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ANTI-ASSESSMENT COMMITTEE,
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In introducing this paper to the notice of the citizens of this metropolis, it is deemed necessary to make some few remarks as to the object of the publication. The city of New York has become the largest, the most populous, and most wealthy city on this continent. The increase of population and business has been rapid, and is still on the onward course. We look back to what it was but a few years since, and compare what it then was with what it is now, and are astonished, and almost ask ourselves what will it be, at this rate, a century hence. What has been, we already know, but what is to be, time alone can unfold. Cities, vastly more populous and more extensive, have been reared and flourished in the old world, and have long since gone to ruins, and not a vestige remains to mark the spot where once stood the mighty walls of princely palaces; the proud city, once the scene of grandeur and splendor, has become a scene of desolation and of ruin. The city of New York is in its infancy. Two hundred and thirty years ago, this whole island was in the entire possession of the red men of the forest, and although numerous and powerful, a change, a mighty change has passed over them; they are gone, and not one of that nation now lives upon the earth, and probably not a drop of their blood runs in the veins of any human being. The people who succeeded them have come and gone, and have been followed by still another, the subjects of a mighty power, who, after the space of little more than a century, have been compelled to yield to the present possessors. In 1696, the entire population of New York, including whites, Indians and negroes, did not exceed 6000 souls,—and now it contains one third of a million of people. The past, as well as the present history of the city, is interesting and valuable; and there are many things which relate to its past and present government and condition, which ought to be placed in a condensed and connected form before the public. The strife of political parties, and the extravagant anticipations of those engaged in real estate speculations, have produced a state of things in the city of New York greatly to be deplored. It will not now help the difficulty to blame and censure individuals; both political parties have been (I may say alike) in fault, and it would seem now, as to the welfare and good government of the city, that they should "unite in what they agree in, rather than fall out as to what they differ about." The mischiefs which exist can be remedied, and the property of the citizens protected from such a state of things in future.

The powers claimed by the Mayor and Common Council, and officers of the corporation now, as well as heretofore, are of an extraordinary character, and certainly require to be at once defined and restricted. It is not usual for municipal corporations in any country to exercise power and control over private property. This power is not possessed even by governments which are sovereign. The cottage of the humblest individual in our land should be as sacred and as much protected as that of the most powerful monarch on the earth; such is the principle on which our general and state government is founded, and such is the genius of our institutions.

The Corporation of the City of New York, a mere municipal corporation, claims to possess, and actually exercises, power over the property of the citizens, that no monarch in any civilized nation on earth would presume to claim, or dare attempt to exercise. This corporation, a mere creation of the statute, to claim to possess powers greater than the very body which created it! what absurdity. The exercise of this power is dangerous to civil liberty and destructive to the welfare and prosperity of the city. The partial, oppressive and excessive assessing of private property, under the pretext of making public improvements, has been carried to great extremes, and such has been the effect, that in very many instances estates have been by these means actually confiscated. There is no safety in titles to real estate, under such a state of things, and no security in investments made in real estate or in securities upon real estate. A state of things of a very extraordinary character now exists; state stocks and bank stocks afford very little security to capitalists; losses in these stocks have been immense, and those who have money from which they wish to derive a moderate and certain income, would now invest largely in real estate, but the power claimed and actually exercised over the real estate on this island by the corporation is so great as actually to make it almost valueless, and divest it of that permanent and certain security that it would otherwise possess. This state of things ought not to exist longer, but should be at once effectually remedied. It is the great doctrine of the common law, that municipal corporations have but few powers beyond those of managing their corporate property and franchises, and appointing and removing their officers.

It is proposed to publish this paper in twelve numbers of sixteen pages each, in the present size, convenient to be bound into a book. It is designed to give the Constitution of the United States, the constitution of this state, and the laws of the state relative to the city, which includes the city charter, also the ordinances of the corporation, and such general information in relation to the city and city government as may be thought to be useful to the citizens, as well as the officers of the corporation, and also to set forth in considerable detail, the assessment abuses, the mischiefs of which, when extensively known, and a remedy pointed out, will be remedied, and the past to some extent corrected. Many of the improvements, so called, have been asked for by speculators, as is said. There are two classes of persons called speculators; one of these classes deal in lots, and the other in contracts and fees. There are, however, another class of persons, who are very numerous, who neither asked for these mis-called improvements, nor approved of them, but whenever they had opportunity, opposed them; these persons are sufferers—great sufferers—many of these have been ruined. This latter class of persons will be presented in this paper, and such public documents placed before the people in relation to them as will produce a conviction in the minds of all our disinterested, as well as public-spirited citizens. There are but few citizens, and very few, who are opposed to improvements, but there are vast numbers, in fact nine tenths of this community, who are wholly opposed to the present system of making improvements, and to the enormous and most glaring abuses which have been practised in these proceedings. It is not necessary in this notice to say much—the contents of this paper will speak fully on this matter, and it will be our endeavor that it shall commend itself to the good opinion of the good men of both political parties. The articles which have been published in the newspapers of this city for a year past, and signed Anti-Assessment, were from the pen of the editor of this Gazette.

ASSESSMENTS AND TAXES.

In the month of May, 1829, the citizens of New York, at an election held in the different Wards, elected by ballot sixty-five delegates (five from each ward) to form a convention to amend the City Charter. These delegates met in convention in June, 1829. In the journal of their proceedings, as published with the notes of Chancellor Kent, are the following doings as to *Assessments and Taxes.* These deserve a careful reading.

IN CONVENTION, July 23d, 1829.

"Mr. John Duer offered the following additional section to come in between sections 9 and 10, as reported by the committee.

"Every law, ordinance or resolution, which shall be introduced in either Board, and also every report of a committee recommending any public improvement, or any appropriation of public monies, *shall be published without delay in all the newspapers employed by the corporation.*

"Mr. M. M. Noah offered the following amendment:

"And all reports of committees which shall recommend any specific improvement, involving the appropriation of public monies, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the Board, under the authority of the Common Council, in the daily newspapers.

"Mr. Whiting moved that the further consideration of the 9th section be, for the present, postponed.

"The chairman having put the question on the motion, it was determined in the negative.

"Mr. Duer then moved, that the consideration of the additional section offered by him, and also of the amendment thereto, offered by Mr. Noah, be postponed.

"The chairman having put the question on Mr. Duer's motion for postponement, the same was determined in the affirmative."

JULY 29, 1829.

"Mr. Noah made a motion, that the committee of the whole do re-consider the 6th section of the report of the committee of fourteen; and the chairman having put the question on Mr. Noah's motion, the same was determined in the affirmative.

"On motion of Mr. Noah, the committee of the whole then proceeded to consider the said 6th section offered by him in convention on the 23d instant.

"Mr. Hedley made a motion to amend the amendment of Mr. Noah, by adding after the word 'Board' in the third line thereof, the words '*in one or more of the daily newspapers,*' and to strike out in the last line the words '*in the daily newspapers.*' Whereupon Mr. Noah assented to the said amendment for striking out.

"Mr. Stephen Allen made a motion to amend the amendment offered by Mr. Noah, by adding after the word '*all*' in the first line, the words '*resolutions and.*

"And the chairman having put the question on Mr. Allen's amendment, the same was determined in the affirmative.

"Mr. Van Buren made a motion to amend the amendment of Mr. Noah, by adding at the end thereof the words '*in all the newspapers employed by the corporation.*'

"Whereupon Mr. Hedley withdrew his amendment.

"Mr. John Hone made a motion to amend the said amendment of Mr. Noah, by adding at the end thereof the words '*and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*'

"The chairman having put the question on Mr. J. Hone's amendment, the same was determined in the affirmative.

"The chairman then read the 6th section as amended, in the following words:

"6. *The Boards shall meet in separate chambers,* and a majority of each *shall* be a quorum to do business. Each board *shall* appoint a president from its own bo-

dy, and *shall* also choose its clerk and other officers, determine the rules of its own proceedings, and be the udge of the qualifications of its own members. Each board *shall keep a journal of its proceedings*, and the doors of each *shall* be kept open, except when the public welfare shall require secrecy; *and all resolutions and reports of committees which* SHALL *recommend any specific improvement involving the appropriation of public monies, or taxing or assessing the citizens of said city,* SHALL *be published immediately after the adjournment of the board, under the authority of the Common Council, in all the newspapers employed by the corporation; and whenever a vote is taken in relation thereto the ayes and noes shall be called and published in the same manner.*"

SEPT. 28, 1829.

"Mr. Philip Hone offered the following resolution:

"Resolved, That the committee appointed under the third resolution of the proceedings of this day, be *instructed to prepare an address to the people, explaining the provisions of the act now to be adopted*, and urging their sanction to the same.

"Mr. President put the question, shall this resolution pass? and it was determined in the affirmative."

The 30th day of October, 1829, the President and fifty-seven members of the convention signed and published an address to the people, in pursuance of the foregoing resolution, *explaining the provisions of the proposed new Charter*, and recommending its acceptance by the people to whom it was submitted, at the then pending election. This address contains this paragraph in relation to assessments.

"Another guard to the City Treasury is provided, by recommending that all the bills or resolutions involving the appropriation of public moneys or imposing *assessments*, shall be immediately published in the newspapers; and whenever a vote shall be taken thereon, the ayes and noes shall be called, and the names of the members with their votes shall be published. This it is trusted will secure at once publicity and notice to all concerned, and the strong influence of personal responsibility on the vote of every individual member. All propositions involving *assessments*, or burdens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard. Careful and deliberate legislation, strict accountability, judicious economy, and *perfect publicity*,—these are the remedies which the Convention have sought against, the evils and abuses to which all wealthy city governments are subject, of which *this* city has felt its share, and of which the public voice has at different times loudly complained."

The provisions of the charter were approved by the people as expressed by their vote by ballot; one alteration, however, was made, viz.: to limit the term of service of the aldermen to one year instead of two.

Thus, it will be seen, the mischief the convention intended to and made provisions to guard against was discovered and known, and the remedy they provided is the seventh section of the act. It is clearly to be seen by the amendments to Mr. Noah's resolution that he convention did not mean "one or more of the daily newspapers," nor the uncertain and undefined provision of "the daily papers," but all the newspapers employed by the corporation, under the authority of the common council, and immediately after the adjournment of the board. This is a plain matter, and so plain that it seems impossible to be misconstrued. It will be seen in the seventh section of the first act of the constitution of the United States, is a provision analogous to that of the seventh section, which has been always held to be imperative. This is an important question, and will be treated upon in our next number of this paper. I will, however, here quote some remarks of Judge Story of the Supreme Court of the United States, as to construction of the constitution and of statutes.

"The first and fundamental rule in the interpretation of all instruments is, to construe them according to the sense of the terms, and the intention of the parties. Mr. Justice Blackstone has remarked, that the intention of a law is to be gathered from the words, the context, the subject-matter, the effects and consequence, or the reason and spirit of the law. He goes on to justify the remark by stating, that words are generally to be understood in their usual and most known signification, not so much regarding the propriety of grammar, as their general and popular use; that if words happen to be dubious, their meaning may be established by the context, or by comparing them with other words and sentences in the same instrument; that illustrations may be further derived from the subject-matter, with reference to which the expressions are used; that the effect and consequence of a particular construction is to be examined, because, if a literal meaning would involve a manifest absurdity, it ought not to be adopted; and that the reason and spirit of the law, or the causes, which led to its enactment, are often the best exponents of the words, and limit of their application."

Where the words are plain and clear, and the sense distinct and perfect arising on them, there is generally no necessity to have recourse to other means of interpretation. It is only when there is some ambiguity or doubt arising from other sources, that interpretation has its proper office. There may be obscurity, as to the meaning, from the doubtful character of the words used, from other clauses in the same instrument, or from incongruity or repugnancy between the words, and the apparent intention derived from the whole structure of the instrument, or its avowed object; in all such cases interpretation becomes indispensable.

Rutherforth has divided interpretation into three kinds, literal, rational, and mixed. The first is, where we collect the intention of the party from his words only, as they lie before us. The second is, where his words do not express that intention perfectly, but exceed it, or fall short of it; and we are to collect from probable or rational conjectures only. The third is, where the words, though they do express the intention, when they are rightly understood, are themselves of doubtful meaning; and we are bound to have recourse to the like conjectures to find in what sense they are used. In literal interpretation the rule observed is, to follow that sense in respect both of the words, and of the construction of them, which is agreeable to common use, without attending to etymological fancies or grammatical refinements. In mixed interpretation, which supposes the words to admit of two or more senses, each of which is agreeable to common usage, we are obliged to collect the sense, partly from the words, and partly from conjecture of the intention. The rules then adopted are, to construe the words according to the subject matter, in such a sense as to produce a reasonable effect, and with reference to the circumstances of the particular transaction. Light may also be obtained in such cases from contemporary facts, or expositions; from antecedent mischiefs; from known habits, manners, and institutions; and from other sources almost innumerable, which may justly affect the judgment in drawing a fit conclusion in the particular case.

Interpretation also may be strict or large; though we do not always mean the same thing, when we speak of a strict or large interpretation. When common usage has given two senses to the same word, one of which is more confined, or includes fewer particulars than the other, the former is called its strict sense, and the latter, which is more comprehensive, or includes more particulars, is called a large sense. If we find such a word in a law, and we take it in its more confined sense, we are said to interpret it strictly. If we take it in its more comprehensive sense, we are said to interpret it largely. But whether we do the one or the other, we still keep to the letter of the law. But strict and large interpretations are frequently opposed to each other in a different sense. The words of a law may sometimes express the meaning of the legislator imperfectly. They may, in their common acceptation, either include more or less than his intention. And as, on the one hand, we call it a strict interpretation, where we contend that the letter is to be adhered to precisely; so, on the other hand, we call it a large interpretation, where we contend the words ought to be taken in such a sense, as common usage will not fully justify; or that the meaning of the legislator is something different from what his words in any usage would import. In this sense, a large interpretation is synonimous with what has before been called a rational interpretation. And a strict interpretation, in this sense, includes both literal and mixed interpretation; and may, as contra-distinguished from the former, be called a close, in opposition to a free or liberal interpretation.

"It is an established rule of construction, where a phrase will bear either of two meanings, to give it that which will allow some meaning to other parts of the instrument, and not that which will render all others useless.

"One of the best established rules of interpretation—one which common sense and reason forbid us to overlook, is, that when the object of the power is clearly defined by its terms, or avowed in the context, it ought to be construed so as to obtain the object and not defeat it. The circumstance that so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or denied to have any operation? if the people frame a constitution, the rulers are to obey it. Neither rulers nor any other functionaries, much less any private persons, have a right to cripple it, because it is according to their views inconvenient, or dangerous, unwise or impolitic; of narrow limits, or of wide influence.

"The common principle of interpretation would seem to instruct us, that the different parts of the same instrument ought to be so expounded, as to give meaning to every part that will bear it. Shall one part of the same sentence be excluded altogether from a share in the meaning; and shall more doubtful and indefinite terms be retained in their full extent, and clear and precise expressions be denied any signification? Nothing is more natural or common, than first to use a general phrase, and then to qualify it by a recital of particulars.

"Interpretation would here desert its proper office—that, which requires, that every part of the expression ought, if possible, to be allowed some meaning to be made to conspire to some common end.

"Now it is not too much to say, that in a constitution of governments, framed and adopted by the people, it is a most unjustifiable latitude of interpretation to attach to any clause, if it be sensible in the language, in which it is expressed, and in the place which it stands. If words are inserted, we are bound to presume that they have some definite object and intent; and to reason them out of the constitution upon arguments *ab inconvenienti*, (which to one mind may appear wholly unfounded, and to another wholly satisfactory,) is to make a new constitution, not to construe an old one. It is to do the very thing which is so often complained of, to make a constitution to suit our own notions and wishes, and not to construe that which the people have given to the country.

"Having thus disposed of the question, what is the true interpretation of the clause, as it stands in the text of the constitution, and ascertained that the power of taxation, though general, as to the subjects to which it may be applied, is yet restrictive, for the purposes for which it may be exercised; it next becomes matter of inquiry, what were the reasons for which this power was given, and what were the objections to which it was deemed liable."

The above quotations from Judge Story, of the Supreme Court of the United States, in commenting upon the Constitution of the United States, may be applied to the *seventh section* of the charter or constitution of the city. The charter of the city is a statute, and as such must be construed strictly.

ASSESSMENTS.

The assessment for the pretended opening of the Seventh Avenue, from 21st Street to 129th Street, is a most extraordinary proceeding. A petition was presented to the common council some five or more years ago, signed by thirty persons, few of whom were interested in the land to be affected by such proceeding. Upon this petition the common council proceeded to act. In February, 1839, the supreme court confirmed the report of the commissioners of estimate and assessment for the opening of this avenue. The amount of awards made to the owners of land required to be taken for the opening of this avenue, is stated at $23,141 41. Since the confirmation of this report there has been paid by the street commissioner of the city of New York, the large sum of $12,435 70, fees and expenses for making the estimate, &c., and in addition to this the very large sum of $1,115 is to be paid for collecting the assessment. This large sum of fees is made up of the following lesser sums, viz.: counsel fees and court charges $3,976 77; surveyors' fees $2,801; commissioners' fees $4,920; room hire $110; clerk hire $250; carriage hire $30; stationery, &c. $48. The sum paid the commissioners is, for each of the three commissioners $1,640, which at the rate of four dollars per day, the highest price allowed by law for every day actually employed, &c. is pay for *sixteen months*' services for each commissioner, and one dollar per day room hire for the same time. The other charges are equally extravagant. Three competent men could, in ten days time, make the estimate and assessment for opening the 7th Avenue from 21st to 129th Street. A great portion of the land through which it is laid out is held in large tracts. This avenue is not yet open, and several persons who have been assessed have taken proceedings to set the assessment aside.

Ninth Avenue, from 45th Street to the Bloomingdale Road.—The assessments for the pretended opening of this avenue are of a singular description. Two entire blocks belonging to the corporation of the city of New York, and situate on the east side of the avenue between 63d and 65th streets, are assessed twenty-five dollars each——; the land opposite, or the west side of the avenue, belonging to other owners, is assessed fifty dollars each block; two other blocks on the east side of the avenue, between 61st and 63d streets, are assessed *eight hundred and fifty dollars* each block, and two blocks on the west side of the avenue and opposite, are assessed fifty dollars each. The lands composing all of these blocks are of nearly equal value, and the location, &c. the same in every respect, each block extending to the centre of the avenue, and extending back to half the distance to the next avenue. The proceedings in relation to making the assessment for this portion of the avenue were ordered by the common council on the petition of eighteen persons, *none of whose names* are to be found on the list of awards or assessments. The assessment for the opening of this avenue has, some of it, been collected more than four years ago, and for others of it the land has been sold, some for a term of two thousand years. The avenue is not yet open. Proceedings have been taken to set aside the assessment.

SPLENDID ASSESSMENT.

A lot of ground belonging to the estate of a person deceased, situate on the corner of 28th street and 7th avenue, being 58 feet 10 inches front, and 96 feet 10 inches deep, was assessed for the pretended opening of 28th street, the sum of *one thousand and thirty-seven dollars and five cents;* and for the pretended opening of the seventh avenue *two hundred and nine dollars and ninety-eight cents*, making in all *twelve hundred and forty-seven dollars and three cents.* This assessment has been some time on interest, and both together now amount to about fourteen hundred dollars. This land is not worth one half this sum. What kind of an improvement shall this be called? The land sharks would not have it at the last great sale, although it was offered for the term of five thousand years to any person who would come forward and pay the assessment and the interest, and then for any length of time!

Judge Story, of the supreme court of the United States, in his commentary upon the constitution in speaking of that clause of it which provides that "*private property shall not be taken for public use without just compensation,*" remarks:

"This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers."

TAXES.

"It has been remarked by Adam Smith, (says Judge Story) "that the private revenue of individuals arises ultimately from three different sources, rent, profit and wages; and that every public tax must be paid from some one, or all these sources of revenue."

The whole amount of taxes raised by the corporation of the city of New York, in the year 1830, was four hundred and fifty thousand dollars.

The annual tax raised by the corporation of the city of New York in the year 1792, was about six thousand dollars less than the amount paid and payable to corporation counsel last year.

Our worthy comptroller of the city of New York, in his annual report for 1839, makes this very judicious remark. "The common council are from this time forward, peculiarly required, by every consideration of prudence, to abate all unnecessary expenditures, however trivial."

Judge Story, in speaking of legislatures, makes these very pertinent remarks, which may with great truth be applied to the common council of New York:

"There is a strong propensity in public bodies to accumulate power in their own hands, to widen the extent of their own influence, and to absorb within their own circle the means and the motives of patronage. It has often been said that necessity is the plea of tyrants; but it is equally true that it is the plea of all public bodies invested with power where no check exists upon its exercise. Mr. Hume has remarked with great sagacity, that men are more honest in their private, than in their public capacity; and will go greater lengths to serve a party than where their own private interests alone are concerned. Honor is a great check upon mankind. But where a considerable body of men act together this check is in a great measure removed, since a man is sure to be approved of by his own party for what promotes the common interest. Public bodies, like private persons, are occasionally under the dominion of strong passions and excitements; impatient, irritable and impetuous. The habit of acting together produces a strong tendency to what, for the want of a better word, may be called a corporation spirit. Measures are often introduced in a hurry, and debated with little care, and examined with less caution. A legislative body is not apt to mistrust its own powers, and far less the temperate exercise of those powers. The representatives of the people will watch with jealousy every encroachment of the executive magistrate, for it trenches upon their own authority. But who shall watch the representatives themselves? Will they be as jealous of the exercise of power by themselves as by others?"

The comptroller, in his annual report to the common council in 1839, remarks:

"That it has heretofore been proposed to establish a general receiving office, for the collection of ordinary taxes and all other assessments. The plan has been favorably thought of. For efficiency and economy it would be a manifest improvement. The amount paid to the ward collectors alone, for collecting the tax of 1838, amounted to near $30,000. Whether it is expedient to make a change of this character, which involves an amendment of the city charter, is for the wisdom of the people and their representatives to decide."

COMMON COUNCIL.

The legislative power of the *corporation* is vested in a board of aldermen and board of assistants, who together shall form the common council of the city. The section vesting the legislative power of the city in the two boards was adopted by the convention in 1829; the legislature altered this, and vested only the legislative power of the *corporation* in the common council. The legislative power of the city belongs to the legislature of the state of New York, the city being a part of the state, and governed by the laws of the state.

MAYOR.

The mayor of the city of New York possesses great power. He has a right and it is his duty to veto any proceeding of the common council which he disapproves of, and return such proceedings to the board in which the proceeding originated, with his objections. The board to which it shall be returned, shall enter these objections at large on their journal, and cause the same to be published in *one* or more of the public newspapers of the city. "The board to which such act, ordinance or resolution, have been so returned, shall, after the expiration of not less than ten days thereafter, proceed to reconsider the same. If after such reconsideration, a majority of the members *elected* to the board shall agree to pass the same, it shall be sent together with the objections, to the other board, by which it shall likewise be reconsidered; and if approved by a majority of all the members elected to such board, it shall take effect as an act or law *of the corporation.* In all such cases the votes of both boards shall be determined by yeas and nays, and the names of the persons voting for and against the passage of the measure reconsidered, shall be entered on the journal of each board respectively." See sections 12 and 13 of the act of April 7, 1830. Is this statute directory?

The mayor holds the strings of the public purse of the city,—no money whatever can be drawn from the city treasury without his sanction.

The mayor is wholly independent of the common council; he is elected by the people, under and by virtue of the constitution of the state of New York as amended in 1833.

ANCIENT PROCEEDINGS AND LAWS

RELATIVE TO STREETS, &c.

The first Assembly convened in the Colony of New York was in the year 1633, and from that time to 1691 several Laws were enacted, but never printed, and were not confirmed by the King.—These Laws were recorded in the Office of the Colonial Secretary, and are now deposited in the Office of the Secretary of State at Albany. The first printed Journal of the Colonial Assembly, bears date April, 1691.—The first Law enacted by the Colonial Assembly in relation to streets in the City of New York, bears date Oct. 1, 1691. This act was confirmed by William 3d, May 11, 1697, and remained a Law of the province during the remainder of the time the Colony continued under the British Government, and was a Law of the State of New York until 1787, when it was repealed, and

another Law containing many of its provisions enacted in its stead.—Thus it will be seen that this Law was in force ninety-five years.—There are some peculiarities in this Law which I wish to call the reader's attention to, viz.: That no provision is made for assessing the awards made to the owners for Land taken for a public street, the amount, therefore, had to be paid from the public Treasury. This act was, during the time it remained in force, a complete protection to private property. The proviso attached to the Bill by the Governor and Council evinces great care and attention in the passing of Laws.

The following are the proceedings of the General Assembly of the Colony of New York, in passing the first Law in relation to Streets, &c.

General Assembly of the Colony of New York.
"Die Martis, 2 ho. P. M., Sept. 22d, 1691.
The Petition of the Mayor and Aldermen, &c. read.
Ordered, That a Bill be brought in accordingly.
Die Jovis, 2 ho. P. M., Sept. 24 1691.
A Bill for regulating the Buildings, Streets, Lanes, Wharfs, Docks and Alleys of the City of New York.
Read the first time and ordered a *second time*.
Ditto Bill read a second time, and ordered to be engrossed.
Die Veneris, 10 ho. A. M. Sept., 25th, 1691.
The Bill for regulating the Buildings, &c., read a third time, and passed, and ordered to be sent up to the Commander in Chief and Council for their assent.
Ordered that Alderman Merrett, Mr. Courtland, Mr. Beeckman, and Mr. Rensaleer do carry up the *two* Bills (ut supra) to the Commander in Chief and Council for their assent.
The Gentlemen returned from the Fort say, they delivered the *two* Bills (ut supra) and the Commander in Chief and Council say, it is very well—they will make all the speed imaginable.
Die Jovis, 10 ho. A. M., Oct. 1st. 1691.
Upon reading the Petition of the Mayor, Aldermen, and Commonalty of the City of New York, together with the *Proviso* transmitted to the House by the Commander in Chief and Council for consideration;
"Ordered that the proviso be annexed to said Bill, and sent up to the Commander in Chief and Council for their assent, and that the Commander in Chief may assess the value of the lots in controversy, as is desired in said Petition.—Ordered—That Alderman Merrett, Alderman Kipp, Mr. Van Schaick, and Mr. Whitehead, do carry up the said Bill and *Proviso*, and acquaint the Commander in Chief and Council that the House waits their commands when to attend the publication of acts passed this session."

Act of Assembly passed in the Province of New York.
An Act for regulating the Buildings, Streets, Lanes, Wharfs, Docks, and Allies, of the City of New York.

Whereas, the City of New York and Metropolis of this Province was chiefly erected by the inhabitants thereof for the propagating and encouraging of trade and commerce, and for the good benefit and welfare of their Majesty's subjects inhabiting within this province, and forasmuch as it is very necessary for traffic and commerce that the buildings, streets, lanes, wharfs, docks and *allies* of the said city be conveniently regulated with uniformity for the accommodation of habitations, shipping, trade and commerce, and that all impediments and obstructions that may retard so necessary a work may be removed: Be it therefore enacted by the Commander in Chief, and Council, and Representatives met in General Assembly, and by the authority of the same, That the Mayor, Aldermen, and Common Council of the said city shall and may at their will and pleasure elect, nominate, or appoint, one or more discreet and intelligent person or persons to be surveyors or supervisors of their buildings, streets, lanes, wharfs, docks and *allies*, and to see that the buildings, streets, lanes, wharfs, docks and allies, of the said city be conveniently regulated with uniformity, for the accommodation of habitations, shipping, trade, and commerce, according to such rules and order of building and laying out of the streets, lanes, wharfs, docks, and allies, as shall be established by the Mayor and Common Council of the said city, who are hereby authorized and empowered to make such rules and orders for the better regulation, uniformity, and gracefulness of such new buildings as shall be erected for habitations, and also of such streets, lanes, wharfs, docks and allies as shall be convenient for the good of the inhabitants; and it shall be lawful for the Mayor, Aldermen, and Common Council, or for the Mayor and Aldermen in their court, to administer an oath upon the Holy Evangelists unto the surveyors or supervisors of the true and impartial execution of their office in this behalf.

And, whereas, in laying out of the new lots for buildings some controversie may arise by a lot or lots of ground which if built upon would be very incommodious and prejudicial to one of the principal streets of this city, and hurtful to the trade and health of the inhabitants, Be it therefore enacted, &c., That the Mayor, Alnermen, and Common Council of the said city, for the time being, in Common Council assembled, shall and may and are hereby empowered and required to obstruct any building or buildings that may narrow the said street or any other streets within the said city, and the said Mayor, Aldermen, and Common Council shall and may, by virtue of the present act, continue the said street, commonly called the Broad street, according to its present dimensions; and if in the doing thereof, or in the laying out for the future any streets, lanes, wharfs, docks or *allies*, they do take any person's ground they are to give notice to the owners or parties interested in the ground so to be *taken* for the intent as aforesaid; and to the end that reasonable satisfaction may be given for all such ground as shall be taken and employed for the use aforesaid, the Commander in Chief and Council may assess the value of the lots in controversie; and for other ground the Mayor, Aldermen, and Common Council shall and may treat and agree with the owner and others interested therein; and if there shall be any person that shall refuse to treat in manner aforesaid, that in such case the Mayor and Aldermen in their court are hereby authorized, by virtue of this act, to issue out a warrant or warrants to the sheriff of the said *city*, who is hereby required to empannel and return a jury before the said court of Mayor and Aldermen, which jury, upon their oath, to be administered by the said court, are to inquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same as shall be judg'd by the said Mayor, Aldermen, and Common Council shall be adjudged fit to be converted to the purposes aforesaid; and such verdict of the jury and judgment of the said court of Mayor and Aldermen thereupon, and the payment of the said sum or sums of money so awarded and adjudg'd to the owners or others having estates or interest or tender or refusal thereof, shall be binding to all intents and purposes against the said parties, their heirs, executors, administrators and assigns, and all others claiming any title or interest to the said ground, and shall be a full authority to the said Mayor, Aldermen, and Common Council to cause the said ground to be converted and used for the purposes aforesaid, anything contrary herein or in any other law to contrary hereof in any wise notwithstanding.

And forasmuch as the filth and soil of the said city lying in the public streets thereof doth often prove a common nuisance unto the inhabitants and traders to and from the said city, and very prejudicial to their health, for the removal thereof, be it further enacted, &c., That the numbers and places for all common sewers, drains, and vaults, and the order and manner of paving and pitching the streets, lanes, and *allies* of the said city, shall be designed and set out by the said Mayor, Aldermen, and Common Council of the said city, together with the said surveyor or supervisors, appointed in manner aforesaid, and when they assemble shall have power and authority to order and direct the making of vaults, drains, and sewers, or to cut into any drain or sewer already made, and for the altering, amending, enlarging, cleansing and scouring of vaults, sinks or common sewers; and for the better effecting thereof it shall and may be lawful to and for the said Mayor, Aldermen, and Common Council, together with the surveyors and supervisors, at their said meeting, to impose any reasonable tax upon all houses within the said city, in proportion to the benefit they shall receive thereby, for and toward the making, cutting, altering, enlarging, amending, cleansing, scouring all and singular the said vaults, drains, sewers, pavements and pitching aforesaid; and in default of payment of the said sum to be charged, it shall and may be lawful to and for the said Mayor, Aldermen, &c., by order or warrant under their hands and seals, to levy the said sum and sums of money so assessed, by distress and sale of the goods of the parties chargeable therewith, and refusing and neglecting to pay the same, rendering the overplus if any be.—Always provided and be it further enacted, &c., That nothing herein contained shall be construed to change, alter, shorten, lengthen, narrow or enlarge any of the streets, allies, and lanes within this city, as they are now laid out and remain at the publication thereof, nor to break through any person's grounds now in fence or enclosed, or to take away any person's house or habitations, any thing herein contained to the contrary hereof in any wise notwithstanding.

Passed, October 1st, 1691.
Confirmed, May 11th, 1697.

An Act for regulating the Buildings, Streets, Wharfs and Slips, in the City of New York.—Passed April 16th, 1787.

Whereas, for the encouragement of the trade and commerce of this state, it is necessary that the buildings, streets, wharfs and slips, in the city of New York, should be regulated with uniformity, for the accommodation of habitations, shipping and transportation; wherefore, to remove all impediments or obstructions that may retard so necessary a work,

§ 1. *Be it enacted by the people of the state of New York, represented in senate and assembly, and it is hereby enacted, by the authority of the same*, That it shall and may be lawful to and for the Mayor, Aldermen and commonalty of the city of New York, in Common Council convened, from time to time, to make such by-laws, ordinances, rules and orders, for the better regulating and arranging, with uniformity, such new buildings as shall, after the passing of this act, be erected for habitation or for the purposes of trade and commerce; and also for regulating and altering the streets, wharves and slips, in such manner as shall be most commodious for shipping and transportation; and also at their will and pleasure, from time to time, to nominate and appoint two or more discreet and intelligent persons to be the surveyors of the buildings, streets, wharfs and slips of the said city, whose office and duty it shall be to direct and see that all buildings, streets, wharfs and slips, to be laid out or altered in the said city, be regulated with uniformity, for the accommodation of habitations, shipping, trade and commerce, according to such bye-laws, ordinances, rules and orders, as, by the Common Council of the said city, shall be for that purpose, from time to time, ordained and established; which said Surveyors shall respectively, before they enter upon the duties of their said offices, take the following oath, before the Mayor or Recorder, viz.

I ———, *appointed a Surveyor of the city of* New York, *do swear, in the presence of Almighty God, that I will faithfully, truly and impartially, execute the office of one of the Surveyors of the said city.*

II. And *whereas* in the laying out of new lots of ground for buildings, controversies may arise, by reason that a lot or lots, if built upon to their full extent, would incommode and obstruct some street of the said city, and be hurtful to the trade and health of the inhabitants thereof; therefore, *be it further enacted by the authority aforesaid*, that it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the said city, in Common Council convened, to hinder and prevent any building or buildings, that may narrow or encroach upon any street within the said city: and if in the doing thereof, or in the laying out for the future, any streets, wharfs or slips, they shall require for such purposes, the ground of any person or persons, they shall give notice thereof to the owner, or parties interested in such ground, or his, her or their agent or legal representative: and to the end that reasonable satisfaction may be made for all such ground as shall be necessary for the uses aforesaid, the said Common Council shall and may treat with the owners, or persons interested therein, or his, her or their agent or legal representative; and if any such owner or owners shall refuse to treat in manner aforesaid, then, and in such case, it shall and may be lawful to and for the Mayor or Recorder, and any two or more Aldermen, by virtue of this act, by a precept under their hands and seals, to command the Sheriff of the said city and county of *New York*, to impannel and return, and he is hereby required to impannel and return a jury to appear before the Mayor's court of the said city, at any term thereof, not less than three weeks from the date of such precept, to inquire of and assess the damages and recompence due to the owner or owners of such ground, or his, her or their agent or legal representative; and at the same time to summon the owner or owners of such ground, by notice to be left at his, her or their most usual place of abode, to appear before such Mayor's court, on the day and at the place in such precept to be specified;

which jury being first duly sworn, faithfully and impartially to inquire into and assess the damages in question, and having viewed the premises, if necessary, shall inquire of and assess such damages and recompence, as they shall, under all the circumstances, judge fit to be awarded to the owner or owners of such ground, for their respective losses, according to their several interests and estates therein. And the verdict of such jury, and the judgment of the said Mayor's court thereupon, and the payment of the sum or sums of money so awarded and adjudged to the owner or owners thereof, or tender and refusal thereof, shall be conclusive and binding, to all intents and purposes, against the said owner and owners, his, her and their respective heirs, executors, administrators and assigns, claiming any estate or interest of, in or to the same ground; and it shall thereupon be lawful to and for the said Mayor, Aldermen and Commonalty of the city of *New York*, and their successors, to cause the same ground to be converted to and used for the purposes aforesaid.

IV. And *whereas* the dirt and soil lying in the streets, doth often prove a common nuisance, and very prejudicial to the health of the inhabitants of the same city; for remedy whereof, *be it further enacted by the authority aforesaid*, that it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the said city, in Common Council convened, by ordinances and bye-laws for that purpose to be made and ordained, from time to time, and in such manner as they shall judge to be most conducive to health and public convenience, to cause common sewers, drains and vaults to be made and constructed in any part of the said city, and to order and direct the pitching and paving the streets thereof, and the cutting into any drain or sewer already made, or to be made; and the altering, amending, cleansing and scouring of any street, vault, sink, or common sewer, within the same city. And for the better effecting thereof, it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the said city, in Common Council convened, to cause to be made, an estimate or estimates of the expense of conforming to such regulations as aforesaid, and a just and equitable assessment thereof, among the owners or occupants of all the houses and lots intended to be benefited thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire respectively. And in order that the same may be faithfully and impartially performed, the said Common Council shall, from time to time, appoint *five* sufficient and disinterested freeholders for every such purpose, who, before they enter upon the execution of their trust, shall be duly sworn, before the said Mayor or Recorder, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and a certificate in writing of such estimate and assessment being returned to the said Common Council, and ratified by them, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively; and such owners or occupants respectively, shall thereupon become, and be liable and chargeable, and they are hereby required, upon demand, to pay to such person as shall be authorised by the said Common Council to receive the same, the sum at which such house or lot shall be so assessed, to be employed and applied for and towards the making, altering, amending, pitching, paving, cleansing and scouring such streets, and making, constructing and repairing such vaults, drains and sewers as aforesaid; and in default of payment thereof, or any part thereof, it shall and may be lawful to and for the Mayor, Recorder, and Aldermen of the same city, or any five of them, of whom the Mayor or Recorder always to be one, by warrant under their hands and seals, to levy the said sum and sums of money so assessed, by distress and sale of the goods and chattels of the owner or occupant of such house or lot so assessed, and refusing or neglecting to pay the same; rendering the overplus, if any there be, after deducting the sum assessed, and the charges of distress and sale, to such owner or occupant respectively, or their legal representatives.

V. *Provided always, and be it further enacted by the authority aforesaid*, That nothing in the last mentioned clause of this act contained, shall be construed to affect any contract or agreement that hath been or shall be made between any landlord and tenant, respecting the payment of any such charges or repairs, but they shall be answerable to each other in the same manner as if this act had never been made. *And further*, In case any money so from time to time to be assessed for the services aforesaid, shall be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, that then it shall and may be lawful to and for the person so paying the same, and he shall be, and hereby is empowered and authorised to sue for and recover the same, with interest and costs of suit, in any court having lawful cognizance thereof, as so much money paid for the use of the person for whom or for whose use the same shall have been paid; and the assessment aforesaid, with proof of payment, shall be conclusive evidence to such court, and judgment and execution shall be awarded accordingly.

VI. And *whereas* more effectually to accommodate the trade and preserve the health of the citizens, it is necessary, in certain parts of the city, to level adjoining lots, by raising some and reducing others, in order to draw away the stagnate water and filth, and render the streets dry, and the passage easy and convenient; and it frequently happens, that there are vacant lots, owned by persons who refuse to contribute to any expense with respect to their lots, or the streets on which they are bounded, however detrimental such refusal may prove to the proprietors of the adjacent lots, and the public good: For remedy whereof, *Be it further enacted by the authority aforesaid*, That when in any such case a general regulation shall be judged necessary, in any part of the city, and be ordered and directed by any ordinance or bye-law of the said Mayor, Aldermen and Commonalty of the said city, in Common Council convened, for raising, reducing, levelling or fencing in any such lot or lots as aforesaid, it shall and may be lawful to and for the said Common Council, to cause an estimate to be made of the whole expense of conforming to such regulation, with respect to each lot which the owner thereof shall refuse or neglect to put in the order thereby required; which estimate shall be made and certified under the hands and seals of *five* sufficient freeholders, to be appointed for that purpose, and sworn in manner aforesaid; and the same estimate being duly returned to, and approved by the said Common Council, they shall take order for advertising the same, in two or more of the public newspapers printed in the said city, for three weeks, thereby requiring the owners of such lots respectively, to pay the sum at which the said lots shall be so assessed, to the treasurer or chamberlain of the said city, to defray the expense of the intended work; and that if default shall be made in such payment, such lot will be sold at public auction, at a day and place therein to be specified, for the lowest term of years at which any person shall offer to take the same, in consideration of advancing the sum assessed on the same, for the expense aforesaid. And if, notwithstanding such notice and demand, the owner or owners should refuse or neglect to pay such assessment, with the charge of appraisement and advertisement, then it shall and may be lawful to and for the said Common Council, to cause the said lot to be sold at public auction, for a term of years, for the purposes and in the manner expressed in the said advertisement, and to give a declaration of such sale to the purchaser thereof, under the common seal of the said city; and such purchaser, his executors, administrators and assigns, shall, by virtue thereof, and of this act, lawfully hold and enjoy the same, for his and their own proper use, against the owner or owners thereof, and all claiming under him or them, until his term therein shall be fully complete and ended; being at liberty to remove all the buildings and materials which he, she or they shall erect or place thereon, but leaving the ground in sufficient fence, and with the street or streets fronting the same, in the order required by the said regulations; any law, usage or custom to the contrary thereof notwithstanding. *Provided always*, That if, after defraying the actual expense of conforming any lot, so to be sold for a term of years, to the regulations aforesaid, and deducting all reasonable charges attending the same, a surplus of the purchase money, bidden or given therefor, at such auction, shall remain in the hands of the Chamberlain or Treasurer of the said city, the same shall forthwith be rendered to the owner or owners of such lot or lots respectively, or his, her or their respective legal representatives.

VII. *And be it further enacted by the authority aforesaid*, That if, upon the completion of any such regulation as aforesaid, it shall appear to the Mayor, Aldermen and Commonalty of the said city, in Common Council convened, that a greater sum of money hath been *bonâ fide* expended in making such regulation, than the sum mentioned in the estimate so made as aforesaid, and actually collected, it shall and may be lawful to and for the said Common Council, to cause a further assessment to be made of the sum, which such *bonâ fide* expenditures shall exceed the sum so estimated and collected as aforesaid, upon and among the owners or occupants of all the houses and lots before assessed as aforesaid, and to cause the same to be collected in the same manner as herein before directed. *And further*, That in case the sum actually expended shall be less than the sum expressed in such estimate, and actually collected as aforesaid, the surplus shall be forthwith rendered to the respective persons from whom the same were so collected and received as aforesaid, or his, her or their respective legal representatives.

An Act authorising the Mayor, Aldermen and Commonalty of the city of New York, to fill in, and raise the Tract of Land in the said city, called the Meadows, and for continuing Roosevelt and Frankfort streets. —Passed 6th April, 1792.

WHEREAS Benjamin Hildreth, John De Peyster, John Franklin, Samuel Franklin, Comfort Sands, and Samuel Osgood, and others, in and by their certain petition to the Legislature, setting forth, that in the city of New York, in that part commonly called and known by the name of the Meadows, in the fifth ward of the said city, there are many vacant lots of land, which through the inattention of their owners, have become deep sink holes, the receptacles of water in the rainy seasons, and the source of many unwholesome and noxious stenches; and that the petitioners are informed, that the powers of the corporation of the said city are not competent so far as to grant any relief in the premises; and have therefore humbly prayed the Legislature, that an act to compel the owners of said lots to fill them up, and so remove the said nuisance; or that such other measures may be taken as to the Legislature shall seem expedient: **Wherefore,**

I. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, by an ordinance or ordinances, bye-law or bye-laws, for that purpose to be made and ordained, and in such manner as they shall deem to be most conducive to the health, convenience and safety of the citizens of the said city, and the interest and advantage of the proprietors of the respective houses and lots of ground to be affected thereby, to order the filling in with earth, and raising the lots of ground and streets in all the aforesaid tract of land called the Meadows, situate in the fifth ward of the said city, and bounded northerly by Chatham-street, southerly by the rear of the lots on the northerly side of Cherry-street, westerly by the rear of the lots on the easterly side of Queen-street, and easterly by Catharine-street, to such height as to convey into the East-river all the water which shall from time to time fall on the said tract of land, or run thereon from the adjoining lots and streets; and that the expense of conforming to such regulation, shall be borne and paid by the owners of the respective lots of ground to be affected thereby in the manner herein after mentioned.

II. *And be it further enacted*, That Richard Furman, Abraham Rhinelander, George Stanton, Joseph Stringham, and John Stagg, shall be and hereby are appointed commissioners to make an estimate of the whole expenses of conforming to such regulations as aforesaid, and to make a just and equitable assessment thereof, among the owners of all the houses and lots of ground intended to be benefited thereby, in proportion as nearly as may be, to the advantage which each shall be deemed to acquire respectively, making such allowance to such of the owners or proprietors of any of the said houses or lots of ground as shall have filled or raised their respective lots of ground, or the streets in front thereof, as they the said commissioners shall deem just and equitable. And the said commissioners shall, before they enter upon the execution of their trust, be duly sworn before the mayor or recorder of the said city, to make the said estimate or assessment, fairly and impartially according to the best of their skill and judgment, and a certificate in writing, of such estimate and assessment, under the hands and seals of the said commissioners, or any three or more of them, being returned to the common council of the said city, and ratified by them, shall be binding and conclusive upon the owners of such houses and lots of ground so to be assessed respectively, and the sum or sums of money at which each house and lot of ground shall be so assessed, shall become and be a charge upon such respective house and lot of ground, into whose soever hands and possession the same shall at any time thereafter come and descend. And the owners of such houses and lots of ground respectively, at the time of

such assessment, shall thereupon become and be liable and chargeable, and they are hereby required, upon demand, to pay such person or persons as shall be authorised by the common council of the said city, to receive the same, the sum at which each such house or lot of ground shall be so assessed, to be employed and applied for and towards filling and raising such respective lot of ground, and the street opposite thereto; and in default of payment thereof, or any part thereof, it shall and may be lawful to and for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder always to be one, by warrant under their hands and seals, to cause the said sum and sums of money, so assessed, to be levied by distres and sale of the goods and chattels of the owner of such house or lot of ground so assessed, and refusing or neglecting to pay the same, rendering the overplus money, if any there be after deducting the sum assessed, and the charges of distress and sale, to such owner or owners respectively, or their legal representatives. And in case no sufficient goods or chattels of the owner of any such house or lot of ground can be found within the city and county of New York, whereof the sum or sums of money so assessed thereon can be made and levied, or in case the owner of such house or lot of ground, so assessed, is unknown, or shall reside out of the said city of New York, the said common council shall take order for advertising such lot of ground and the buildings thereon, if any there be, in two or more public newspapers printed in the said city, for thirteen weeks, at least twice in every week, in and by such advertisement, describing the same lot of ground, and requiring the owners thereof respectively to pay the sum or sums of money at which such lot of ground shall be so assessed, to the treasurer or chamberlain of the said city, to defray the expense of the intended work; and that if default shall be made in such payment, such lot will be sold at public auction, at a day and place therein specified, in fee simple, to the highest bidder, to defray the expense aforesaid. And if, notwithstanding such notice, the owner or owners of any such lot of ground shall refuse or neglect to pay such assessment, with the charge of such advertisement, then it shall be lawful to and for the said common council to cause the said lot of ground, together with the buildings thereon, if any there be, to be sold at public auction in fee simple, for the purposes and in the manner expressed in the said advertisement, and to give a declaration of such sale to the purchaser thereof, under the common seal of the said city; and such purchaser, his heirs or assigns shall, by virtue thereof, and of this act, hold and enjoy the same, for his and their own proper use, against all former owner or owners thereof, and all claiming under him or them; any law, usage or custom to the contrary thereof notwithstanding. *Provided always.* That if after defraying the actual expense of conforming any lot of ground so to be sold, and the street in front thereof, to the regulations aforesaid, and deducting all reasonable charges attending the same, a surplus of the purchase money bidden or given therefor at such auction, shall remain in the hands of the chamberlain or treasurer of the said city, the same shall, on demand, be rendered to the owner or owners of such lot of ground respectively, or his, her or their legal representatives.

III. *And be it further enacted*, That if upon the completion of such regulation, it shall appear to the common council, that a greater sum of money hath been *bonâ fide* expended in making such regulation, than the sum mentioned in the estimate so made as aforesaid, and actually collected, it shall and may be lawful to and for the said common council to cause a further assessment to be made by the commissioners above named, or any three or more of them, of the sum which such *bonâ fide* expenditures shall exceed the sum so estimated and collected aforesaid, upon and among the owners of all the houses and lots of ground before assessed as aforesaid, and to cause the same to be collected in the same manner as herein before directed.—And further, That in case the sum actually expended shall be less than the sum expressed in such estimate, and actually collected as aforesaid, the surplus shall be forthwith rendered to the respective persons from whom the same was so collected and received as aforesaid, or his, her or their legal representatives.

IV. *And be it further enacted*, That it shall and may be lawful for the mayor, aldermen and commonalty of the city of New York, in common council convened, to lay out and continue Roosevelt-street, which now runs through part of the tract of land aforesaid, from Chatham-street to Cherry-street, on a straight line to the East-river, through the lots of ground on the southerly side of Cherry-street aforesaid, and of such breadths as the common council shall think proper, nor exceeding the present breadth thereof, on the southerly side of Cherry-street aforesaid. *Provided always*, That before the laying out and continuing the said street to the East-river as aforesaid, the said mayor, aldermen and commonalty, shall, for that purpose, first have and obtain the consent of the proprietor or proprietors, his, her or their legal representatives, of such houses and lot or lots of ground, through which the said street may pass, on the south side of Cherry-street as aforesaid.

V. *And be it further enacted*, That it shall be the duty of the commissioners in this act above named, upon a full and equitable consideration and estimate of all the circumstances attending the same, to determine what part or proportion of all and every the sums of money which shall be expended by the common council of the said city, for opening and continuing Roosevelt-street to the East-river, as aforesaid, ought to be borne and paid by the said common council, in consideration of the general convenience to the citizens o. the said city, occasioned by opening and continuing that street as aforesaid, and what part or proportion thereof, specifying the sum, ought to be borne and paid by individual citizens, in the tract of land called the Meadows, and in Roosevelt-street, continued as aforesaid, and in the vicinity thereof, whose estates have become advanced or increased in value by such improvements and that it shall also be the duty of the said commissioners, to make a just and equitable assessment of the last mentioned sum, among the owners of all the said houses and lots of ground, which shall appear to them to be benefited as aforesaid, in proportion as nearly as may be to the advantage which each shall be deemed to have acquired respectively, and that they the said commissioners, or any three or more of them, shall make a certificate in writing of such assessment, under their hands and seals, and return the same to the common council of the said city, which assessment shall be binding and conclusive upon the owners of such houses and lots of ground so to be assessed respectively, and the sum or sums of money, at which each such house and lot of ground shall be so assessed, shall be deemed a debt due from the owner or owners thereof, his, her or their representatives, to the mayor, aldermen and commonalty of the said city, and shall be payable to them within three months from the date of such assessment, and shall moreover become and be a charge or lien, and prior incumbrance upon such respective house and lot of ground, into whose hands or possession soever the same shall then be, or at any time thereafter may come or descend; and the respective owners of such houses and lot or lots of ground respectively, at the time of such assessment, shall thereupon become and be liable and chargeable, and they are hereby required, to pay to the treasurer or chamberlain of the said city for the time being, who is hereby authorised to receive the same, to the use of the said corporation, the sum at which each such house and lot or lots of ground shall be so assessed as aforesaid, and in default of payment, the same shall and may be recovered at the suit of the said treasurer or chamberlain, in any court of record within this state, with interest at six per cent, to accrue after the said three months from the date of such assessment, with costs of suit. And no such action or suit shall be abated or discontinued by the death of the treasurer or chamberlain of the said city, or by his resignation or removal from office; but shall and may be continued and prosecuted to effect, by his successor in office.

VI. *And be it further enacted*, That it shall and may be lawful to and for the mayor, aldermen and commonalty of the city of New-York, in common council convened, to cause Frankfort-street to be continued to Queen-street, in the manner and under the restriction herein before provided respecting the continuance of Roosevelt-street; and the said mayor, aldermen and commonalty, and the commissioners herein before named, shall have the like powers and authority, for the purpose of continuing Frankfort-street as aforesaid, and paying the expenses thereof, as are herein before given to them respectively for continuing Roosevelt-street.

PAVING AND REGULATING STREETS, &c.

And be it further enacted, That it shall be lawful for the said mayor, aldermen and commonalty, to cause common sewers, drains and vaults, to be made in any part of the said city, and to order and direct the pitching and paving the streets thereof, and the cutting into any drain or sewer, and the altering, amending, cleansing and scouring of any street, vault, sink or common sewer, within the said city; and the raising, reducing, levelling or fencing in, any vacant or adjoining lots in the said city; and to cause estimates of the expense of conforming to such regulations to be made, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefited thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire; and the said mayor, aldermen and commonalty shall appoint such skilful and competent disinterested persons as they shall or may think proper to make every such estimate and assessment, who before they enter upon the execution of their trust, shall severally take an oath before the mayor or recorder of the said city, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and the said persons, after having made such estimate and assessment, shall certify the same in writing to the said mayor, aldermen and commonalty, in common council convened, and being ratified by the said council, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively, and shall be a lien or charge on such lots as aforesaid; and such owners or occupants shall also respectively be liable upon demand, to pay the sum at which such houses or lots respectively shall be so assessed, to such person as the said common council shall appoint to receive the same; and in default of such payment or any part thereof, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals to levy the same by distress and sale of the goods and chattels of such owner or occupant refusing or neglecting to pay the same, rendering the overplus, (if any) after deducting the charges of such distress and sale to such owner or occupant, and the money, when paid or recovered, shall be applied towards making, altering, amending, pitching, paving, cleansing and scouring such streets, and making and repairing such vaults, drains and sewers as aforesaid, and raising, reducing, levelling or fencing in, such lots as aforesaid. *Provided however*, That nothing herein contained shall affect any agreement between any landlord and tenant, respecting the payment of any such charges, but they shall be answerable to each other in the same manner as if this act had never been made; and if the money so to be assessed, be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, it shall then be lawful for the person paying, to sue for, and recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

And be it further enacted, That if upon completing any such regulation, it shall appear to the said mayor, aldermen and commonalty, that a greater sum of money had been *bonâ fide* expended in making such regulation than the sum estimated and collected aforesaid, it shall then be lawful for the said mayor, aldermen and commonalty, to cause a further assessment equal to such excess, to be made and collected in manner aforesaid; and in case the sum actually expended shall be less than the sum expressed in such estimate, and collected as aforesaid, the surplus shall forthwith be returned to the persons from whom the same were collected, or their legal representatives.—[Passed April 9th, 1813. 2 R. L., p. 407, § 175 & 176.

An Act to amend an Act, entitled "An Act to reduce several laws relating particularly to the city of New York into one Act."—Passed April 20, 1839.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. Whenever, and as often as any lands, tenements, hereditaments or premises shall be required for any purpose specified in an act, entitled "An act to reduce several laws relating particularly to the city of New York into one act," passed April 9th, 1813, the application for the appointment of commissioners of estimate and assessment shall not be made to the supreme court elsewhere than in the city of New York, except in the city of Albany, in the months of April, June, July, August, September, October, November and December; and the application for the confirmation of the report of the commissioners of estimate and assessment, shall be made to the supreme court at the term thereof held in the city of New York, or at such special term to be held in the city of New York as the

supreme court may appoint for that purpose; and if, upon hearing such application, persons who appear by the said report to be interested, either by assessment for benefit or award for damages, to the amount of a majority in amount of the whole assessments and upwards, shall appear and object to further proceedings upon the said report, the court shall order the same to be discontinued, and the same shall thenceforth be discontinued.

§ 2. The commissioners of estimate and assessment shall be appointed as follows:—The mayor, aldermen and commonalty of the said city shall give notice, by advertisement to be published in at least four of the public newspapers printed in the said city, of their intention to make application to the said court for the appointment of such commissioners, which notice shall specify the time and place of such application, and the nature and extent of the intended improvement, and shall be so published for and during the space of twenty days previous to the said appointment; and they shall, in addition to the said advertisement, cause copies of the same in handbills to be posted up for the same space of time, in three conspicuous places adjacent to the property to be affected by the intended improvement. At the time thus specified, the mayor, aldermen and commonalty shall nominate three discreet and disinterested persons to the said court, of whom they shall designate one who shall be appointed. Any person who may be interested in the property which will be affected by the intended improvement,(which interest for this purpose shall be decided by his own affidavit stating the nature and extent of such interest) may present to the court the name of one or more persons, which names shall form a list, out of which, if a majority in interest of the persons so interested shall agree upon the name of one person, that person shall be appointed; but if a majority shall not agree upon one person, then the court shall appoint one person, out of the names in such list; after which the said court shall appoint a third person out of the names so presented by the common council and by the parties interested; all of which persons so nominated shall be subject to the right of challenge on the ground of interest, incapacity or disqualification, to be exercised by the said mayor, aldermen and commonalty, or by any person having an interest in the said matter; and if any of them shall be rejected for good cause or refuse to serve, then another shall be nominated in his stead by the same party.

§ 3. It shall be the duty of the said commissioners in all cases to report fully and separately to the said court the amount of loss and damage, and of benefit and advantage to each and every owner, lessee, party and person entitled unto, or interested in any lands, tenements, hereditaments or premises, so required for the purpose of any such operation or improvement.

§ 4. An abstract of the estimate and assessment of the said commissioners, containing the names of the owners of the lots assessed, the numbers of such lots as they appear on the map of the commissioners, together with such map; and the amount of the assessments whether for damage or benefit; and also all the affidavits, estimates and other documents which were used by the said commissioners in making their said report, shall be deposited in the street commissioner's office of the city and county of New York, for the inspection of whomsoever it may concern, for at least sixty days before the said commissioners make their report to the said court. They shall give notice of the time and place of making their said report, by advertisement, to be published in at least four of the public newspapers printed in the said city, for and during the space of at least sixty days, previous to the making of said report; and by copies of the said advertisement, in handbills, to be posted up for the same, in the manner herein before directed.—Similar notice, for at least twenty days, shall be given of any supplemental or amended report.

§ 5. Any person or persons whose rights may be affected by the said estimate and assessment, and who shall object to the same or any part thereof, may, within thirty days after the first publication of the said notice, state his, her or their objections to the same in writing to the said commissioners; which statements shall not be received by the said commissioners, unless verified by his, her or their affidavits, or the affidavits of other persons, or both; and it shall be the duty of the said commissioners, in all cases, to transmit to the said court, together with their said report, all the written statements and affidavits which may have been served upon them within the time aforesaid. And at the expiration of the said thirty days, it shall be the duty of the said commissioners to give at least ten days' notice in manner aforesaid, of a time and place, when and where any person or persons, who may consider themselves aggrieved by such estimate or assessment, shall be heard in opposition to the same; and the said commissioners shall have power to adjourn from time to time, within the space of ten judicial days, until all such person or persons are fully heard.

§ 6. Upon the application of any person or persons whose rights may be affected by the said estimate or assessment, verified by the oath or affirmation of such applicant or his agent, that any witness, residing or being in the city and county of New York, whose affidavit to verify or oppose any objection to the said estimate or assessment is material or necessary to such party, refuses voluntarily to appear before any officer authorized to take such affidavit, to testify or affirm to such matters as he may know, touching such objection, any one of the justices of the superior court of the city of New York may issure a subpœna, under his hand, requiring such witness to appear and testify to such matters as he may, touching the said estimate or assessment, at such time and place as the said justice may designate in such subpœna. And every person who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer, under oath or affirmation, touching the matters aforesaid, shall forfeit to the party injured one hundred dollars; and may also be committed to prison by the judge who issued such subpœna; there to remain, without bail, and without the liberties of the jail, until he shall submit to answer, under oath or affirmation as aforesaid. The testimony of such witness when given, shall be reduced to writing in the presence of, and be sworn or affirmed to before the judge.

LAWS OF THE STATE OF NEW YORK.

An Act in relation to the collection of Assessments and Taxes in the city and county of New York, and for other purposes.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

§ 1. In all cases where commissioners or assessors shall describe the houses and lots assessed for any improvement, the assessment shall describe and particularize all such houses and lots by the known street number, as well as the ward number, and shall also state the names of the owner or owners and occupant or occupants, and it shall be the duty of the surveyor who shall make out the assessment list, to ascertain by an inquiry, to be made of the collector of taxes of the ward in which the property assessed is situate, and by inquiry of the person who collected the taxes of such ward the previous year, as to such ownership, and such collector shall afford the requisite information.

§ 2. It shall be the duty of all commissioners and assessors authorized to make any estimate and assessment for any improvement authorized by law, to be assessed upon the owners or occupants of houses and lots or improved or unimproved lands, affected thereby, to give notice to the owner or owners and occupant or occupants of all houses and lots and improved or unimproved lands, that they have completed the estimate and assessment; such notice shall be published daily in at least ten of the daily newspapers for ten days successively; it shall describe the limits embraced by such assessment, and shall contain a request for all persons whose interests may be affected thereby, and who may be opposed to the same, to present their objections in writing to the chairman of the commissioners or assessors, within ten days from the date of such notice; and if after examining such objections the commissioners or assessors shall not deem it proper to alter their assessment, or having altered it, there shall still be objections to the same, it shall be their duty to present such objections, with the assessment, to the power authorized to confirm the same; but nothing herein contained shall conflict with, or render invalid the act entitled "An act to reduce several laws relating to the city of New York into one act, passed April 20, 1839."

§ 3. In advertising houses and lots, improved or unimproved lands, to be sold for the non-payment of assessments, it shall be the duty of the Street Commissioner to advertise all the houses and lots or other lands lying contiguous to *each other* and belonging to the same owner, in one parcel, unless otherwise requested by such owner.

§ 4. It shall not be lawful for any commissioner or assessor to charge for any services in making estimates and assessments for any improvements authorized by law to be assessed upon the owners or occupants of houses and lots, or improved or unimproved lands, not actually rendered by him, nor for any parts of days as whole days, while the time occupied was less than six hours of such day.

§ 5. Certificates of sale shall be made and delivered to the purchasers without charge; and no charge shall be made in the sale for the second advertisement and lease, but the expense of the former shall be paid by the owner at the time of redeeming, or by the purchaser when he shall receive a lease. The expense of drawing and executing a lease shall be paid by the purchaser at the time of receiving the same, and shall not exceed fifty cents.

§ 6. The rate of interest allowed by law to the purchaser at the time of redemption on the amount of the purchase money, shall be reduced to fourteen per cent. per annum, but no interest shall be calculated upon a less portion of time than one quarter of a year; and in all cases where the property shall be redeemed during any fractional part of a year, the interest shall be calculated so as to include the quarter in which such redemption shall be made: the time to be computed from the day of sale.

§ 7. Commissioners or assessors, for making estimate and assessment for any improvements authorized by law to be assessed upon the owners or occupants of houses and lots or improved or unimproved lands, shall in no case assess any house and lot or improved or unimproved land more than one-half the value of such house and lot or improved or unimproved land, as valued by the assessors of the Ward in which the same shall be situate.

§ 8. It shall be the duty of the collectors of taxes of the city of New York to attend at the Comptroller's office, in the Hall of Records, every Saturday, during the months of January and February in each year, from the hour of ten o'clock in the morning to the hour of three o'clock in the afternoon, with the tax list of their respective Wards, for the purpose of affording taxpayers owning property in the different Wards, an opportunity of paying such taxes.

§ 9. No houses and lots, or improved or unimproved lands in the city and county of New York, shall be hereafter sold or leased at public auction, for the nonpayment of any assessment or tax which may be due thereon, unless notice of such sale shall have been published once in each week for three months, in at least ten of the daily newspapers printed and published in the city of New York, one of which shall contain a particular and detailed statement of the property to be sold for assessments, and such as is now published by the Street Commissioner in two of the daily newspapers in the city of New York, or the said detailed statement or description shall be printed in a pamphlet, in the discretion of the Street Commissioner, in which case the pamphlets shall be deposited in the Street Commissioner's office, in the city of New York, and with the collector of taxes of the different Wards of the said city, and shall be delivered to any person applying therefor; and the notice provided for in this section to be given of the sale of houses and lots and improved or unimproved lands, shall also state that the detailed statement of the assessments or tax and ownership of the property assessed or taxed is published in one of the daily newspapers, naming the same, or in a pamphlet, as the case may be, and where the same will be deposited, to be delivered to any person applying for the same.

§ 10. It shall not be necessary to give any further publicity of any intended sale of property for unpaid assessments and taxes than is contemplated by the last preceding section; and in giving the further notice required by section second of the act entitled, "An act for the more effectual collection of taxes and assessments in the city of New York, passed April 12, 1816, of the sale of property six months previous to the expiration of the time of redemption, it shall only be necessary to publish the same in one daily newspaper, printed in the city and county of New York, twice in each week for six weeks successively, and so much of the said section as is inconsistent with this section and the preceding sections, is hereby repealed.

§ 11. In all cases where pieces, parcels or lots shall have been sold for the assessment, and any person shall claim to redeem any portion or part of the same within the time limited for redemption, he shall be permitted to do so on paying the apportionment of the assessment for which the property was sold, together with the interest on the same, and an equitable proportion of the expenses. The apportionment shall be made by the Street Commissioner.

§ 12. Nothing contained in the 9th section of this act shall be construed to postpone the sale advertised to take place in June next.

Passed May 14, 1840.

We have here given the several acts of the Legislature in relation to paving streets, building sewers, filling low grounds, &c., from the earliest period of legislature in the colony of New-York, and after the colony became a state, down to the present time in chronological order. We have also given all the legislation in relation to opening streets up to the year 1732.

It will be seen by a careful reading of these laws, that for all lands taken for a street, no assessment could be made upon adjoining owners. The cost of the land was a city charge, and assessed by a jury.

It will also be seen by a careful reading of the various acts, that for building sewers, pitching and paving streets, &c., the estimate and assessment must be made before the work is undertaken, and the money collected and applied to the pitching and paving, &c., and that if too much has been collected, the surplus shall be returned, and if not enough has been assessed, that a *second assessment* shall be made to cover the deficiency.

Wm. S. Johnson, Esq., who was, by resolution of the common council passed in July, 1837, requested to revise the city ordinances, commenced the undertaking, and in the early part of his proceeding, made a communication to the common council from which I extract as follows: "The reviser is informed that it has not been the practice to make any preliminary estimate of the expense, but only to make the assessment *after the work has been done*, and the expense *thus* ascertained. Whether or not such a practice is in conformity to the law, the reviser submits to the wisdom of the common council." On this note the law committee of such boards remark thus:—"The committee would call the attention of the common council, particularly, &c., to notes, title 7, of assessments, &c.

The acts above quoted are to be found in the session laws of 1810, page 326; 1830, page 182; of 1813, R. S. 2d vol. page 407; of 1792, 2d green leaf, page 451; of 1787, 1st green leaf, page 441; and of 1791, S. & L. page 8.

THE AMENDED CHARTER.

An Act to amend the Charter of the City of New York.

Passed April 7, 1830.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The legislative power of the corporation of the city of New York, shall be vested in a board of aldermen and a board of assistants, who together shall form the common council of the city.

§ 2. Each ward of the city shall be entitled to elect one person, to be denominated the alderman of the ward; and the persons so chosen, together, shall form the board of aldermen: And each ward shall also be entitled to elect one person, to be denominated an assistant alderman; and the persons so chosen, together, shall form the board of assistants.

§ 3. The aldermen and assistant aldermen shall be chosen for one year; and no person shall be eligible to either office, who shall not, at the time of his election, be a resident of the ward for which he is chosen.

§ 4. The annual election for charter officers shall commence on the second Tuesday in April, and the officers elected shall be sworn into office on the second Tuesday in May thereafter: And all the provisions of law now in force in regard to the notification, duration, and conduct of elections for members of assembly, and in regard to the appointment, powers, and duties of the inspectors holding the same, shall apply to the annual election of charter officers.

§ 5. The first election for charter officers, after the passage of this law, shall take place on the second Tuesday in April, one thousand eight hundred and thirty-one; and all those persons who shall have been elected under the former laws regulating the election of charter officers, and shall be in office at the time of the passage of this law, shall continue in office until the officers elected under this law shall be entitled to be sworn into office.

§ 6. The board of aldermen shall have power to direct a special election to be held, to supply the place of any alderman whose seat shall become vacant by death, removal from the city, resignation or otherwise; and the board of assistants shall also have power to direct a special election, to supply any vacancy that may occur in the board of assistants: and in both cases, the person elected to supply the vacancy, shall hold his seat only for the residue of the term of office of his immediate predecessor.

§ 7. The boards shall meet in separate chambers, and a majority of each shall be a quorum to do business. Each board shall appoint a president from its own body, and shall also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board shall keep a journal of its proceedings, and the doors of each shall be kept open, except when the public welfare shall require secrecy: And all resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the common council, in all the newspapers employed by the corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.

§ 8. Each board shall have the authority to compel the attendance of absent members, to punish its members for disorderly behavior, and to expel a member, with the concurrence of two-thirds of the members elected to the board; and the member so expelled, shall, by such expulsion, forfeit all his rights and powers as an alderman or assistant alderman.

§ 9. The stated and occasional meetings of each board of the common council, shall be regulated by its own ordinances; and both boards may meet on the same or on different days, as they may severally judge expedient.

§ 10. Any law, ordinance, or resolution of the common council, may originate in either board; and when it shall have passed one board, may be rejected or amended by the other.

§ 11. No member of either board shall, during the period for which he was elected, be appointed to, or be competent to hold any office, of which the emoluments are paid from the city treasury, or by fees directed to be paid by any ordinance or act of the common council, or be directly or indirectly interested in any contract, the expenses or consideration whereof are to be paid under any ordinance of the common council; but this section shall not be construed to deprive any alderman or assistant of any emoluments or fees which he is entitled to by virtue of his office.

§ 12. Every act, ordinance, or resolution which shall have passed the two boards of the common council, before it shall take effect, shall be presented, duly certified, to the mayor of the city, for his approbation: if he approve, he shall sign it; if not, he shall return it, with his objections, to the board in which it originated, within ten days thereafter; or if such board be not then in session, at its next stated meeting. The board to which it shall be returned, shall enter the objections at large on their journal, and cause the same to be published in one or more of the public newspapers of the city.

§ 13. The board to which such act, ordinance, or resolution, shall have been so returned, shall, after the expiration of not less than ten days thereafter, proceed to reconsider the same. If, after such reconsideration, a majority of the members elected to the board shall agree to pass the same, it shall be sent, together with the objections, to the other board, by which it shall be likewise reconsidered; and if approved by a majority of all the members elected to such board, it shall take effect as an act or law of the corporation. In all such cases, the votes of both boards shall be determined by yeas and nays; and the names of the persons voting for and against the passage of the measure reconsidered, shall be entered on the journal of each board respectively.

§ 14. If the mayor shall not return any act, ordinance or resolution so presented to him, within the time above limited for that purpose, it shall take effect in the same manner as if he had signed it.

§ 15. Neither the mayor nor recorder of the city of New York shall be a member of the common council thereof, after the second Tuesday of May, one thousand eight hundred and thirty-one.

§ 16. Whenever there shall be a vacancy in the office of mayor, and whenever the mayor shall be absent from the city, or be prevented by sickness or any other cause from attending to the duties of his office, the president of the board of aldermen shall act as mayor, and shall possess all the rights and powers of the mayor, during the continuance of such vacancy, absence or disability.

§ 17. It shall be the duty of the mayor,

1. To communicate to the common council, at least once a year, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city, in relation to its government, finances, and improvements.

2. To recommend to the adoption of the common council, all such measures connected with the police, security, health, cleanliness, and ornament of the city, and the improvement of its government and finances, as he shall deem expedient.

3. To be vigilant and active in causing the laws and ordinances of the government of the city to be duly executed and enforced.

4. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and generally to perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of this state and the United States.

§ 18. Annual and occasional appropriations shall be made by proper ordinances of the common council, for every branch and object of city expenditure; nor shall any money be drawn from the city treasury, except the same shall have been previously appropriated to the purpose for which it is drawn.

§ 19. The common council shall not have authority to borrow any sums of money whatever, on the credit of the corporation, except in anticipation of the revenue of the year in which such loan shall be made, unless authorized by a special act of the legislature.

§ 20. It shall be the duty of the common council to publish, two months before the annual election of charter officers, in each year, a full and detailed statement of the receipts and expenditures of the corporation, during the year ending on the first day of the month in which such publication is made; and in every such statement, the different sources of city revenue and the amount received from each; the several appropriations made by the common council, the objects for which the same were made, and the amount of moneys expended under each; the moneys borrowed on the credit of the corporation, the authority under which each loan was made, and the terms on which the same was obtained, shall be clearly and particularly specified.

§ 21. The executive business of the corporation of New York shall hereafter be performed by distinct departments, which it shall be the duty of the common council to organize and appoint for that purpose.

§ 22. It shall be the duty of the common council to provide for the accountability of all officers and other persons, to whom the receipt or expenditure of the funds of the city shall be entrusted, by requiring from them sufficient security for the performance of their duties or trust, which security shall be annually renewed; but the security first taken, shall remain in force until new security shall be given.

§ 23. The clerk of the board of aldermen shall, by virtue of his office, be clerk of the common council, and shall perform all the duties heretofore performed by the clerk of the common council, except such as shall be assigned to the clerk of the board of assistant aldermen; and it shall be his duty to keep open for inspection, at all reasonable times, the records and minutes of the proceedings of the common council, except such as shall be specially ordered otherwise.

§ 24. The division of the common council into two boards shall not take effect until the officers to be elected under this law enter on the duties of their office. Each board shall hold its first meeting, for the purpose of organizing, on the second Tuesday of May in each year; at which time the mayor or clerk of the common council shall attend, by whom the oath of office shall be administered to the members elected. In the absence of the mayor and clerk, such oath may be administered by the recorder or first judge of the city, or by any of the justices of the superior court.

§ 25. None of the provisions of this act, except the eighteenth, nineteenth, twentieth, and twenty-second sections, shall be construed as applying to the common council as now constituted.

§ 26. Such parts of the charter of the city of New York, and of the several acts of the legislature amending the same, as are not inconsistent with the provisions of this law, shall not be construed as repealed, modified, or in any manner affected thereby; but shall continue and remain in full force.

Session Laws, 1830, *Ch.* 122.

To the Honorable the Senate and Assembly of the State of New York.

Your memorialists, citizens of the city of New York, most respectfully beg leave to represent to your honorable body the manifold evils and grievances which the inhabitants of this city experience in consequence of the great and arbitrary power now and heretofore exercised by the Corporation of the city of New York, its officers and servants, in imposing unnecessary, heavy, and grievous burdens upon the people, in the assessing of real estate, houses, and lands, for ruinous, unnecessary and uncalled and unasked for improvements.

Your memorialists represent that the ancient charter of the city of New York did not vest the Corporation with any power to assess the citizens of the city for what are now mis-called improvements. The first power given the corporation in this matter was by an Act of the Legislature of 1807, and subsequently other Acts were passed. These Acts were not asked for by the people, but were granted on the application of the officers of the corporation.

Your memorialists herewith present public documents published by authority of the Common Council, showing the great extent to which this power has been exercised, which fully sustain the charge that the powers granted have been wickedly abused.

Your memorialists further represent that one of the officers of the Corporation advertised for sale at public auction near seven thousand lots for the non-payment of assessments, that many of these lots belong to widows and orphans, and in many instances to persons who are absent from the city, and in other cases to persons who have been unfortunate in business, to unsettled estates, and to others who cannot at this time, owing to the prostration of trade, pay the assessments.

Your memorialists herewith present the list of property advertised for sale by the officers of the corporation by which it will be seen that 1145 of the lots are assessed; sums less than five dollars each 49, sums less than one dollar each; and in very many instances farming lands held in one tract, and belonging to one and the same owner, have been by the assessor or commissioner sub-divided into lots of 25 feet by 100, and assessed separately small sums, by which the expenses have been enormously increased.

Your memorialists further represent, that the practice of commissioners and assessors to describe property by an arbitrary map number instead of the known street number by which the owners of property are misled in knowing that assessments have been imposed; this will be seen by the documents herewith. It very often happens that property is assessed as that of unknown owners, and many times in a wrong name; and in consequence of this practice property is often sold, and the first information the owner has of the assessment is obtained from the purchaser of the property at a sale for unpaid assessments, when he comes to take possession. By the Act of 1816, Commissioners were authorised to extend their assessments for improving streets, &c. as far as they judge the property benefited, but no provision was made by that act to give a notice to the distant owners of the property thus affected, by which means such owners are deprived of the opportunity of making objections to the assessments in sufficient time to be available. Another serious objection to the present system in making assessments for public improvements, is to the extravagant charges made by commissioners, assessors, surveyors, and corporation counsel: it will be seen by the public documents herewith, that for one street less than three thousand feet in length, this class of charges amounted to near $12,000. When property is sold at public auction for unpaid assessments, the Corporation sell the property for a term of years, which in many cases is equivalent to selling the fee simple absolute. Very many of the lots so sold are purchased by corporation officers, who, from being employed by the corporation to make the surveys, collect the assessments, &c. &c., acquire information of the absence, &c. of the owners, and by that means possess themselves of the estate.

Your memorialists could go further into detail of the mischiefs against which they seek to be relieved, but they deem it unnecessary.

Your memorialists, therefore, in consideration of the premises, respectfully ask your honorable body to pass a law to remedy the evils complained of, and also, to suspend the sales of property for unpaid assessments until the termination of the next session of the Legislature, and to make such further and other enactments in relation thereto as the Legislature in their wisdom shall deem needful and right.

And your memorialists in duty bound, &c.

Joseph Tucker
Isaac M. Woolley
A. Lockwood
G. O. Kinney
Smith W. Anderson
Benjamin L. Swan
Thos. Lawrence
Smith Harriot
Burtis Skidmore
John Anthon
Samuel G. Raymond
Hamilton Murray
Richard Whiley
F. R. Tillou
Thos. R. Mercein
T. W. Thorne
John L. Mason
John H. Cornell
Peter Lorillard
Maturin Livingstone
Peter Sharpe
Stephen Allen
Samuel M. Thomson
Daniel B. Talmadge
Thos. J. Oakley
Robt. Skidmore
John D. Wolfe
M. M. Noah
Edward Sanford
J. B. Mower
John A. Schuyler
Luther Tonner
Nivens & Townsend
David Austin
R. Havens
M. Van Schaick
R. Lockwood
Samuel Thomson
Robert Smith
Sylvanus S. Ward
Abel T. Anderson
A. B. Hays
Edward A. Nicoll
G. H. Striker
O. Halstead
C. S. Van Winkle
Edgar Harriott
John R. Murray
John Haggerty
Cyrus Hitchcock
John R. Peters
James G. King
Thomas E. Davis
Geo. D. Strong
John H. Ferris
Benjamin Townsend
John Leonard
Jacob Drake
Edmund Smith
Henry Remsen
J. J. Coddington
Wm. W. Vermilye
W. Van Benthuysen
Morris Ketcham
Ezra P. Davis
N. T. Eldridge
James Fellows
D. D. Williamson
Wm. Bard
Lewis Curtis
Peter Morton
Francis P. Lynch
B. R. Winthrop
Thomas Hale
Jno. Rathbone, Jr.
Orsamus Bushnell
Peter Embury
Peter G. Stuyvesant
W. W. Chester & Co.
J. Milhau
Charles Dennison
Ogden Haggerty
Anthony Arnoux
John M. Bradhurst
Nicholas Schureman
Alexander Stewart
A. B. Macdonald
D. Codwise
John J. Palmer
J. B. Nones
Anthony Lamb
Stanton Bebee
R. Withers
Hamilton Fish
Geo. Folsom
Nicholas J. Quackinboss
John V. Greenfield
Walter Bowne
Joseph Willoughby
Aaron Clark
C. Crolius, jun.
Phelps, Dodge & Co.
Frederick De Peyster
Valentine Mott, M.D., per John Hopper Mott
Sheppard Knapp
G. A. Worth
William Scott
Richard Mott
J. V. Tilyou
Eben. Meriam
Joseph Meeks
R. Stebbins
Robert Ray
J. Drake
E. Schieffelin
Jas. Delafield
Isaac A. Johnson
Hiram Walworth
Robert C. Cornell
James Campbell
Walter Skidmore
Richard L. Schieffelin
Michael Floy
Andrew C. Zabriskie
Henry Breevort, jun.
R. K. Delafield
Henry Youngs
Leonard W. Kip
John H. Talman
Thomas Riley
Nathan. Weed & Co.
Duncan P. Campbell
John Q. Jones
H. Andrew
John C. Beekman
John Beekman
Abm. B. Cox
Jas. M. Murray
John Allan
W. Jones
James Vandenburgh
James Brown
Richard F. Carman
J. Heard
Wm. Dodge
John T. Dodge
Walter Legget
Wm. C. Rhinelander
B. H. Wiggins
D. L. Haight
Richard Kingsland
Robert Bogardus
Wm. Gale
Richard Mortimer
Nathaniel Cogswell
Robert G. L. De Peyster
A. A. Alvord
Wm. C. Hickok, M. D.
John M. Bruce
Wm. B. Townsend
Sampson Moore
John Newhouse
John M. Dodd
J. Delafield
James J. Jones]
James Roosevelt
Edward H. Pendleton
Peter Schermerhorn
Ogden E. Edwards
W. A. Duer
P. P. Van Zant
David P. Hall
John Morss
B. Rhinlander
Jno. L. Lawrence
Thatcher T. Payne
Peter Lorillard, jun.
Robert Craighead
John Wallis
Stuart Mollan
James Gillespie
Geo. F. Hope
Mott, Brothers
B. Birdsall
Stephen Conover
Thomas S. Cargill
Wm. Browning
Masters, Markoe & Co.
James Harriot
Isaac Young
J. W. Barnes
Jonathan Thompson
Thomas T. Woodruff

WILLS OF PERSONAL ESTATE.

Below is an opinion written by Judge Savage, late Chief Justice of this State, since he left the Bench. It is upon a very important question, and deserves to be generally read. It is the ablest opinion ever given upon that question which is a new one, so far as the Revised Statutes are concerned. Judge Savage is justly accounted one of the ablest Chief Justices that has ever presided in our Supreme Court, and his written opinion will be regarded by all who know him, as conclusive on this question. In a future number will be given the written opinion of the same able and learned Jurist upon invalidity of trusts of real estate, to receive the rents and profits of land, and them pay over, &c. These opinions may seem out of place in a Municipal Journal; but as they are valuable, the people will be benefited by perusing them.

In the matter of the Last Will and Testament of S. S.

In 1837, S. S. made his Last Will and Testament, as follows:—

He appoints A. B. his executor and trustee, and directs his trustee to sell, dispose of and convey all his estate, real and personal, at such time and in such manner as the trustee may think proper, and to invest the proceeds in the funded debt of the United States, or other stock or good security, as he may deem advisable.

That he shall set apart $15,000 in trust for certain specific purposes—and divide the residue into three equal parts, and hold the same separately in trust for certain purposes to be mentioned.

The testator left five children—three daughters and two sons. His daughters are C. the wife of D.; E. wife of F., and G. wife of A. B. The sons are I. and K. The principal division of the estate is into five parts. The sum of $15,000 into two parts, one of $15,000 the other of $10,000,

The residue is divided into three parts—the income of one-third is to be applied by the trustee to the use of E. for life—remainder at her death equally to her lawful issue. One other third to be applied to the use of K. for life—remainder to his lawful issue. If he should die without lawful issue, then remainder to his sisters E. and G., for their lives, each one half, and remainder over to their lawful issue respectively. The income of the other third of the residue is to be applied to the use of G. for life, and then the principal to her lawful issue.

The sum of $15,000 is thus disposed of—the income of $5,000 is to be paid to C. for life, provided she survives her husband; and the income of $10,000 is to be paid to I. for life. After their deaths respectively, the sums of which they will have received the income, are to be divided into three parts, and the income to be applied to E. G. and K. severally for life; and at the death of each the principal is to be distributed equally, among their respective lawful issue. Should K. die without issue his third of the $15,000 is left undevised, but his third of the residue of the estate is given to his sisters E. and G. for life, with remainder over of one half to their respective issue, severally.

The question is, whether these devises are in conformity with the "Revised Statutes?"

It is to be observed here that this will does not create any trust in real estate; nor in the rents and profits of lands. The executor and trustee is authorised to sell all the estate of the testator, and to invest the proceeds; the trustee, however, takes no estate in the realty—his authority to sell is a mere power; and until the power shall be executed, the estate vests in the heirs at law. There is no attempt in this case to render real estate inalienable. The real estate is all to be converted into personal, and as such is devised in trust.

The provisions of the revised statutes applicable to this case are found in part 2. ch. 4, tit. 4, 2 R.S. 773 sec. 1.

§ 1. The absolute ownership of personal property shall not be suspended by any limitation or condition whatever for a longer period, than during the continuance and until the termination of not more than two

lives in being at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than two lives in being at the death of the testator.

§ 2. In all other respects, limitations of future or contingent interests in personal property shall be subject to the rules prescribed in the first chapter of this art., in relation to future estates in lands.

The principal, if not the only difference, therefore, between the law relating to future estates in lands, and trusts of personal property, is this:—In respect to future estates in lands, the two lives, during whose continuance the power of alienation may be suspended, must be in being at the creation of the estate.—Part 2, ch. 1, tit. 2, art 1, § 15. But in respect to personal property, if the instrument containing the limitation be a will, the power of alienation, or as the statute expresses it, the absolute ownership may be suspended for the continuance of two lives, in being at the death of the testator; in all other respects they are subject to the same rules. As all the persons upon the continuance of whose lives, the power of alienation is suspended by the will of S. S. appear to have been in being when the will was executed, there is in this case no difference between the rules by which it is to be determined, and those applicable to future estates in lands.

I will proceed therefore to test the different devises in his will by those rules.

The first devise to C., or rather to the trustee to pay pay over to her during her life the interest of $5,000 upon the contingency of her surviving husband; after her death the principal is to be divided into three parts, and the interest paid upon the three several parts to E. G. & K. severally, during their several lives; and upon their respective deaths, such third of the principal is devised absolutely to their lawful issue severally.

Assuming for the present, that there is no objection to the trust, simply as a trust, there seems to be no objection to the validity of this devise.

The absolute ownership of the property devised, or any part of it, is not suspended for a longer period than until the termination of two lives in being at the death of the testator—as well as at the creation of the estates. One-third of the $5,000 is suspended during the lives of C. and E.; another third during the lives of C. and G., and the other third during the lives of C. and K. The interest of C. is contingent, depending on the fact of her surviving her husband—and the interests of E. G. and K. contingent, depending on their severally surviving C. But the fact of contingency is no objection. "Future estates are either vested or contingent," part 2, R. S. 723, § 13. "Successive estates for life shall not be limited unless to persons in being *at the creation thereof*," § 17. As regards personal property devised by will, this is to be read, instead *of* persons in being at the creation thereof, it should be persons in being *at the death of the testator*. But in this case it makes no difference the persons who take successively are all named in the will, and were therefore in being at the creation of the estate.

I do not perceive that this devise violates any rule prescribed in relation to future estates in lands.

2. The devise to I. is not distinguishable from that to C., except that it is not contingent but absolute; the income is payable to him at all events.

3. As to the residue of his estate, after taking out the $15,000 for C. and I., it is to be divided into three parts, and the income of one third to be *applied to the use* of E. G. and K. respectively for their lives, and after their deaths respectively, the principal of which they have severally received the income is to be divided absolutely between the lawful issue of each. So that the absolute ownership of this part of the estate is suspended for one life only. In the case of K., however, it is directed that, if he should die without lawful issue, then his share of the residue of the estate (but not his interest in the $15,000) shall be divided equally between E. and G. for their several lives, with remainder over to their lawful issue respectively. The absolute ownership is not suspended in any contemplated event, for more than two lives.

For the purpose of comparing the devises in this will with the rules regulating future estates in lands, I have assumed, that the trusts were valid as trusts—it is proper however to consider that question.

Previous to the revised statutes, there was no difference between trusts of real and personal estates, so far as respects the period for which they might lawfully be continued—the limit in both cases was that they should not amount to a perpetuity—and a limitation to any number of lives in being at the creation of the trust, was within the line of a perpetuity. In the celebrated case of Theilluson vs. Woodford, 4 Vesey, jr. 227, the personal property conveyed to the trustees was estimated at 600,000*l*., and both real and personal was rendered inalienable and directed to accumulate during the lives of nine persons. The courts in England said that it was immaterial how many lives were inserted, for it was for the life of the survivor, and so for one life only. It was often remarked by the judges that "the candles were all lighted and burning at the same time." Such was the law here before the operation of the revised statutes; and such is the law still, unless such trusts are limited by those statutes.

In revising the statutes, the Legislature treated of real and personal estates separately. Part 2, ch. 2, tit. 2, treats, "Of the nature and qualities of estates in real property, and the alienation thereof." And the second article of this title treats "Of uses and trusts." The first section of this article, which is § 45, declares that "Uses and trusts, except as authorised and modified in this article, are abolished"—and as a consequence of that enactment, it is added, "And every estate and interest in lands shall be deemed a legal right, &c." Every subsequent section of this article which speaks of the estate which may be held in trust, speaks of the estate in lands, or the possession of lands—and the word "assignment" in the 47th section, was probably inserted to embrace terms for years. The 55th section which enumerates the express trusts authorised by law, speaks only of trusts relating to lands, viz:—to sell or mortgage or lease lands, and to receive the rents and profits of lands for the purposes specified.—If it should be adjudged that by the 45th section, all trusts were abolished as well of personal as of real estate, it would follow that as no trust of personal property has been expressly authorised, all such trusts are void. I, however, cannot so construe the statute. The Legislature were regulating real estate, and limiting the period beyond which such estate should not be rendered inalienable. This appears from the language of the statute itself, as well as from the notes of the revisors.

Had the legislature omitted to limit the inalienability of personal estate it must have been left to the limit of the common law. They were not guilty of such omission, but made the enactment which I have first quoted above. The fact that they have done so is an additional argument in favor of the position assumed by me, to wit—that in the article of uses and trusts it was not intended to embrace personal estates.

By the common law the absolute ownership of personal property might be suspended during the continuance of any number of lives in being at the date of the instrument directing such suspension; but by the first section of tit. 4 of ch. 4 of part 2, the suspension of the absolute ownership is limited to two such lives, instead of an indefinite number; and by the second section in all other respects, the limitations of future or contingent interest in personal property are subject to the rules prescribed in relation to future estates in lands.

It is well understood that limitations of future or contingent interests in personal as well as real property are effected generally by means of trusts. The Legislature do not say that trusts may be created of personal property, for the same purposes as trusts in relation to lands, for trusts of personal property had not been abolished, but merely, that in all respects except the suspension of absolute ownership, the same rules shall apply to limitations of personal property, as to future estates in lands.

The legislature speak of limitations and conditions by means of which the absolute ownership of personal property might be suspended, as pertaining to instruments recognised by the laws; and they specify wills as one species of those instruments. The rules regulating future estates in lands, and not the rules regulating trusts authorised by the 55th section, must furnish the rules by which trusts or limitations of personal property are to be governed. Trusts of real and personal estate may, however, be subject to the same rules to a certain extent; that is, in so far as they are both subject to the rules in relation to future estates in lands It will be seen that the trusts authorised by the 3d and 4th subdivisions of the 55th section are "subject to the rules prescribed in the first article of this title. On looking into that article it will be found, that the rules referred to are in the 36th section by which the disposition of the rents and profits of lands accruing subsequent to the execution of the instrument creating such a disposition shall be governed by the rules in relation to future estates in lands. In so far, therefore, as the rules in relation to future estates in lands apply to either description of trust, they are both governed by the same rules. But those rules which are common to both will be found to have no relation to the nature of the trusts, but only their termination, or the manner of their enjoyment during their existence. Rules respecting future estates will be found in art. 1, of ch. 1, of part 2: and those rules govern trusts of real and personal property. For instance both trusts of real and personal estates are void in their creation—which shall suspend the absolute ownership for a longer period than is prescribed.

A variety of rules and regulations are found from § 10 to § 36 of that article, which regulate future estates in lands, and also trusts of real and personal property, so far as they are applicable; but there will be found nothing in any of those rules affecting the question, whether a trust to receive the interest of money, and pay it over to any person, is a valid trust or not.

The conclusion to which I have arrived on that point is drawn from premises which may be put in the shape of a syllogism, as follows:

All trusts to receive the interest of money, or the rents and profits of lands, or pay them over to any person, were lawful before the operation of the revised statutes.

Trusts to receive and pay over the interest of money are not abolished or modified except by the rules in relation to future estates in lands, and in respect to the period of their continuance for two lives only.

Therefore trusts to receive and pay over the interest of money are still valid trusts, subject to such rules and limitations as are found in the statutes.

But trusts to receive the rents and profits of lands were abolished except as modified—that modification limits such trusts to certain specified objects—therefore such trusts for any other objects are void.

Trusts of personal property, however, in relation to the objects or purposes for which they might be created at the common law, having been left untouched by the statutes, remain now, as they were before the statutes were passed. Those statutes have limited the continuance of trusts of personal property to the continuance of two lives—they have made various regulations as to the interests under them being vested or contingent: but the objects for which such trust may be created, are the same now as they ever have been at the common law.

I am therefore of opinion, that the trusts of the will of S. S. to receive the interest of money and pay it over are valid trusts: and as the absolute ownership is not suspended longer than for two lives in being at the death of the testator, the whole will is, in my opinion, legal and valid.

I am aware that it may be argued that trusts of personal property are liable to most of the objections to trusts of real estates—they facilitate fraud and increase the business of the court of chancery. But the answer to these and similar objections is, that such considerations should have weight with those whose business it is to make laws; but they should not control the opinions of those whose business it is to expound the laws. (Signed,) JOHN SAVAGE.

CITY COMPTROLLER'S REPORT OF 1840.

The preface to this report is a most extraordinary piece of composition, and I am surprised that it should have emanated from the pen of a gentleman of the ability of our city Comptroller. It is in every respect so much unlike *him*. It is the most unsound production that I have ever seen from *his* pen, and altogether unlike all other doctrines set forth or admitted by him in his annual reports of 1839 and 1840. In the next number we shall give this *preface* entire, and comment freely upon it.

The residue of the report (excepting so much as relates to the Water Commissioners, which is of a political character) is a very satisfactory document, as compared with former reports, that is, *it* is more full and more in detail, and is made up with ability. It is the duty of the Common Council to present a detailed statement of city expenditures for the information of the electors. The Comptroller's report as now published, is for the information of the Common Council and officers of the corporation.

We make some extracts from the report, and will hereafter give the whole report in the various numbers of this paper.

It will be seen that there is no necessity whatever for

the Corporation to press the collection of ruinous assessments. The present provision of that statute, as stated in the present number of this paper, as to funding the amount of awards for street openings, widening, and extending, will relieve the Corporation from all embarrassments in these proceedings; and the adaption of a general law to relieve the contractor, will ease off this difficulty, and benefit all interested, without injury to any one. It will be seen that the Corporation have already issued bonds for a portion of awards for street openings, etc.

Leaving politics aside, the present Comptroller has discharged the duties of his office with ability.

COUNSEL FEES.

The Comptroller's Report of 1840, shows that there have been paid to corporation counsel and ex-counsel during the year 1840, seventeen thousand five hundred and twenty-four dollars and seventy-three cents. The items of these charges are to be found in the Report, pages 49, 50, 52, 58, 63, 65, 86, 89 and 92; in addition to these are the counsel fees in Cherry street, 12, 29 and 30, the streets amounting to about five thousand dollars more or less, which is in dispute Of the first named sum, eight thousand, eight hundred, and seventy-six dollars and eighty cents, belong properly to account of 1839. In the Comptroller's report of 1839, the amount of counsel fees stated at thirty-seven thousand, four hundred and eighty-one dollars, and sixty-six cents, exclusive of the above amount of $8,876 80, all the above sums together for two years make the great sum of sixty-eight thousand eight hundred and eighty-three dollars and nineteen cents. The items of 1839 are to be found in the Comptroller's report of that year, pages 35, 42, 54, 76, and 102. Truly, the corporation counsel have the salary of the President and his two secretaries, without the laborious duties of his office.

EXTRACTS FROM COMPTROLLER'S REPORT.

The Assessment Bonds of the Corporation, to the amount of four hundred thousand dollars, payable at the pleasure of the Corporation, on or before June 1st, and July 1st, 1840, have been issued to cover advances which the Corporation has made in the payment of awards to individuals for damages sustained in opening and widening certain streets. They were negotiated at par, bearing interest at six per cent. per annum, and will be met and paid, from time to time, as often as the liens held by the Corporation for their redemption are realized. A specific detail of these liens will be found immediately following. The Bonds were issued under the authority of the Amended Charter empowering the Corporation to borrow in anticipation of the revenue, as well as of the State Law cited in the Ordinance upon this subject, passed August 8th, 1840.

Of the secure character of such liens, the history of this City in this matter for the last thirty years, gives abundant proof. During that period the City has advanced the sum of six millions two hundred and seventy thousand three hundred and seventeen dollars and eight cents, on this account, and the particulars of which will be found in the Appendix to this Report, all of which have been repaid, with the exception of $412,024 24, which are the outstanding liens above referred to. A small portion of them has become the absolute property of the City. The gores in Beaver street are of this description, but upon these there will probably be a depreciation of about $12,000 00; all the rest consist of items actually due the Corporation, and will be realized by public sale.

The adoption of a general law to allow the Corporation to make loans in anticipation of uncollected assessments, in order to enable them to pay Contractors upon the completion of contracts, it is believed, would not embarrass the City finances, but would result in obtaining the acceptance of all such contracts at greatly reduced prices.

FROM DEPARTMENTS.

There has been a falling off in the amount of revenue realized this year from the sale of the street sweepings, &c. The demand has not been active. The Department has been compelled, in order to prevent its too great accumulation at the depots, to offer an extended credit to its customers. At the close of navigation this year, more than twenty thousand loads remained undisposed of; last year the amount did not exceed two hundred loads. The laying of water pipes has deteriorated the value of street sweepings nearly twenty-five per cent., besides adding a heavy expense for carting off the sand left to secure the pavements.

While it must be admitted that the City has enjoyed an extraordinary degree of health since the present expensive mode of cleaning streets has been adopted, and that to maintain an exemption from disease, the expenditure must be of secondary importance, yet the magnitude of the cost, and the apparent impossibility of any considerable reduction under the present system, should invite attention to discover some other less expensive mode; and it is suggested that the experiment of leasing the streets to individual contractors should be tried, the covenants to be so framed that the streets should be swept as often and as thoroughly as at present, and to the satisfaction of the Superintendent of Streets, before the payment of any money. An offer has been received, at this Office, from a responsible source, to undertake the work at twenty thousand dollars less, per annum, than it has cost the City at any time within five years.

WHARVES, &c.

The value of the Wharf and Slip Property belonging to the Corporation, as based upon its actual cost, is estimated at $1,748,000 00. The cost of repairs, cleaning, with salaries of officers for the year 1840, amounted to $28,890 41, while the whole amount of revenue from the lease of Wharves and Ferries was $88,592 33. The nett income for 1840 was $59,701 92, or about 3 1-16 per cent. upon their actual cost.

The propriety of increasing the rates of Wharfage has several times been entertained by the Common Council, without any practical result. The inadequacy of the income to the amount of capital invested, is obvious from this exhibit, and should induce a new effort to improve this branch of the City revenue.

The amount of rents in arrear is large. More than one half of the arrears of Dock Rent had accumulated previous to 1839, a portion of which can never be realized. The arrears on the other account are mostly secure to the Corporation. The Water Lot Rent is a lien on very valuable property. The difficulty of collecting this kind of rent promptly, arises principally from the facts that the original grants are now owned by numerous assignees in severalty, who do not agree among themselves as to the proper apportionments of the rent. A declatory law of the State, permitting and legalizing proper apportionments to be made from time to time, as the grants are divided, would be very desirable to the holders, and facilitate the department in collecting these rents.

With the year 1842, a new item will enter into the computations of the Revenue necessary to be raised to meet the current annual disbursements of the City Government; an item that may bear heavily upon the community, unless a large reduction in the present rate of expenditures be effected. At that time the Croton Water will have been introduced, and be ready for the use of the inhabitants of the City, and, although a portion of the Works will not have been entirely completed, yet the debt will have reached, at least, the sum of Twelve Millions of Dollars, the interest on which, at five per cent., will be *Six Hundred Thousand Dollars* per annum. The annual cost of Repairs, and the expense of managing the Water Department, will probably reach $50,000 more.

The correctness of the estimate, given in the last annual report of the Comptroller, as to the ultimate amount of debt upon the Water account, and the period at which the Works will be completed, is confirmed by the experience of the past year; a new application to the State Legislature for a further issue of the Stock will therefore be required. And although the amount needed will still be large, yet the ample resources of the Corporation pledged for its redemption, their comparative freedom from all other debts or prospective habilities, the immense amount of taxable property held by the inhabitants of the city, the prompt faith with which it has always met its obligations, the intrinsic circumstances attending the creation of the debt, releasing it from the objections urged against the validity of other public securities, and the possession of a legal mode by the City creditor, of enforcing his just claim, now extensively known and appreciated, furnish a reasonable assurance that the remainder of the Water Stock can be readily and advantageously negotiated.

CITY STOCKS.

In another respect the City stocks must have an advantage over State stocks of much greater *practical* consequence. While there *can be* no constitutional or legal mode of enforcing a contract against a State, there *is* such a mode of enforcing one against a Municipality; the creditor to the City may reduce his claim, upon default, to judgment, when it becomes an immediately available lien upon all the Corporation property, and he may, if he chooses, realize it by judicial process, as in the case of an individual. Regarding the large amount of fixed property which the City possesses, and must always possess, this fact affords to those who may hold its securities, the strongest possible guarantee of easy, prompt, and certain payment. Perhaps these are the controlling reasons why our securities have now a higher value compared with those of this State, than heretofore, notwithstanding the advantage which the State has endeavored to give its own Stock by making it a basis for the issue of bank notes, and declaring any investment to be made in it by the banks of this State, should not be construed as an extension of their lines of discount.

By the several laws of the Corporation, all the funds arising from the ordinary revenues of the City, from the negotiation of its Stocks, and from the management of its Assessment, commonly called "Trust Accounts," are paid to the City Chamberlain, forming a Fund, separated from the Sinking Fund only. From these sources he is accustomed to pay all warrants drawn upon him, whether for the ordinary current expenses of the City Government, or for the payment of its debts, for the prosecution of its public works, or the payment of claims due on its "Trust Accounts."

The receipts detailed below form, therefore, an aggregation of several funds, and exhibit not only the ordinary revenues applicable to the support of the City government, but the sums loaned to it both for permanent and temporary use, and also the amounts collected by assessment imposed by the Supreme Court, in which it has no interest, except as trustee for their disbursement. The following is a summary of all these sources, and the amount derived from each during the year 1840, with the Treasury balance at the commencement of the year.

The revenues generally have exceeded the estimate made at the commencement of the year, and will continue to improve. There is a large amount of arrears due from these sources, which are either secured or in process of being collected. Of these claims, which are the absolute property of the City, and constitute assets against its debts, the following, with the exception of about $30,000, are considered reliable. The delinquencies in the assessment accounts enumerated below, are liens upon real estate which can be realized by public sale.

The receipts into the general Treasury, from the ordinary revenues of the city, from the negotiation of its stocks, and from the management of its "trust accounts," including the cash on hand at the commencement of the year, amounted to $5,004,610 12.

The taxable property of the City and County of N. York as assessed in 1840, is valued at $252,252,515, or more than five thirteenths of the whole taxable property in the State. The rate of tax levied was 5 4-10 mills on each dollar of valuation, being less than the average rate of taxation imposed in the other counties of the State.

The laws permitting claimants to audit their own accounts, by affidavit, where no tariff of compensation is fixed, do not always secure the services required at the lowest rate. Those laws, also, which confer upon the employing officer a discretion in the sum to be allowed for the services performed, not exceeding a given amount, are found, in practice, to serve only as authority for fixing the maximum as the unvarying compensation. Were other Ordinances so changed as to throw all the patronage of the City open to competition, it is believed that a large retrenchment would thereby be effected.

The salaries paid to the higher officers of the City Government may be materially reduced, without injustice to the incumbents.

It is not then alone to the postponement of new undertakings that the public must look for essential relief, but to the dispensing, immediately and entirely, with every unnecessary expense, however trivial. No community has a larger ability to meet, or more readily pays, the necessary demands of its government than the people of this City; but there is also no people whose permanent interest requires a more rigid economy in the administration of their municipal affairs.

It is in view of the *uncertain* amount of revenue to be derived from the Croton Aqueduct, and the *certain* necessity of increased taxation, to make up the deficiency, that the undersigned has deemed it his duty

thus to direct the attention of the City Legislature, by a more than ordinary notice, to timely means of avoiding a result that must otherwise prove severely burdensome."

CHAPEL STREET ASSESSMENT.

Document No. 9.

BOARD OF ASSISTANT ALDERMEN,

July 23d, 1838.

Report of the Committee on Assessments upon the Assessment for Regrading, &c., Chapel street. Presented by Mr. Tiemann. Laid on the table and printed. *John Newhouse*, Clerk.

The Committee on Assessments, to whom was referred the assessment for regrading and paving Chapel street, together with the various petitions and remonstrances concerning the same, Respectfully Report,

That the Committee have devoted much time and labor in examining the subject submitted to them—that they have had before them several persons who have fully set forth all the facts and circumstances connected with this subject, and have fully established the fact that the laying of the new sewer was entirely unnecessary, and consequently an expenditure without any possible good to the parties interested, who are now called upon to pay large sums of money without receiving the least equivalent therefor; and farther, the parties aver, that the old paving was in good order and condition, and consequently the expense of repaving is to them an expenditure for which they are benefited only in a trifling degree; under these circumstances your Committee are fully of opinion that the parties should be indemnified by the Common Council, and offer for adoption the following resolution:

Resolved, That the expense of repaving Chapel street be paid by the Common Council, and the Comptroller draw a warrant for the amount thereof.

Respectfully submitted,

DANIEL F. TIEMAN,
C. C. CROLIUS, Jr.,
FREEMAN CAMPBELL, } Committee on Assessments.

Document, No. 8.—Board of Assistant Aldermen.—November 26th, 1838.

Report of the Committee on Assessments, upon their former report upon the petition of sundry persons asking to be relieved from the assessment for re-paving, &c., Chapel-street. Presented by Mr. Tiemann. Laid on the table and ordered printed.

J. NEWHOUSE, *Clerk.*

The committee on assessments, to whom was referred the petition of sundry owners of property on Chapel street, praying that the expense of the last grading and re-paving of said street be paid out of the city treasury, have had the subject some time under consideration, and have given the matter all the attention that so important a subject should at all times demand from your committee, by examining a great number of persons, the street in question, &c., beg leave *respectfully to report*: That they have endeavored to give the subject submitted to them that careful consideration which its importance demands—important because it involves a principle laid down by some of the departments as a guide for assessing property when re-paved, but not found in the laws of the state relating to the city, nor in the corporation ordinances,—that when a street is newly graded and re-paved, the property must pay for it, without reference to whether they have paid for it since 1824 or not, at which time an ordinance passed the common council, by which they ordain that they will keep all pavement in order, that should be paid for by the owners after that time.

Your committee would respectfully offer the following, as some of the reasons for the conclusions they have come to. That since 1820 the owners of property on Chapel street have paid for re-paving, widening, filling up and building two sewers, assessments amounting to the enormous sum of $231,032 46, independent of the present assessment of $33,613 46, for the present grading and re-paving.

The commissioners that were appointed by the supreme court, to award and assess benefits and damages, by the widening of Chapel street, did not assess or charge upon the city any portion or part of the value or buildings destroyed by the widening of the street, as they had by law a right to do. The buildings were estimated at the sum of $102,800, the one-third of which could have been charged the city, being $34,266 66. (*Laws of the State in relation to the city of New York*, pages 731, 732, 746 and 957.)

The last improvement in widening Chapel street, was intended as a public avenue, to relieve Broadway, in part, and will no doubt be extended at both ends eventually, so as to make, as was originally contemplated, one of our main avenues leading out of the city. Any persons going through Broadway and the Bowery, will not dispute but that more wide and main avenues are needed at this time, and it is very evident that Chapel street must ere long form one of them. Therefore the assessment for widening should not be confined to the immediate vicinity of an improvement of so vast and beneficial a nature to the whole of that section of our city, but the city should, in all such cases, pay a part of the expense incurred.

A portion of the street has been paved and paid for by the owners since 1824. The street has been all repaved, and paid for by the owners since 1820, except so much as has been added to the street by the late widening, and that the owners should pay for. A large portion of this assessment is for re-paving the cross streets which have not been altered in the grade, and a part not altered two inches higher or lower.

Chapel street and its vicinity was heavily taxed for filling, grading and paving of Canal street, which is not included in the above sum of $231,000.

Mr. *Shepherd*, the superintendent to the building of the new sewer in Chapel street, appeared before your committee and stated that the old sewer was as good at the time it was taken up as any new one could be made. It was larger than the new one now is, being six feet square, and the new one but four feet six inches in diameter,—consequently was an unnecessary expense of $16,571, and paid, and cannot carry off near as much water as the old sewer.

If it was ever right for the corporation to pay for any re-pavement, it appears in the opinion of your committee to be that of Chapel street, even if the late improvement of widening had not taken place,—for the ordinance says nothing about grading; so that whether a street is raised or lowered, does not alter the intention of the law. The only question in relation to this street appears to be—has the street been paved and paid for by by the owners? They have paved and re-paved, and always paid.

For the reasons thus set forth, your committee recommend for adoption the following resolution:

Resolved, That the comptroller be directed to draw his warrant for $30,413 34, being the amount for repaving, after deducting so much as has been added to the street by widening and grading.

All of which is respectfully submitted by,

DANIEL F. TIEMANN,
C. CROLIUS, Jr. } *Committee on Assessments.*

Document No. 183.

JOURNAL OF DOCUMENTS—BOARD OF ASSISTANTS.

BOARD OF ASSISTANT ALDERMEN,

April 23d, 1840.

Report of the Street Committee, on the petition of owners of property on Centre-street, and adjoining streets, for damage done to property by altering the grade. Adopted. *John Newhouse*, Clerk.

Report of the Street Committee, to whom was referred the petition of owners of property on Centre-street, and the adjoining streets, to be re-imbursed for damage done to their property by an alteration of the grade.

Respectfully Report, That the petitioners set forth: That some of them having erected and elevated buildings conformably to the grade previously adopted, have suffered damage by said alteration.

They ask that the subject may be referred to arbitrators to estimate and allow damages.

The committee are of opinion that there is propriety and justice in referring this matter to disinterested individuals, to estimate and assess the damages and benefits occasioned by the change of grade—and they have obtained the opinion of the counsel hereunto annexed, as to the proper course to pursue, and in accordance with said opinion they submit the following resolution:

Resolved, That the assessors appointed in the ordinance for regulating and paving Centre-street, and the adjoining streets, estimate and assess the damages sustained by reason of such regulation as a part of the expenses thereof.

WM. WELLS HOLLY,
A. V. WILLIAMS, } Street Committee.

COUNSEL'S OPINION.

The Committee of Streets of the Board of Assistants.

Gentlemen,—In answer to inquiries made by you in relation to the new regulation or grading of Centre-street, I would remark that, after the proceedings for opening and widening Centre-street were finished, the common council in July last, deemed it expedient to alter a part of the grade of said street, and by resolutions ordered that the regulation of Centre-street and the streets connected with it and affected by it, be changed in conformity to the regulation shown by the blue lines drawn on the profile in the street commissioner's office. The common council, at the same time, resolved that such regulation be referred to the commissioners to estimate and to assess the damages and benefit that might accrue from such change of regulation, and directed the counsel of the board to take proper measures for that purpose.

They also ordered the street commissioners to present the proper ordinances to carry such regulation into effect.

The subscriber supposed at the time he received a copy of said resolution, that it was the intention of the common council that an application should be made to the supreme court for the appointment of commissioners to estimate such damages and benefit; but no such proceeding is provided for by law; the court has no such authority; and such application would have been fruitless. The law vests in the common council, the power of ordering and directing the grading of streets, and provides for the appointment by them of commissioners to estimate the *expenses* of such grading, and assess the same upon the property benefitted. Under this law all the alteration of the grades of streets, and all the new grades, and all estimates and assessments therefor, have been made, except when it has been done by commissioners for opening or widening streets in connection with their proceedings.

This mode of proceeding by ordinance of the corporation under the law referred to, is the proper one in the case of the alteration of the grade of Centre-street, and the only difficulty arises from the question whether the law allows the commissioners appointed by the ordinance to assess and award the damages, if any are incurred by such regulation.

Hitherto no damages have been allowed in proceedings of this kind, either because the commissioners have not felt warranted by law in allowing them, or because it has always happened that such regulations were beneficial to all. In the present case the common council evidently supposed that some damages would be sustained, and endeavored to *provide* for their payment in the same resolutions, by which they ordered and adopted the new regulation, and it would seem to be but justice not to carry into effect one resolution without the other.

The question then is, which is the true construction of the act referred to. It provides that the common council shall cause estimates of the expenses of conforming to such regulation to be made by skilful and disinterested persons, and a just and equitable assessment thereof made among the owners or occupants of houses and lots benefited thereby. No mention is specifically made in the *law* of damages to be allowed, and the authority to allow them must be inferred from the terms and general intent of the law, if it exists at all. In the first place, the law gives the power absolutely to the corporation to make such new regulation, and to assess the expenses upon the persons benefited.

Without the power of allowing damages in cases where damages are really sustained, the law is unjust in its operation, benefitting one man's property at the expense of another, without compensation to that other, a construction not to be adopted for any law.

If there was any other proceeding applicable to cases of grading where damages are sustained, or if this law were limited in terms to cases where all houses and lots would be benefited, the case would be different, but the law is general and absolute, and necessarily requiresthis construction to be equitable and just.

What are the expenses of conforming to such regulations that are to be estimated? The true answer seems to me to be, all just claims arising from it—the value of property injured or destroyed by it, as well as the materials and labor required for making it; the cost of the work—the compensation for damage necessarily done in making the work, and without doing which it could not be accomplished. Unless this be the proper explanation of the expense of conforming to such regulations, the law would authorise the doing of an injury without affording any remedy.

This construction is further strengthened by the terms of the law requiring estimates of such expense to be made and assessed, inasmuch as if the mere cost of doing the work only is to be ascertained, the contract price, or the actual expenditure, would render estimates unnecessary. The question is certainly not free from doubt and difficulty, but absolute injustice, of making these regulations without paying for damages actually sustained by them, seems to me to render that construction proper and necessary, which fulfils the general intent of the law, and does justice to all.

With these views of the proper construction of this law, I would advise that the commissioners appointed by the ordinance for the new grade or regulation of Centre street, estimate and assess the dumages necessarily caused by such new regulation, as a part of the expenses thereof. GEO. F. TALMAN.

April, 1838.

ASSESSMENTS LEADING TO THE UNCERTAINTY OF TITLES OF REAL ESTATE.

The loose and irregular mode of making and recording assessments, and giving notice of sales for assessments, is productive of great mischief and much trouble.

It is well known that heretofore lots have been described by surveyors, commissioners, and assessors, by arbitrary map numbers, and by as many different numbers to a lot as there are different assessments. This must be remedied. The law of the last session remedies the evil as to assessments made subsequent to June 5th, 1840; but there are a vast number of lots on which assessments are due, that are described in the old loose way; this must be remedied by a special law, and it must also be provided that a book shall be kept open for inspection, where all these incumbrances shall be regularly and properly recorded, that persons who purchase or loan money on real estate, may be able at once to ascertain the extent and magnitude of assessment leins, which in very many instances amount to more than the value of the land. As a full and complete illustration of my argument, we will state a few cases which have come under our own personal observation, which are most convincing and decisive. The first of these is the case of Mr. Delhoyo. A Spanish gentleman, some two years ago, purchased a house and lot, No. 2, Anthony-street, near Hudson-street, for which he paid six thousand dollars cash. The property was sold on a master's sale on a foreclosure, by one of the insolvent insurance companies. The property belonged to the estate of a person deceased. This property had been assessed for the widening of Chapel-street, the sum of between three and four hundred dollars, and described as the property of estate of Thomas Flender, who owned the three adjoining lots. The real owner was never called upon for the assessment; the property was however advertised for sale as the property of estate of Thomas Flender, and described as being situate between Chapel and Hudson-streets, and by an arbitrary map number—was sold for a long term of years, and Mr. Delhoyo knew nothing of the incumbrance until after the time of redemption had expired; he had, however, time to obtain an injunction, and then compromised the matter by paying five hundred dollars, which he had to lose.

ANOTHER.

A gentleman purchased a house and lot in Eighth-street, for which he paid several thousand dollars. About a month ago he was called upon by a person who had purchased the premises at the sale for unpaid assessments, for an assessment of about eight dollars, for paving Wooster-street, which is some distance from it. The property was sold for the term of eight years, and was assessed in another name from that of the owner; the owner was never called upon for the assessment, and was wholly ignorant of it. He obtained an injunction.

AND STILL ANOTHER.

Mr. Stuart Mollan, an old and highly respectable merchant of New York, residing in Broadway, next door to the corner of Twelfth street, occupying a large house with his stable on the rear of his lot, was assessed for building a sewer in Thirteenth street. He paid the assessment when called on. A few days since he learnt that his stable had been assessed seperately from his house for the sewer in Thirteenth street, and put down as the property of a Mr. McIllwaine, who had no interest in it. It was assessed a very small sum—was advertised and sold for the assessment for the term of eight years, as the property of Mr. McIllwaine, and described by an arbitraty map number, and he was wholly ignorant of the whole affair. A few days since, when the purchaser, who is a corporation contractor, or belongs to the family of one, claimed possession. This matter is now pending.

AND YET ANOTHER.

Mr. James Gillispie, a highly respectable gentleman residing in Dey street, owns a house on the corner of Broadway and Twelfth street, has been served in the same manner by the same persons as Mr. Mollan, and under the same circumstances.

AND MORE STILL.

Mr. Richard Mortimer, one of our highly respectable citizens, owning property on Twelfth street, has fared the same as to his property, as Mr. Mollan and Mr. Gillispie.

AND YET MORE.

Two lots of ground on Sixth street, near Avenue C, was assessed some thirty dollars for widening Avenue C. The owner had no knowledge of the assessment. He sold the lots, and now after two or more years, he finds a man building upon these lots on the strength of a lease from the corporation for thirty-five years, for the nonpayment of the assessment.

With the exception of Mr. Delhoyo's house and lot, the other five assessments did not amount to fifty dollars, but some seventy or eighty dollars costs have been added to the amount, and the parties obliged to resort to the courts for relief.

Shall these things be permitted? Certainly not. Hundreds and hundreds of cases of these same descriptions have occurred, and are cotinually occurring, and this mischief must be promptly remedied.

The legislature are called upon to remedy these abuses, and to put a stop to this abominable system of ruinous assessments. Some say that we are "shutting the stable door after the horse has gone." Not so. This system is still in its full tide of continuance, and will continue until the most effective and decided measures are taken to prevent it. The annexed petition to the legislature signed by many of our most respectable and influential citizens irrespective of party politics, will, we trust, bring the desired relief. There are other abuses of great magnitude and of a very alarming character, which require prompt attention. The Mayor and Common Council will, without doubt, lend their aid to correct these abuses, by uniting in endeavoring to obtain from the Legislature a general law. Mayor Purdy has been opposed to assessments generally, and latterly so many of the abuses have come to his knowledge, that a convincement must have produced a perfect conviction in his mind of the absolute necessity of Legislative enactments to remedy the evils complained of.

POPULATION OF THE CITY OF NEW YORK.

In 1731	8,622	In 1810	96,276
" 1756	10,381	" 1820	123,706
" 1773	21,876	" 1825	166,086
" 1786	23,614	" 1830	202,580
" 1790	33,131	" 1840	312,883
" 1800	60,489		

TAXES OF THE CITY OF NEW YORK.

In 1801	$75,000	In 1825	$300,000
" 1810	120,000	" 1830	450,000
" 1820	250,000	" 1840	1100,000

FLOATING DEBTS OF THE CITY.

There has been for the last ten years a floating debt, and every year increasing, which must now amount to a very large sum of money. At the last session of the legislature an application was made to fund thirteen hundred thousand dollars. The legislature passed an act to fund four hundred thousand dollars. Authority should at once be given by the legislature to the corporation, to fund all the floating debt, and a prohibition provided also against the corporation issuing another bond, unless authorized by some special act of the legislature. The comptrollers report of 1840 is a very lengthy document, and much time is required to examine it properly, and compare it with the former reports; this will be done in the subsequent numbers of this paper. The private minutes of the finance committee are the best criterion of city indebtedness. The comptroller reports only actual payments. The city has a great undertaking in hand, and will be obliged to borrow a large sum of money, it is important therefore, that the credit of the corporation should be preserved unimpaired. Justice to individuals who are holders of the present stock, also require this, as it would be doing a great wrong to impair the value of the public securities, which are held by those who have, in many cases, paid a premium for this stock. Wherever the city expenditures have been extravagant and unnecessary, they should be known and remedied. The increase of taxes have been very great, and are still to all appearance increasing. An application is now before the legislature to authorise a tax for a large amount, and it is hoped that in the act which authorises its imposition, a restrictive and special provision may be inserted, requiring that the money shall be specially appropriated for the purposes for which it is to be raised, and not "for any purpose the mayor, aldermen, and commonalty may in any manner sustain," as is provided in the tax act of the last session.

Governor Morton of Massachusetts recommended retrenchment as a substitute for taxation. This should be good authority with our present common council.

We have two descriptions of taxes in the city of New York, viz.: direct and indirect taxes. The indirect taxes are the assessments which are most odious, and of a very alarming character. In other cities, these kind of assessments are unknown. All the expenses of paving streets, building common sewers, and sinking wells, are a city charge. These assessments affect every body—they decrease the value of real estate, render titles unsafe, and are dangerous to civil liberty.—The abuses have been so great, so long continued, so pertinaciously persisted in, that the people have become exasperated, forbearance has ceased to be a virtue, and operates as an encouragement to the abuses and mischiefs.

Regulating the Ninth Avenue, from 45th street to the Bloomingdale Road.—Some months since a petition was presented in the board of assistant aldermen, to have this portion of the avenue regulated. The petition is signed by eighteen persons. We have a list of their names and also a map of all the property on that portion of the avenue which would be subject to assessment, and find that but two of the petitioners appear to be owners of any of the property which would be assessed for the work.

2d Avenue Sewer.—This sewer and its branches cost about seventy thousand dollars,—it was ordered by the common council on the petition of eleven persons; the names of only one of the petitioners appear upon the assessment list for the expense of this sewer, and the assessment of that one amounts to less than eight dollars. Both of the above petitions are on files in the offices of the clerk of the common council, and clerk of the board of assistants.

We give below the Bill reported by the select committee of the Senate, at the last session of the legislature. It will be seen, by a careful reading of this bill, that it would have remedied very many of the assessment-abuses now complained of. The sections which would have remedied those abuses were struck out by the person who drew the bill, at the request of the corporation of the city of New York. The reason for consenting to strike out, was the lateness of the session, and the consequent danger of losing the whole bill if it was opposed in either house, and also a willingness to agree upon a bill as being more desirable in all cases where it can be done. It will be recollected that the expense charged for selling lots for unpaid assessments, was sixteen dollars and eighty cents for each lot sold, which included the interest on the cost. The cost of advertising was $5, certificates $3, lease $1, making $12; twenty per cent. interest on this amount for two years made $4 80, which altogether is $16 80. If the owner redeemed at the end of two years the price of the lease was returned, but not the interest on the lease. It will also be recollected that the old rate of interest was twenty per cent. per annum; the law of 1840 reduced it to fourteen per cent. per annum.

It was very desirable to remedy that abuse of extorting such extravagant fees on the sale of every separate lot, and this much was effected by the Act of May 14, 1840, which is set forth in the present number of this paper.

The mode of describing lots by arbitrary map numbers, instead of the known street number, on assessments made after the act took effect, is done away with, and the street and ward numbers are now required to be stated; but this difficulty of vague and uncertain description of lots assessed previous to the passing of that act, by arbitrary map numbers, is yet to be remedied. It will be borne in mind by those who are familiar with assessments, that in the comptroller's report of 1839, appendix K, is a list of twenty-three streets, avenues, and public places, the assessments of which were confirmed by the supreme court in that year.—None of these assessments are included in the last sale; and besides these there are assessments for street paving, curb and gutter, sidewalks, filling low grounds, building sewers, building bulkheads, wells and pumps, &c., &c., almost without number, for which the assessments are yet to be collected, and in the assessments of which the old plan of arbitrary map numbers has been adopted. This can be remedied by requiring all lots advertised for sale to be described by the known street and ward numbers, and by requiring the purchaser to give six months' notice before he applies for a lease to the owner to redeem, as is done by the purchasers at tax sales made by the comptroller of the state. See vol. 1. R. S. p. 400, sec. 84. We will recur to this subject again.

An Act in relation to the collection of assessments and taxes in the City and County of New York, and for other purposes.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. In all cases where commissioners or assessors shall hereafter be appointed to make an estimate and assessment of the expense of conforming to any order, regulation, resolution or ordinance, in laying out, opening, widening, extending, altering, straightening, or in any manner improving any avenue, street, park, place, lane or alley; or of building, constructing, altering, amending or repairing any sewer, culvert or drain; or of making, sinking or digging of any well; or for boring for water; or for regrading, grading, repaving or paving any avenue, street, park, place, lane or alley; or for the levelling, excavating, reducing, regulating or filling of any lot or lots in the city and county of New York, and all commissioners and assessors who have been heretofore appointed, and who have not yet made their report, or where their reports have been made and not confirmed, it shall be their duty to ascertain, by due proof to be made to such commissioners or assessors in writing, that the board of aldermen and board of assistant aldermen composing the common council of the city of New York, have in all respects complied with the requirements of section seven of chapter one hundred and twenty-two, of laws of this state, passed April 7, 1830; and such proof in writing shall be appended to the assessment roll of said commissioners or assessors.

Sec. 2. In all cases where commissioners or assessors shall describe the houses and lots assessed for any improvement set forth in the first section of this act they shall describe and particularize all such houses and lots by the known street number, and shall also state the names of the owner or owners, and occupant or occupants, and it shall be their duty to ascertain by an inquiry to be made of the collector of taxes of the ward in which the property assessed is situate, and by inquiry of the person who collected the taxes of such ward the previous year, as to such ownership; and such collector, on being notified in writing by the chairman of such commissioners or assessors, shall attend before them for examination.

Sec. 3. It shall be the duty of all commissioners and assessors authorised to make any estimate and assessment for any improvement recited in the first section of this act, to give notice to the owner or owners, and occupant or occupants, of all houses and lots, and improved or unimproved land affected thereby, that they have completed the estimate and assessment, and will meet at the street commissioner's office in the city of New York, to hear the objections of all persons interested, to the said estimate and assessment, who may appear and make objections thereto.

Sec. 4. Such notice may be served personally, or by leaving the same at the dwelling-house of the owner and occupant, with any person of suitable age and discretion belonging to the family of such owner and occupant, or by leaving the same at the place of business of such owner and occupant, with the person having charge of the business of such owner and occupant.

Sec. 5. The notice provided for in the two last preceding sections, shall state the amount of the assessment or assessments, the street where the property is situate, and the day and hour on which the commissioners or assessors will meet to hear objections to the estimate and assessment, and state the place of meeting, and shall be signed by the chairman of such commissioners or assessors.

Sec. 6 It shall be the duty of the commissioners or assessors, to employ a suitable person at a reasonable compensation, to make service of the notices provided for by this act; and such person shall make oath or affirmation to the due service of each of said notices, in a general return to be made to the said commissioners or assessors, who are hereby authorised to administer such oath or affirmation, and to endorse the same upon the said general return of due service, which shall be appended to the assessment list.

Sec. 7. It shall be the duty of the commissioners or assessors to take down in writing the objections which any person interested in opposing the assessment may make thereto, at the time when such commissioners or assessors shall meet to hear objections, and shall carefully read the same over to such objector, who, if he approve the same as correct, shall sign his name thereto, and such objections shall be attached to the assessment list.

Sec. 8. Whenever houses and lots, or improved or unimproved lands, shall be assessed for any improvements specified in the first section of this act, it shall be the duty of the commissioners or assessors to assess all property belonging to one and the same owner or owners, which adjoins and is held in one parcel or tract, in one sum, unless required by such owner or owners to assess the same separately, which requirement shall be in writing, and be signed by the person or persons making it, and shall be appended to the assessment roll.

Sec. 9. Whenever any houses and lots, or improved or unimproved lands, shall be hereafter offered for sale or lease at public auction, for the non-payment of any taxes or assessments in the city and county of New York, so much only of the property of the same owner or owners, shall be sold or leased as will be sufficient to satisfy such tax or assessment, and the interest and charges, and no more.

Sec. 10. It shall not be lawful for any public officer, or any person in the employ of the corporation of the city of New York, to purchase or lease any houses, lots, improved or unimproved lands at public auction, which shall or may be offered for sale or lease at public auction in the city of New York, for the non-payment of taxes or assessments; and all purchases made by any public officer or person in the employ of the corporation of the city of New York, either directly or indirectly, shall be absolutely void.

Sec. 11. It shall not be lawful for any commissioner or assessor to charge for any services in making estimates and assessments for any improvements recited in the first section of this act, not actually rendered by him, nor any parts of days, as whole days, where the time occupied was less than six hours of such day.

Sec. 12. The expense of advertising houses and lots, and improved and unimproved lands, for sale or lease in the city and county of New York, for unpaid taxes and assessments, and of giving a certificate to the purchaser or lessee therefor, and of making a lease and executing the same, shall be the same as is now charged for the similar services, by the comptroller of the state of New York, in selling lands for unpaid taxes, and no more, nor shall any other or greater rate of interest be charged on the amount of such assessment of taxes than is charged by the comptroller of the state of New York on unpaid taxes when land is sold therefor, and redeemed by the owner or others.

Sec. 13. Whenever any houses and lots, or unimproved lands, shall have been sold, or leased. at public auction in the city of New York for the non-payment of taxes or assessments, the grantee, lessee or purchaser of such houses and lots, or improved or unimproved lands, shall, four months before the term of time for the redemption of any of such houses and lots, and improved or unimproved lands shall expire, give notice both to the owner and the occupant of such houses and lots, and improved or unimproved lands, of the sale and lease, and the amount of the tax or assessment, and of the interest and expenses thereon; such notice shall be served personally or by leaving the same at the dwelling house of the owner and the occupant with any person of competent age and discretion belonging to his or her family, or by leaving the same at the place of business of such owner and occupant, with some person having charge thereof.

Sec. 14. It shall not be lawful for any public officer to execute or deliver to any purchaser or lessee a lease for a term of years of any houses, lots, improved or unimproved lands, until such officer is satisfied by due proof in writing, verified by oath or affirmation, that the requirements of the thirteenth section of this act has been complied with by such lessee or purchaser, and such proof shall be filed in the street commissioner's office in the city of New York.

Sec. 15. Commissioners or assessors for making estimate and assessment for any improvement recited in the first section of this act, shall in no case assess any house, lot, improved or unimproved lands more than one half the actual and real value of such house, lot, improved or unimproved lands, at the time of making such assessment.

Sec. 16. It shall not be lawful for any public officer of the United States, or of the corporation of the city of New York, to serve as commissioners or assessors for the making of any estimate or assessment for improvements, set forth in the first section of this act.

Sec. 17. It shall be the duty of the collectors of taxes of the city of New York to attend at the street commissioner's office, in the hall of records, every Saturday during the months of January and February in each year, from the hour of ten o'clock in the morning to the hour of three o'clock in the afternoon, with the tax lists of their respective wards, for the purpose of affording tax payers owning property in different wards an opportunity of paying such taxes.

Sec. 18. No houses and lots, or improved or unimproved lands in the city and county of New York, shall be hereafter sold or leased at public auction for the non-payment of any assessment or tax which may be due thereon, unless notice of such sale shall have been published in all the daily newspapers printed and published in the city of New York, once a week for six months, and it shall also be the duty of the officer giving such notice, and selling or leasing such houses and lots, and improved or unimproved lands, at public auction, to cause to be printed in a pamphlet a particular and detailed statement of the property assessed, and such as is now published by the street commissioner in two of the daily newspapers in the city of New York, which pamphlets shall be deposited in the street commissioner's office in the city of New York, and with the collector of taxes of the different wards

of the city of New York, and shall be delivered to any person applying therefor; and the notice provided for in this section to be given of the sale of houses and lots, and improved or unimproved lands, shall also state that the detailed statement of the assessment, or tax and ownership of the property assessed or taxed, is published in a pamphlet, and where the same are, or will be deposited, to be delivered to any person applying for the same.

Sec. 19. The act entitled "An act relative to the duties and powers of commissioners of estimate and assessment on opening streets and avenues," passed April 5th, 1816, is hereby repealed.

PROPOSED LAW AS TO PAVING STREETS, AND SINKING WELLS, AND OPENING STREETS.

§ 1. Whenever and as often as the owner or owners of any houses or lots fronting on any street or avenue by petition apply to the board of commissioners for liberty to pave or regulate such street or avenue at the cost and charge of such owner or owners exclusively, it shall be the duty of said board of commissioners to grant a permit for the same, to be so paved or regulated; and the same shall be done under the directions of a city surveyor in the employ of the said board of commissioners, within the time named in the permit granted by the said board of commissioners.

§ 2. Whenever and as often as the owners and occupants of houses fronting on any street or avenue shall be desirous that such street or avenue shall be regulated and paved, and shall petition the board of commissioners of the city of New York to that effect, it shall be the duty of the board of commissioners to cause an estimate of the expense of regulating and paving such street or avenue to be made by a surveyor in their employ; and if it shall be found, on completing such estimate, that the petitioners are owners to the extent of two-thirds the houses fronting on such street or avenue, the said board of commissioners may in their discretion order an assessment of the expense of regulating and paving such street or avenue, to be made upon the owners of all houses fronting on such street or avenue intended to be benefited thereby, by one of the city surveyors in their employ, which assessment, when confirmed by the said board of commissioners, shall be collected by one of the city collectors, and the money thus collected shall be appropriated to the regulating and paving such street or avenue. And in all cases where avenues shall be regulated or paved, one half of the expense of such regulating and paving shall be assessed upon the city treasury.

§ 3. Whenever and as often as the owners or occupants of houses and lots fronting on any street or avenue, shall be desirous of sinking a well in any such street or avenue, and placing a pump therein, for their own convenience or use, and at their own cost and charge, and shall petition and desire the board of commissioners of the city of New York to allow the same to be done, it shall be their duty to give the said petitioners a written permit to that effect, in which shall be stated the place at which the well is to be sunk, and the number of days allowed for completing the same.

§ 4. Whenever and as often as the owners and occupants of houses fronting on any street or avenue, or both, shall apply by petition to the board of commissioners for a well to be sunk, and a pump to be placed therein, it shall be the duty of the said commissioners to cause an estimate of the expense of such well and pump to be made by one of the city surveyors in their employ; and the surveyor making the estimate shall ascertain how many houses fronting on said street or avenue, or both, are within five hundred feet on the line of such street or avenue of the place where such well is designed to be sunk, and assess the same equally among such owners and occupants, and report the same to the said board of commissioners; and if, on the coming in of the said report, it is found that the petitioners are interested to the extent of two thirds the number of houses within the said distance, then and in such case the said board of commissioners may, in their discretion, confirm such estimate and assessment, and cause the amount of such assessment to be collected by one of the city collectors; and the money when collected shall be appropriated to the purposes aforesaid; and if the assessment shall amount to more than the work the surplus shall be paid into the city treasury to the credit of contingencies; and in case the work costs more than the amount assessed and collected, the residue of the expense shall be paid out of the city treasury, and charged to contingencies; but in no case shall any portion of the expense of such well and pump be assessed upon the owner of any house who is not a petitioner, who has a well sunk upon his own premises within said district, or upon any other owner or occupant not a petitioner, whose house is situate within five hundred feet of any other well or pump on the line of said street or avenue, or both.

§ 5. Whenever and as often as the owners to the extent of three fourths the land fronting on any street or avenue on that part of the island laid out by the commissioners under and by virtue of the Act of April 3d, 1807, shall, by petition, apply to the board of commissioners of the city of New York, to have such street or avenue opened or regulated, it shall be the duty of said board of commissioners to cause an estimate of the expense of opening and regulating such street or avenue to be made by a surveyor in their employ, and upon the coming in of his report, if it shall appear to the satisfaction of the said board of commissioners that public necessity or convenience requires such street or avenue to be opened and regulated, and that the estimated expense is not so great as to make it objectionable, then, and in that case, it shall be their duty to cause personal notice to be given to the petitioners to appear before the said board of commissioners; and if it shall appear that the said petitioners are not owners to the extent of three fourths of the land fronting on such street or avenue desired to be opened and regulated, the said petition shall be dismissed, and the expense of making such estimate shall be paid by such petitioners, and shall be a valid and effectual lien and incumbrance upon the land of such petitioners.

(*To be concluded in our next number.*)

That portion of the Law of 1839 which applies to giving notice of application to the Supreme Court for the Confirmation of Assessments, and also requiring the taxation of costs and expenses, and under which all the streets, avenues, and public places, for the opening of which the assessments have been confirmed since the passage of the act, have been made without complying with its provisions, and for which reason we contend the confirmation should be set aside and declared void. Session Laws, 1839, p. 182.

§ 7. The said mayor, aldermen and commonalty shall be authorised at any time previous to the confirmation of the report by the said court, to discontinue all farther proceedings relative to the said improvement, without the necessity of an application to said court for leave to do so.

§ 8. Whenever an estimate and assessment for loss and damage, and for benefit and advantage, shall be made by the said commissioners relative to the same person or persons, no interest shall be demanded from such person or persons, upon the amount assessed for benefit and advantage, except on the excess of the amount he is to pay over and above the amount he is to receive for or in consequence of any intervening time between the period fixed for the receipt of the amount of benefit and advantage, and the payment of the amount of lot and damage.

§ 9. All motions (except as hereinbefore provided) made under and by virtue of the act hereby amended, before the said court or any court to which an appeal may have been made, shall be upon giving previous notice of the time, place and object of such motion, to be published for at least fourteen days in four of the public newspapers, and by copies of said notice in handbills, to be posted up for the same space of time in the manner hereinbefore directed.

§ 10. No real estate or other property shall be sold or advertised for sale, for the non-payment of any assessment or tax laid upon real estate, unless notice in writing shall have been left at the residence of the owner or owners, if residing in the city of New York, or if upon diligent inquiry, such owner or owners cannot be found, then at the residence of the tenant or tenants upon the said premises, at least twenty days previous to such advertisement; and if such owner or owners do not reside in said city, or upon diligent inquiry cannot be found and the premises are without a tenant or tenants, then such notice in writing shall be put up for the same space of time, in some conspicuous place on the premises so assessed or taxed.

§ 11. The one hundred and seventy-ninth, and one hundred and eightieth sections of the act hereby amended, are repealed.

§ 12. No cost or charges to the said commissioners, their attorney, counsel or others, shall be paid or allowed for any services performed under this act, or the act, hereby amended, unless the same shall be taxed by the said court, who are required to make rules to apply to the said bills of costs, the existing laws in relation to the taxation of costs, and the nature and proof of the services rendered and disbursements charged, as far as the same can be made applicable; and no unnecessary cost or charges shall be allowed. Public notice of the time and place of the taxation of costs shall be given, for the same time and in the same manner as notices are required to be given by the above ninth section; and a copy of the bill of costs, containing items and particular services performed, shall be deposited in the office of the street commissioner at the time of the first publication of such notice.

§ 13. So much of the act aforesaid, or of any other act as is inconsistent with the provisions of this act, is hereby repealed.

§ 14. This act shall take effect on its passage; but no part thereof except the ninth and twelfth sections shall affect in any respect any proceedings under the act hereby amended, which may have been commenced previous to the passage of this act.

State of New York, Secretary's Office.

This act having been approved and signed by the Governor, on the 20th day of April, 1839, I do hereby certify, that the same became a law on that day.

JOHN C. SPENCER, Secretary of State.

By section 3 (R. S. City, p. 512.) The aldermen and assistants are elected for one year.

By section 4. The officers elected on the 2d Tuesday of April shall be sworn into office on the 2d Tuesday of May thereafter.

By section 5. The members of the Common Council then in office, shall continue in office until the officers elected shall be ENTITLED to be sworn into office.

By section 24. "Each Board *shall* hold its first meeting for the purpose of organizing on the 2d Tuesday of May, in each year.

By article 4, section 15. Const. St. N. York. "All officers heretofore elective by the people, shall continue to be elected, &c." And by section 16. "Where the elevation of any office is not prescribed by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the *appointment*."

By article 2, section 1. U. States Const. "The executive power shall be vested in a president of the United States. He shall hold his office during the term of four years."

By article 12 of the amendment. "And if no house of Representatives shall choose a president whenever the right of choice devolves upon them, before the 4th day of March next following, then the Vice President shall act as President."

By section 6. As above, the persons elected as aldermen and assistant aldermen on the 2d Tuesday of May, 1831, were *entitled* to be sworn into office on the first hour, or first moment of the 2d Tuesday of May, of that year; and so of every succeeding year.

The aldermen and assistant aldermen cannot hold over under the Constitution, article 4 section 16; and by section 3 of the City Charter, they are elected for one year; and by section 4 of the same, they are required to be sworn into office on the 2d Tuesday of May; and section 24, the Boards are required to meet on that day for the purpose of organizing.

In 1836, the board of aldermen met for the purpose of organizing on the 10th day of May, which was the 2d Tuesday of May of that year — but were unable, from the fact that the two parties were eight and eight, equally balanced, to elect a president until

the 1st of July, during the whole of which time the city of New York was without a Common Council; and no legal act could be done by either Board during that time.

The same difficulties have occurred in Congress. The House of Representatives have at various times been unable to elect a Speaker on the first day — in such case the Senate did not proceed to business; and the President in such cases has always withheld his annual message until both Houses were organized. Such was the case in 1840.

Congress are required by the Constitution to meet on the first Monday of December in each year, &c., —— and less than a quorum may adjourn.

In 1837, President Jackson attended at the Capitol until midnight on the 3d of March, for the purpose of signing bills passed by Congress. He left the Capitol as soon as the clock struck twelve.

In 1840, the venerable ex-president Adams, then, and now a member of the House of Representatives, left the hall of that house at 12 o'clock at midnight of the 2d March, it being Saturday night, saying that the 25th Congress of the United States was at an end.

In 1841, President Van Buren attended at the Capitol to sign bills until midnight, and left at 12 o'clock. The year 1841 will go out at 12 o'clock at night of the 31st December next, and the present month of March will go out on the fifth Wednesday at midnight.

EXPENSE OF WIDENING ART STREET.

The expense of widening this street is upwards of eighty-eight thousand dollars. The length of the street is five hundred and thirty-one feet.

COLUMBIA COLLEGE.

The lands of this college have been assessed between five and six thousand dollars, for the pretended opening of streets out of town. The assessments have been paid, and have exhausted their ready funds which were needed for other purposes, and the college has in consequence been obliged to apply to the State for relief. The streets for which these assessments have been made have not been opened, and will not be for *many, many* years to come.

In 1837, a deputation of merchants from the city of New York proceeded to Washington, and requested the President to convene Congress to take measures in relation to the currency. The President replied, "We have no Congress which can be convened at this time;" and he waited until several of the states had elected a sufficiency of members to form a quorum, and then convened Congress by proclamation in September of that year.

France is often without a Chamber of Deputies, Great Britain without a Parliament, Spain without a Cortez, the United States without a Congress, and the city of New York without a Common Council——; and it has happened with Great Britain that they were without a King and Parliament at the same time.

ASSESSMENT ABUSES.

Several influential citizens are preparing affidavits of the abuses in assessment proceedings, to forward to the legislature.

CORPORATION NOTICES.

We have looked through the Journal of Commerce of Monday, and the Evening Star of 25th February, and the Evening Post of the 6th inst., and find but one advertisement of the corporation officers; this one is that of Col. Ewing, the street commissioner, in relation to the discontinuance of proceedings in the opening one hundred and twenty-eight street, published in the Evening Post.

ANCIENT CHARTER OF THE CITY OF NEW YORK.

We shall publish in some of the subsequent numbers the ancient Charter proceedings.

CITY GOVERNMENT.

Hon. ELIJAH F. PURDY, *Acting Mayor*,
Residence, No. 81 Ludlow-st, cor. Broome-st.
Office, No. 5 City Hall.

Board of Aldermen.

1st Ward, Calvin Balis, 100 Broad-st.
2d " Caleb S. Woodhull, 24 Beekman-st.
3d " Egbert Benson, 56 Warren-st.
4th " Daniel C. Pentz, 51 Oak-st.
5th " Robert Jones, 154 Hudson-st.
6th " James Ferris, 86 Bayard-st.
7th " Josiah Rich, 279 East Broadway.
8th " William Chamberlain, 35 Mercer-st.
9th " Freeman Campbell, 17 Leroy-st
11th " Abraham Hatfield, 310 Second-st
12th " Nathaniel Jarvis, jun., 8th Avenue near McComb's Bridge.
13th " Elias L. Smith, 4 Willett-st.
14th " Samuel Nichols, 387 Broome-st.
15th " David Graham, jun., 770 Broadway.
16th " Peter Cooper, 4th Avenue, cor. 28th-st.
17th " Orville J. Nash, 126 Norfolk-st.

Board of Assistant Aldermen.

17th Ward, Frederick R. Lee, *President*, 5 Stanton-st.
2d " Thomas F. Peers, 148 William-st.
3d " John A. Underwood, 93 Liberty-st.
4th " Benton W. Halsey, 42 Oliver-st.
5th " William Adams, 179 Church-st
6th " Felix O'Neil, 44 Mott-st.
7th " William L. Wood, 531 Grand-st.
8th " David Vandervoort, 41 Renwick-st.
9th " Moses G. Leonard, 761 Greenwich-st.
10th " Daniel Ward, 1 Allen-st
11th " Edward Penny, jun., 217 Stanton-st.
12th " Samuel Bradhurst, near McComb's Bridge.
13th " Jacob A. Westervelt, 398 Grand-st.
14th " John D. Spader, 206 Mulberry-st.
15th " Henry E. Davies, 33 Clinton-place.
16th " James Pollock, 19th-st.

Collectors of Taxes, with their places of residence.

1st Ward, Oliver Cobb, No. 6 Coenties-slip.
2d " E. T. Backhouse. 15 Fulton-st.
3d " Garret Forbes, 261 Greenwich-st
4th " John V. Coon, 398 Pearl-st.
5th " E. P. Horton, 110 Reade-st
6th " John Layden, 55 Elm-st.
7th " John Murphy, 596 Water-st.
8th " H. T. Kiersted, 529 Broadway.
9th " Martin Blanch, 106 Charlton-st.
10th " Darius Ferry, 98 Allen-st.
11th " Moses Fargo, 1 Manhattan-st.
12th " Patrick Doherty, 8th Avenue and 40th-st.
13th " John F. Russell, 34 Norfolk-st.
14th " Nelson Sammis, 241 Centre-st.
15th " Joseph Britton, 40 Amity-st.
16th " John Stewart, cor. 3d Avenue and 26th-st.
17th " Cornelius Van Benschoten, 64 Stanton-st.

Collectors of Arrears of Taxes.

(Office—Old Alms House, Park.)

Thomas K. Kellinger, No. 110 Delancey-st.
John P. Truesdell, 197 Spring-st.
Clarkson Crolius, 1 Reade-st.

STANDING COMMITTEES OF THE BOARD OF ALDERMEN AND ASSISTANT ALDERMEN, *May* 18, 1840.

Applications for Office.

Alderman Jones,	Assistant Davies,
" Balis,	" Peers,
" Woodhull.	" Underwood.

Assessments.

Aldermen Benson,	Assistant Underwood,
" Graham,	" Ward,
" Nash.	" Peers.

Arts, Sciences, and Schools.

Alderman Graham,	Assistant Leonard,
" Cooper,	" Davies,
" Smith.	" Halsey.

Charity and Alms House.

Alderman Ferris,	Assistant Bradhurst,
" Jarvis,	" Penny,
" Benson.	" Vandervoort.

Ferries.

Alderman Campbell,	Assistant Halsey,
" Smith,	" Westervelt,
" Rich.	" Adams.

Finance.

Alderman Chamberlain,	Assistant Westervelt,
" Benson,	" Peers,
" Cooper.	" Pollock.

Fire and Water.

Alderman Nichols,	Assistant Penny,
" Hatfield,	" Wood,
" Pentz.	" Vandervoort.

Lamps and Gas.

Alderman Ferris,	Assistant Penny,
" Nichols,	" Spader,
" Balis.	" Wood.

Laws and Applications to the Legislature.

Alderman Woodhull,	Assistant Davies,
" Rich,	" Halsey,
" Ferris.	" Ward.

Markets.

Alderman Nash,	Assistant Spader,
" Jones,	" Vandervoort,
" Nichols.	" Leonard.

Police, Watch, and Prisons.

Alderman Rich,	Assistant Wood,
" Graham,	" Westervelt,
" Hatfield.	" O'Neil.

Public Offices and Repairs.

Alderman Smith,	Assistant Vandervoort,
" Nichols,	" Leonard,
" Campbell.	" Penny.

Roads and Canals.

Alderman Jarvis,	Assistant Bradhurst,
" Ferris,	" Pollock,
" Benson.	" Hulsey.

Streets.

Alderman Pentz,	Assistant Pollock,
" Woodhull,	" Leonard,
" Nash.	" Adams.

Wharves, Piers, and Slips.

Alderman Campbell,	Assistant Wood,
" Chamberlain,	" Westervelt,
" Balis.	" Pollock.

Ordinances.

Alderman Balis,	Assistant Adams,
" Jones,	" O'Neil,
" Graham.	" Davies.

Cleaning Streets.

Alderman Hatfield,	Assistant Ward,
" Pentz,	" Adams,
" Graham.	" O'Neil.

Public Lands and Places.

Alderman Nash,	Assistant O'Neil,
" Jarvis,	" Spader,
" Hatfield.	" Bradhurst.

Salaries.

Alderman Rich,	Assistant Peers,
" Woodhull,	" Ward,
" Balis.	" Underwood,

Joint Special Committee on Public Buildings on Blackwell's Island, Long Island Farms, &c.

Alderman Jarvis,	Assistant Pollock,
" Campbell,	" Peers,
" Smith,	" Penny.

Joint Special Committee on the Croton Aqueduct.

Alderman Cooper,	Assistant Vandervoort,
" Chamberlain,	" Leonard,
" Nichols.	" Wood.

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CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

ARTICLE I.

Sec. 1. All Legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Sec. 3. The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof for six years, and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend farther than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sec. 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each House shall be the judge of the elections and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as such House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, may expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the ayes and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sec. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose, or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journals of each House respectively. If any bill shall not be returned by the President within ten days [Sundays excepted] after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the laws of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex-post-facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receips and expenditures of all public moneys shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Sec. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sec. 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the House of Representatives shall immediately choose by ballot, one of them for President; and if no person have a majority, then from the five highest on the list the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.*

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States."

Sec. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sec. 1. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and the treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states — between a state and citizen of another state — between citizens of different states — between citizens of the same state claiming lands under grants of different states — and between a state, or the citizen thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may direct.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

Sec. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sec. 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.

This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states

* Annulled. See Amendment, Art. 12.

shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty seven, and of the Independence of the United States of America, the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

New Hampshire,
John Langdon,
Nicholas Gilman.
Massachusetts,
Nathaniel Gorham,
Rufus King.
Connecticut,
William Samuel Johnson,
Roger Sherman.
New York,
Alexander Hamilton.
New Jersey,
William Livingston,
David Brearly,
William Paterson,
Jonathan Dayton.
Pennsylvania,
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.
Delaware,
George Read,
Gunning Bedford, jun.,
John Dickinson,
Richard Bassett,
Jacob Broom.
Maryland,
James M'Henry,
Dan'l of St. Tho. Jenifer
Daniel Carroll.
Virginia,
John Blair,
James Madison, jun.
North Carolina,
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
South Carolina,
John Rutledge,
Charles C. Pinckney,
Pierce Butler.
Georgia,
William Few,
Abraham Baldwin.

Attest: WILLIAM JACKSON, Sec.

AMENDMENTS.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members of two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

THE CONSTITUTION OF THE STATE OF NEW YORK.

We, the people of the state of New York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this constitution.

Article First.

Sec. 1. The legislative power of this state shall be vested in a senate and an assembly.

Sec. 2. The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Sec. 3. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

Sec. 4. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sec. 5. The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district shall consist of the counties of Suffolk, Queens, Kings, Richmond, and New York.

The second district shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district shall consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

The seventh district shall consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district shall consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus, and Chautauque.

And as soon as the senate shall meet, after the first election to be held in pursuance of this constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class; the classes to be numbered, one, two, three, and four. And the seats of the first class shall be vacated at the end of the first year; of the second class, at the end of the second year; of the third class, at the end of the third year; of the fourth class, at the end of the fourth year; in order that one senator be annually elected in each senate district.

Sec. 6. An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of color not taxed; and shall remain unaltered, until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district.

Sec. 7. The members of the assembly shall be chosen by counties, and shall be apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of color not taxed. An apportionment of members of assembly, shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly shall be made by the present legislature, according to the last enumeration taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

Sec. 8. Any bill may originate in either house of the legislature; and all bills passed by one house, may be amended by the other.

Sec. 9. The members of the legislature shall receive for their services a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect, during the year in which it shall have been made. And no law shall be passed, increasing the compensation of the members of the legislature, beyond the sum of three dollars a day.

Sec. 10. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

Sec. 11. No person, being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sec. 12. Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for, and against, the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall by their adjournment, prevent its return; in which case it shall not be a law.

Sec. 13. All officers holding their offices during good behavior, may be removed by joint resolution of the two houses of the legislature, if two thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein.

Sec. 14. The political year shall begin on the first day of January; and the legislature shall every year, assemble on the first Tuesday of January, unless a different day shall be appointed by law.

Sec. 15. The next election for governor, lieutenant-governor, senators, and members of assembly, shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections shall be held at such time, in the month of October or November, as the legislature shall by law provide.

Sec. 16. The governor, lieutenant-governor, senators, and members of assembly, first elected under this constitution, shall enter on the duties of their respective offices, on the first day of January, one thousand eight hundred and twenty-three; and the governor, lieutenant-governor, senators, and members of assembly, now in office, shall continue to hold the same, until the first day of January, one thousand eight hundred and twenty-three, and no longer.

Article Second.

Sec. 1. *Every male citizen, of the age of twenty-one years, who shall have been an inhabitant of this state one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have, within the year next preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed and equipped according to law, shall have performed within that year military duty in the militia of this state; or who shall be exempted from performing militia duty in consequence of being a fireman in any city, town or village in this state: and also, every male citizen of the age of twenty-one years, who shall have been, for three years next preceding such election, an inhabitant of this state; and for the last year, a resident in the town or county, where he may offer his vote; and shall have been, within the last year, assessed to labor upon the public highways, and shall have performed the labor, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people:** but no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, shall be seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election. And no person of color shall be subject to direct taxation unless he shall be seised, and possessed, of such real estate as aforesaid.

Sec. 2. Laws may be passed, excluding from the right of suffrage, persons who have been, or may be, convicted of infamous crimes.

Sec. 3. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage, hereby established.

Sec. 4. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

Article Third.

Sec. 1. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant-governor shall be chosen at the same time, and for the same term.

Sec. 2. No person, except a native citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office, who shall not be a freeholder, and shall not have attained the age of thirty years, and have been five years a resident within this state; unless he shall have been absent during that time on public business of the United States, or of this state.

Sec. 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes, for governor, or lieutenant-governor.

Sec. 4. The governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished, during the term for which he shall have been elected.

Sec. 5. The governor shall have power to grant reprieves and pardons after conviction, for all offences, except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting; when the legislature shall either pardon, or direct the execution of the criminal, or grant a farther reprieve.

Sec. 6. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor absent or impeached, shall return, or be acquitted. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the state.

Sec. 7. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall act as governor, until the vacancy shall be filled, or the disability shall cease.

Article Fourth.

Sec. 1. Militia officers shall be chosen, or appointed as follows:—Captains, subalterns, and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions. Brigadier-generals, by the field officers of their respective brigades. Major-generals, brigadier-generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

Sec. 2. The governor shall nominate, and with the consent of the senate, appoint all major-generals, brigade-inspectors, and chiefs of the staff departments, except the adjutant-general and commissary-general. The adjutant-general shall be appointed by the governor.

Sec. 3. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

Sec. 4. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commission, subject to removal as before provided.

Sec. 5. In case the mode of election and appointment of militia officers, hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two thirds of the members present in each house shall concur therein.

Sec. 6. The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general, shall be appointed as follows:—The senate and assembly shall each openly nominate one person for the said offices respectively; after which, they shall meet together, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators and members of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

Sec. 7. The governor shall nominate, by message, in writing, and with the consent of the senate, shall appoint, all judicial officers, except justices of the peace, *who shall be appointed in manner following, that is to say: The board of supervisors in every county in this state shall, at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place as the legislature may direct. And if on such comparison, the said boards of supervisors and judges of county courts, shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county, and the person or persons named in such certificates, shall be justices of the peace: And in case of disagreement in whole, or in part, it shall be the farther duty of the said boards of supervisors, and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint so many justices of the peace, as shall be requisite to fill the vacancies.**

Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

Sec. 8. Sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff: and the governor may remove any such sheriff, clerk, or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk, or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

* Amended in 1826, and the part in *italic* abolished. See amendment No. 2.

** This section was amended in 1826, and the part in *italic* was rescinded. See amendment No 1.

Sec. 9. The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district-attorneys, by the county courts. Clerks of courts and district-attorneys, shall hold their offices for three years, unless sooner removed by the courts appointing them.

Sec. 10. The mayors of all the cities in this state shall be appointed annually, by the common councils of the respective cities.*

Sec. 11. So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

Sec. 12. The governor shall nominate, and with the consent of the senate, appoint masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed by the senate, on the recommendation of the governor. The registers and assistant registers, shall be appointed by the chancellor, and hold their offices during his pleasure.

Sec. 13. The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court: and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts, or by the governor, with the consent of the senate, as may be directed by law.

Sec. 14. The special justices, and the assistant justices, and their clerks, in the city of New York, shall be appointed by the common council of the said city; and shall hold their offices for the same term, that the justices of the peace, in the other counties of this state, hold their offices, and shall be removable in like manner.

Sec. 15. All officers heretofore elective by the people, shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers, whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed.

Sec. 16. Where the duration of any office is not prescribed by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Article Fifth.

Sec. 1. The court for the trial of impeachments, and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them; but when an impeachment shall be prosecuted against the chancellor, or any justice of the supreme court, the person so impeached, shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought, on a judgment of the supreme court, the justices of that court shall assign the reasons for their judgment, but shall not have a voice for its affirmance or reversal.

Sec. 2. The assembly shall have the power of impeaching all civil officers of this state for mal and corrupt conduct in office, and for high crimes and misdemeanors: but a majority of all the members elected shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted, without the concurrence of two thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than the removal from office, and disqualification to hold, and enjoy, any office of honor, trust or profit, under this state; but the party convicted, shall be liable to indictment, and punishment, according to law.

Sec. 3. The chancellor and justices of the supreme court, shall hold their offices during good behavior, or until they shall attain the age of sixty years.

Sec. 4. The supreme court shall consist of a chief justice, and two justices, any of whom may hold the court.

Sec. 5. The state shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which, a circuit judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justice of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court; and in courts of oyer and terminer and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

Sec. 6. Judges of the county courts, and recorders of cities, shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

Sec. 7. Neither the chancellor, nor justices of the supreme court, nor any circuit judge, shall hold any other office or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court, or circuit judge, during his continuance in his judicial office, shall be void.

Article Sixth.

Sec. 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States and the constitution of the state of New York; and that I will faithfully discharge the duties of the office of ——— according to the best of my ability.

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

Article Seventh.

Sec. 1. No member of this state shall be disfranchised, or deprived of any of the rights or privileges, secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Sec. 2. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate for ever; and no new court shall be instituted, but such as shall proceed according to the course of the common law; except such courts of equity, as the legislature is herein authorized to establish.

Sec. 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be allowed in this state, to all mankind; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Sec. 4. *And whereas*, the ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this state.

Sec. 5. The militia of this state, shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, by paying to the state an equivalent in money; and the legislature shall provide by law, for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary, able bodied militia-man.

Sec. 6. The privilege of the writ of habeas corpus, shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require its suspension.

Sec. 7. No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment; and in cases of the militia, when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace; and in cases of petit larceny, under the regulation of the legislature;) unless on presentment, or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel as in civil actions. No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law: nor shall private property be taken for public use, without just compensation.

Sec. 8. Every citizen may freely speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that right; and no law shall be passed, to restrain, or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence, to the jury; and if it shall appear to the jury, that the matter charged as libellous, is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Sec. 9. The assent of two thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing, any body politic or corporate.

Sec. 10. The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state. Rates of toll, not less than those agreed to, by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from all parts of the navigable communications between the great western and northern lakes, and the Atlantic ocean, which now are, or hereafter shall be made and completed: and the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen*; and the duties on goods sold at auction, excepting therefrom, the sum of thirty-three thousand five hundred dollars, otherwise appropriated by the said act; and the amount of the revenue, established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest, and reimbursement of the capital, of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications; nor the duties on the manufacture of salt aforesaid; nor the duties on goods sold at auction, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; nor the amount of the revenue, established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steamboat passengers; shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And the legislature shall never sell, or dispose of the salt springs belonging to this state, nor the lands contiguous thereto, which may be necessary, or convenient, for their use, nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this state.†

Sec. 11. No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

Sec. 12. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy five, or which may hereafter be made, of, or with the Indians, in this state, shall be valid, unless made under the authority, and with the consent of the legislature.

Sec. 13. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed, or altered; and such acts of the legislature of this state, as are now in force, shall be and continue the law of this state, subject

* Amended as to the city of New York. See amendment No. 4.

* Amended as to duties on salt. See amendment No. 3.

† A farther Amendment to this section is now pending.

to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Sec. 14. All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: but nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Article Eighth.

Sec. 1. Any amendment or amendments to this constitution, may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; and, if in the legislature next chosen as aforesaid, such proposed amendment, or amendments, shall be agreed to by two thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment, or amendments, to the people, in such manner, and at such time, as the legislature shall prescribe: and if the people shall approve and ratify such amendment, or amendments, by a majority of the electors qualified to vote for members of the legislature, voting thereon, such amendment, or amendments, shall become part of the constitution.

Article Ninth.

Sec. 1. This constitution shall be in force, from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same, which relate to the right of suffrage; the division of the state into senate districts; the number of members of the assembly to be elected, in pursuance of this constitution; the apportionment of members of assembly; the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; the continuance of the members of the present legislature in office, until the first day of January, in the year one thousand eight hundred and twenty-three; and the prohibition against authorizing lotteries; the prohibition against appropriating the public moneys, or property, for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate, without the assent of two thirds of the members elected to each branch of the legislature; shall be in force, and take effect, from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation, to support this constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroner's, shall be elected at the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their offices, before the first day of January then next following. The commissions of all persons holding civil offices on the last day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission, may respectively continue to hold their said offices until new appointments, or elections, shall take place under this constitution.

Sec. II. The existing laws relative to the manner of notifying, holding and conducting elections, making returns, and canvassing votes, shall be in force, and observed in respect to the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; so far as the same are applicable. And the present legislature shall pass such other and further laws, as may be requisite for the execution of the provisions of this constitution, in respect to elections.

Done in convention, at the capitol in the city of Albany, the tenth day of November, in the year one thousand eight hundred and twenty-one, and of the independence of the United States of America, the forty-sixth. In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS,
President, and delegate from the co. of Richmond.

JOHN F. BACON, SAMUEL S. GARDINER. } *Secretaries.*

[The following delegates composed the convention which framed the foregoing constitution.]

Suffolk.
Usher H. Moore,
Ebenezer Sage,
Joshua Smith.

Queens.
Rufus King,
Nath'l Seaman,
Elbert H. Jones.*

Kings.
John Lefferts.

Richmond.
Daniel D. Tompkins.

New York.
Jacobus Dyckman,
Ogden Edwards,
James Fairlie,
Jno. L. Lawrence,
William Paulding, jun.
Jacob Radcliff,
Nathan Sandford,
Peter Sharpe,
Peter Stagg,
P. H. Wendover,
H. Wheaton.

Westchester.
Peter A. Jay,*
Peter Jay Monro,
Jonathan Ward.

Putnam.
Joel Frost.

Dutchess.
Elisha Barlow,
Isaac Hunting,
Peter R. Livingston,
Abraham H. Schenck,
James Tallmage, jun.

Rockland.
Samuel G. Verbryck.

Orange.
John Duer,
John Hallock, jun.
Peter Milliken,
Benjamin Woodward.

Ulster and Sullivan.
Daniel Clark,
Jonathan Dubois,
James Hunter,
Henry Jansen.†

Greene.
Jehiel Tuttle,
Alpheus Webster.*

Columbia.
Francis Sylvester,*
William W. Van Ness,**
Jacob R. Van Rensselaer,*
Elisha Williams.*

Albany.
James Kent,*
Ambrose Spencer,*
Stephen Van Rensselaer,*
Abraham Van Vechten.*

Rensselaer.
Jirah Baker,
David Buel, jun.
James L. Hogeboom,
John Reeve,
John W. Woods.

Schoharie.
Olney Briggs,
Asa Starkweather,
Jacob Sutherland,

Schenectady.
John Sanders,*
Henry Yates, jun.

Saratoga.
Salmon Child,
John Cramer,
Jeremy Rockwell,
Samuel Young.

Montgomery.
Wm. Irving Dodge,
Howland Fish,*
Jacob Hees,*

Washington and Warren.
Alexander Livingston,
Nathaniel Pitcher,
John Richards,
Wm. Townsend,
Melancton Wheeler.

Essex.
Reuben Sanford.

Clinton and Franklin.
Nathan Carver.

St. Lawrence.
Jason Fenton.

Herkimer.
Sanders Lansing,
Richard Van Horne.*
Sherman Wooster.

Oneida.
Ezekiel Bacon,
Samuel S. Breese,*
Henry Huntington,
Jonas Platt.*
Nathan Williams.

Madison.
Barak Beckwith,
John Knowles,
Edward Rogers.

Lewis.
Ela Collins.

Jefferson.
Hiram Steele,
Egbert Ten Eyck.

Delaware.
Robert Clarke,*
Erastus Root.

Otsego.
Joseph Clyde,
Ransom Hunt,
William Park,
David Tripp,
Martin Van Buren.

Chenango.
Thomas Humphrey,*
Jarvis K. Pike,
Nathan Taylor.

Broome.
Charles Pumpelly.

Cortland.
Samuel Nelson.

Tompkins.
Richard Smith,
Richard Townley.

Tioga.
Matthew Carpenter.

Onondaga.
Victory Birdseye,
Ameri Case,
Asa Eastwood,
Parley E. Howe.

Cayuga.
David Brinkerhoff,
Rowland Day,*
Augustus F. Ferris.

Seneca.
Rob't. S. Rose,
Jonas Seely.

Ontario.
Micah Brooks,
John Price,*
Philetus Swift,
David Sutherland,*
Joshua Van Fleet.

Steuben and Allegany.
Timothy Hurd,
James M'Call.

Livingston.
James Roseburgh.

Monroe.
John Bowman.

Genesee.
David Burroughs,
John Z. Ross,
Elizur Webster.

Erie, Niagara, &c.
Philip Rhinelander, jun.* Augustus Porter,
Alex'r. Sheldon. Samuel Russell.

[The foregoing constitution was ratified by the people, at an election held in the several towns and wards of this state, on the fifteenth, sixteenth, and seventeenth days of January, one thousand eight hundred and twenty-two.]

* Pursuant to a resolution of the convention, the constitution was signed by all the members except those whose names are designated by an asterisk. † Mr. Jansen died during the sitting of the convention.

AMENDMENTS.

[The following amendments to the constitution were proposed by the legislature in 1825, were referred to the legislature of 1826, agreed to by two thirds of the members elected to each house of that legislature, submitted to the people, and approved and ratified at an election held on the sixth, seventh, and eight days of November, 1826.]

Amendment No. 1.—That the people of this state in their several towns, shall at their annual election, and in such manner as the legislature shall direct, elect by ballot their justices of the peace, and the justices so elected in any town shall immediately thereafter meet together, and in presence of the supervisor and town clerk of the said town, be divided by lot into four classes, of one in each class, and be numbered one, two, three, and four; and the office of number one shall expire at the end of the first year, of number two at the end of the second year, of number three at the end of the third year, and of number four at the end of the fourth year, in order that one justice may thereafter be annually elected; and that so much of the seventh section of the fourth article of the constitution of this state as is inconsistent with this amendment, be abrogated.

Amendment No. 2.—That so much of the first section of the second article of the constitution as prescribes the qualifications of voters, other than persons of color, be and the same is hereby abolished, and that the following be substituted in the place thereof:

Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state, one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be elective by the people.

[The following amendments were proposed in 1832, agreed by two thirds of the members elected to each house in 1833, submitted to the people, and approved and ratified at the election in November, 1833.]

Amendment No. 3.—That the duties on the manufacture of salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, and by the tenth section of the seventh article of the constitution of this state, may, at any time hereafter, be reduced by an act of the legislature of this state; but shall not, while the same is appropriated and pledged by the said section, be reduced below the sum of six cents upon each and every bushel; and the said duties shall remain inviolably appropriated and applied as is provided by the said tenth section:

And that so much of the said tenth section of the seventh article of the constitution of this state as is inconsistent with this amendment, be abrogated.

Amendment No. 4.—At the end of the tenth section of the fourth article of the said constitution, add the following words: "Except in the city of New York, in which city the mayor shall be chosen annually by the electors thereof qualified to vote for the other charter officers of the said city, and at the time of the election of such officers.

ANCIENT DUTCH CHARTER.

1657.

To the Right Honorable the Director General and Council, in N. Netherlands:

Noble and Respectful Lords—

Whereas, it has pleased your Honors, to favor the city of Amsterdam, in N. Netherlands, with the priviledge of a small and great citizenship, so is it that we, burgomasters and schepens of this city, for the welfare of the community, acknowledging this favour with thankfulness, solicit your Honours' explanation what persons are to enjoy the small, and who are qualified for the great citizenship; and we request that it may please your Honours to favour the sheriffe, burgomasters and schepens, who are now acting in this city, or who were before among its magistrates, or who shall

at the next election to be chosen, with their descendants, with the priviledge of the great citizensſhip.

Expecting, on this petition,
Your Honours' favourable disposition,
We remain,
(Lower stood)
Your Honours' obedient,
The Burgomasters and Schepens of the city of Amsterdam, in N. Netherland, (Lower stood.)
By order of them, and signed,
JACOB KIPP, Secretary.

Done, 31st January, in the meeting at the City Hall, in Amsterdam, in N. Netherland.

In council at Fort Amsterdam, the 2d February, 1657, which was read in the following words:

February 2d, 1657—Friday.

Whereas, agreeably to the privileges of this city, annually some of the magistrates whose time is expired, leave their seats, to be replaced with others by the Director General and Council in New Netherland, elected as magistrates for the ensuing year, the Hon. Alland Antony, as old Burgomaster, Paulus Limdertson Van de Grift, Burgomaster, William Beeckman, Presedent, Schepen Johannes de Peyster, Govert Lockerman, Adrian Blommet, and Hendrick Jansen Vandervin, Schepens—which is communicated to the community to treat them with due respect. Done in Council, in Fort Amsterdam, N. Netherland, on the day as above.

The Director General and Council in New Netherland, to all who shall see or hear this read—Greeting:

Be it known, That they, in consideration of the several faithfull and voluntary services, on expeditions as otherwise and submission to burthens of the citizens in this city, and in the hope and confidence which the Director General and Council are fostering, that they will continue in the same loyal conduct, on the humble petition of the burgomasters and schepens, resolved to priviledge the citizens and good inhabitants of this city with the distinguished favours of great and small citizenship, (*groot den slein burgevrecht*) so as appears by the act of this priviledge, granted for this purpose to the burgomasters and schepens, in amplification of former ones, as it is explained in said act: And whereas, in all beginnings, any thing or person must be the first, so that afterwards a distinction may take place, so too, it must take place in establishing the great and small citizenship. On which the burgomasters and schepens requested, in their petition to the Director General and Council, a further explanation who actually should be placed among and considered as great or small citizens. As the necessity of this distinction is grounded in reason, so is it that the Director General and Council in New Netherland qualify, now, and favour all such of the Inhabitants with the great citizenship.

First—All those who have been members of the Supreme Government, or who are in it actually, with their descendants in the male line.

Secondly—All who have been, or are yet, burgomasters and schepens in this city, with their descendants in the male line.

Thirdly—The ministers of the gospel, who have been, or are yet, in function, with their descendants in the male line.

Fourthly—All the officers of the militia, from the staff to the ensigns, included, with their descendants in the male line, well understood, that the aforesaid persons shall not be understood to have lost for themselves or their descendants, by their absence from this city, or not keeping fire or light, this priviledge of their great citizenship, in conformity to the laudable customs of the city Amsterdam in Europe.

Further—All other persons who desire and are inclined to be ranked among the great citizens, and to enjoy their priviledges and benifices, may, in conformity of this act, become that priviledge, by addressing themselves to the burgomasters and schepens, provided they pay for it the sum of fifty guilders of Netherland coinage, or its equivalent (£8. 6. 8.)

With the small citizenship are favoured and qualified:

First—All such as resided within this city during a year and six weeks, and kept their fire and light.

Secondly—All born within this city.

Thirdly—All who have married daughters of citizens who have been born in this city; all who might marry these in future, and will, that aforesaid citizenship shall not be lost by absence from this city, or by not keeping fire and light as before.

Further—All others who have opened store in this city, under what name it might be, or who follow this Business within this city or its jurisdiction: Provided, that all such persons shall have previously addressed the burgomasters for this priviledge, and paid for it twenty guilders, Netherland coin, or its equivalent—£3. ℳ8.

All tradesmen may follow and exercise their craft, if they have previously solicited and obtained their citizenship; all pensioned ministers of the company, all passengers and strangers, who intend to settle in the country—provided they effect this within six weeks.—

The money to be obtained from this source, the obtaining of citizenship, shall be received by the burgomasters, to be administered by them, and chiefly employed in the fortification of this city.

All which, that it may be carried into practice in better order, so is it that the burgomasters are commanded and authorised to prepare, as soon as it possibly can be effected, correct lists of all such, who, agreeably to the tenor of this act, have been qualified and favoured with the great and small citizenship, so, too, who in future might obtain this priviledge, and to keep correct registers of it, so that they can whenever it is required, deliver of these faithful copies at the secretary's office of the Director General and Council.

Done, declared, resumed, and resolved, in the meeting of the Director General and Council in N. Netherland, in Fort Amsterdam, in New Netherland.

P. STUYVESANT,
NICASURS DE SELLE,
PETER JONNEMAN.

1664.

Colonel Nicolls took the Fort, City, and Colony, from the Dutch.

ARTICLES OF CAPITULATION IN 1664.

These Articles following were consented to by the persons here under subscribed, at the Governour's bowery,

August 27th, Old Stile, 1664.

I. "We consent, that the States General, or the West India Company, shall freely enjoy all Farms and houses, (except such as are in the forts) and that within six months, they shall have free liberty to transport all such arms and ammunition, as now does belong to them, or else they shall be paid for them.

II. "All public houses shall continue for the use which they are for.

III. "All people shall still continue free denizens, and shall enjoy their lands, houses, goods, wheresoever they are within this country, and dispose of them as they please.

IV. "If any inhabitant have a mind to remove himself, he shall have a year and six weeks from this day to remove himself, wife, children, servants, goods, and to dispose of his lands here.

V. "If any officer of state, or public minister of state have a mind to go for England, they shall be transported freight free, in his majesty's frigates, when these frigates shall return thither.

VI. "It is consented to, that any people may freely come from the Netherlands, and plant in this colony, and that Dutch vessels may freely come hither, and any of the Dutch may freely return home, or send any sort of merchandise home, in vessels of their own country.

VII. "All ships from the Netherlands or any other place, and goods therein shall be received here, and sent hence after the manner which formerly they were before our coming hither, for six months next ensuing.

VIII. "The Dutch here shall enjoy the liberty of their consciences in Divine worship and church discipline.

IX. "No Dutchman here, or Dutch ship here, shall upon any occasion, be pressed to serve in war against any nation whatsoever.

X. "That the townsmen of the Manhattans, shall not have any soldiers quartered upon them, without being satisfied and paid for them by their officers, and at this present, if the fort be not capable of lodging all the soldiers, then the burgomasters by their officers shall appoint some houses capable to receive them.

XI. "The Dutch here shall enjoy their own customs concerning their inheritances.

XII. "All public writings and records, which concern the inheritances of any people, or the reglement of the church or poor or orphans, shall be carefully kept by those in whose hands they now are, and such writings as particularly concern the States General may at any time be sent to them.

XIII. "No judgment that has passed on any judicature here shall be called in question, but if any conceive that he hath not had justice done him, if he apply himself to the States General, the other party shall be bound to answer for the supposed injury.

XIV. "If any Dutch living here shall at any time desire to travel or traffick into England, or any place or plantation in obedience to his Majesty of England, or with the Indians, he shall have (upon his request to the Governour) a certificate that he is a denizen of this place and liberty to do so.

XV. "If it do appear that there is a public engagement of debt by the town of Manhattoes, and a way agreed upon for the satisfying that engagement, it is agreed, that the same way proposed shall go on, and that the engagement shall be satisfied.

XVI. "All inferior civil officers and magistrates shall continue as now they are, (if they please) till the customary time of new elections, and then new ones to be chosen by themselves, provided such new chosen magistrates shall take the oath of alegence to his Majesty of England, before they enter upon their office.

XVII. "All differences of contracts and bargains made before this day, by any in this country, shall be determined according to the manner of the Dutch.

XVIII. "If it do appear that the West India Company of Amsterdam do really owe any sums of money to any persons here, it is agreed that recognition and other duties payable by ships going for the Netherlands be continued for six months longer.

XIX. "The officers military, and soldiers, shall march out with their arms, drums beating, and collours flying, and lighted matches; if any of them will plant, they shall have fifty acres of Land set out for them; if any of them will serve as servants they shall continue with all safety, and become free denizens afterwards.

XX. "If at any time hereafter, the King of Great Brittain and the States of the Netherlands do agree, that this place and country be redelivered into the hands of the said States, whensoever his Majesty will send his commands to redeliver it, It shall immediately be done.

XXI. "That the Town of Manhattan shall choose deputies, and those deputies shall have full voices in all public affairs as much as any other deputies.

XXII. "Those who have any property in any houses in the Fort of Aurania, shall (if they please, slight the fortifications there, and then enjoy all their houses as all people do where there is no Fort.

XXIII. "If there be any soldiers that will go into Holland, and if the Company of West India in Amsterdam, or any private persons here, will transport them into Holland, then they shall have a safe passport from Colonel Richard Nicolls, deputy governour under his royal highness, and the other commissioners, to defend the ships that shall transport such soldiers, and all the goods in them, from any surprizal or acts of hostility, to be done by any of his Majesty's ships or subjects. That the copyes of the King's grant to his royal highness, and the copy of his royal highness commission to Colonel Richard Nicolls, testified by two commissioners more, and Mr. Winthrop, to be true copyes, shall be delivered to the honourable Mr. Stuyvesant, the present governour, on Monday next by eight of the clock in the morning, at the Old Milin, and these articles conscented to, and signed by Colonel Richard Nicolls, deputy governour to his royal highness, and that within two hours after the fort and town called New Amsterdam, upon the isle of Manhattoes, shall be delivered into the hands of the said Colonel Richard Nicolls, by the service of such as shall be by him thereunto deputed, by his hand and seal.

"John de Decker, Nich. Verlatt, Sam. Megapolensis, Cornelius Steewyock, Oloffe Stevens Van Kortlant, James Courseau, Robert Carr, Geo. Carteret, and John Winthrop, Sam. Willys, Thomas Clarke Pynchon.

"I do consent to this article,
"RICHARD NICHOLLS."

An Act of the Governor and *Councell* for the sentenceing and confiscating ye Lands, Houses and Estates of the subjects belonging to the States of Holland, which shall be found within these his Hoyal Highnesse his Teritories.

Whereas the States of the United Belgicke Provinces, have begun and continued a *Warre* against his majesty our *dread* Soveraigne, his realmes and Dominions, as well in Europe as upon his majesties foreigne Plantations, to the great effusion of Christian Blood and the destruction of com*erce*. In which case it is not onely customary but consonant to the Lawes of nations to make seizure of and confiscate ye estates of the subjects of these provinces or estates against whom *warre* is declared. Now forasmuch as divers

persons of the Dutch Nation residing under the dominions, and being the subjects of the said States of the United Belgicke Provinces, and not under any oath or obligation of Allegience to his majesty, have and doe enjoy within this Government to their use and behoofe severall houses and lands, the full discovery thereof cannot at present bee found out in any respect of the severall private conveyances, Letters of Attorney, Deputation, Procuration and the like. However the Governour, by and with the advice of His Councell, have thought fitt to enter upon the records (without making any publication thereof for reasons and considerations satisfactory to themselves) and bee it entred upon the records, that from and after the date hereof, all the Lands and Houses lyeing and being within the teritories of his Royall Highnesse James Duke of Yorke, &c., which did formerly belong, or in any ways now may appertain to any of the subjects of the said States, or any of the inhabitans under their dominions, (who are under no oath or obligation of allegiance to His Majestie,) are and stand sentenct and confiscated to his majesties use. To the end that the Rents, Profits and Emoluments arising from the confiscation of the said lands and houses, together with the rents, profitts, and emoluments received and remaining in any other hands by procuration or otherwise, may render some support to the charge of this Government.

And its further ordered and decreed that the entry of this resolution of the Governour and councell upon the Booke of Records, shall stand firme and valid to all intents and purposes. Notwithstanding the fformality of the publication is omitted.

And the execution of this decree and order shall and may bee lawfully put in practise at all or any time from and after the date hereof as fully and effectually as if the same had beene publicaly declared and manifested.

Given under my hand this 10th of October, 1665, in James Fort, R. NICOLLS.

Entred and Registred in the Office of Records the day and ye e above written, by order of ye Governour and Councell. MATTHIAS NICOLLS, Sec.

Vol. i. Acts made by the Governour and his Councell.

BY THE GOVERNOR.

WHEREAS, there hath beene a change of Governm't in these parts, and other Oathes imposed upon the Inhabitants; These are in his Ma'ties name to require all such persons as doe intend to continue under his Ma'ties obeidence within this his Royall Highnesse Government, that they appeare at such times and places as the Magistrates within the Respective Townes and places were they Live, shall appoint, to take the usuall Oathes of Allegiance and ffidelity. To which end, all Magistrates and Officers whome it may concerne, are required to give orders therein, and attend the taking the Said Oathes, and that the same be recorded accordingly.

Given under my hand, in New Yorke, this 13th day of March, 1674.

E. ANDROS, S.

To the Mayor and Aldermen of the Citty of New Yorke, and to other Justices of the Peace and Magistrates within this Government, to cause this order to be forthwith published, and put in execution.

BY THE GOVERNOR.

WHEREAS, it hath pleased his Ma'ty and his Royall Highnesse to send me with Authority to receive this place and Governm't from the Dutch, and to continue in the Command thereof, under his R. Highness, who hath not only taken care for our future safety and defence, but also given me his Commands for securing ye Rights and Propertyes of ye Inhabitants, and that I should endeavour by all fitting means the good and wellfare of this Province and dependences under his Government; That I may not be wanting in any thing that may conduce thereunto, and for the saveing of the trouble and charge hether, for the satisfyeing themselfes in such doubts as might arise concerning their Rights and Propertyes upon this change of Governm't, and wholly to settle ye mindes of all in gen'll, I have thought fitt to publish and declare, that all former Grants, Priviledges or Concessions heretofore graunted, and all Estates Legally possest by any under his Royall Highnesse before the Late Dutch Government, (as also all Legall Judiciall Proceedings during that Governm't to my arrivall in these Parts,) are hereby confirmed; And the Possessors by virtue thereof to remaine in quiet possession of their Rights; It is hereby further declared, That the knowne booke of Lawes formerly establisht and in force under his Royall Highnesse Governm't, is now againe confirmed by his R. Highnesse, the which are to be observed and practized, together with ye manner and time of holding Courts therein mencioned as heretofore. And all Magistrates and Civill Officers belonging thereunto to be chosen and establisht accordingly.

Given under my hand, in New Yorke, this 9th day of November, in the six and twentieth yeare of his Ma'ties Raigne. Annoq Domini, One Thousand six hundred seventy and foure.

This is a true copy.

Signed, MATTHIAS NICOLLS, Sec.

Proposals by the Mayor and Aldermen, presented to His Honor the Governor Ex.

1. That there be 6 houses appointed to sell all sorts of Wines and Brandy, and Rume, ets. and Lodging.

2. That there be 8 houses appointed to sell beere, Syder, Mum and Rume; and to provide for strangers as the Law directs, to Sell Brandy, Rum, Strong waters and Tobacco.

3. That 2 of the wine houses bee Ordinaryes, and 4 of the Beere houses.

The Prices of wines and other Liquors as they are to be sold by the Tappers, Viz.

	£.	s.	d.
French wines at	0	1	3 pr. qt.
Ffayall wines and St. Gorges	0	1	6 pr. qt.
Maderia Wines and Portaporte	0	1	10 pr. qt.
Canaryes, Bresados and Malagoes	0	2	0 pr. qt.
Brandy	0	0	6 pr. gill.
Rumm	0	0	3 pr. gill.
Syder	0	0	4 pr. q.
Doble Beer	0	0	3 pr. qt.
Mum	0	0	6 pr. qt.
The ordinary at ye wine houses pr. meale	0	1	0
At the Beere house	0	0	8 pr. ml.
Lodging at ye wine house per night	0	0	4
At the Beere house	0	0	3 pr nt.

That the Land in this Citty conveinient to build on, if the Partyes who owne the Same doe not Speedyly build thereon, may bee valued and sold to those who are willing to build, &c. &c.

Upon applicacon made to us by several persons who are willing to repaire and build houses in this Citty for their conveniency and accommodacon: And wee being informed, that there are Severall Lotts, and parcells of ground, in this Citty convenient to build on: and severall houses ruinated and decayed: The Owners whereof being either absent, or unwilling to build or repaire the Same; The which wee having taken into our consideracon, for the generall good of this Citty; doe order that all the Land conveinient to build on; and all the ruinated and decayed houses which are untenantable within this Citty, be forthwith vewed, apprized and valued by persons by us there unto chosen and desired on their oathes: And to bee disposed off to those who are willing to build or repaire the same.

Dated the 2d of February, 1675-6.

BY THE MAYOR AND ALDERMEN.

Citty of New Yorke. } ss. WHEREAS, there is severall parcells and Lotts of vacant ground, conveinient to build on within this Citty; and severall persons being willing to build and settle therein; but can not gitt houses, or to build on (the owners of the said grounds, refusing to build or Sell) of which complaint hath beene made to us for ease whereof; and for the better populating and Inhabiting the said Citty; we haveing conceived a good opinion of the fitnesse and ability of Mr. Thomas Lewis, Alderman, Mr. John Laurence, Mr. Oloff Stevens Van Courtlandt, Mr. Samuel Willson, Mr. Adolph Peterson, Mr. William Merritt, Mr. Abraham Janssen, and Mr. Soert Olphertsen; Doe therefore desire the said persons, that forthwith they servey and value all the vacant Land and ruinated or decayed houses within this Citty, conveinient or fitt to build; And to make returne to the Mayor and Aldermen of the perticular quantityes, and value of the Said Land according to the best of their Judgment and knowledge. The Lands to be valued at beaver-pay; But on equall division of their opinions, concerning any of the Said Lands, Mr. Thomas Lewis is here empowered to have a casting voice. Given under my hand this 3d of February, 1675.

BY THE MAYOR AND ALDERMEN, &c.

Citty of New Yorke. } ss. WHEREAS, by a former order, dated the third instant, Mr Thomas Lewis, Alderman, Mr. John Lawrence, Mr. Oloff Stevens Van Courtlandt, Mr. Samuel Wilson, Mr. Adolph Peterson, Mr. William Merritt, Mr. Abraham Janssen, and Mr. Soert Olphertsen, were desired and authorized to view, appraise and value all the vacant Land, conveinient or fitt to build on; As also, all ruinated, decayed and untenantable houses within the streets and places in this citty. Wee having the same againe under consideration, for reasons to ourselves best known, have thought fit, and do by these presents add unto the above menconed persons, Mr. Peter Stoutenburgh, Mr. Peter Jacobson Marius, and Mr. Jeronimus Ebbing: And doe hereby desire and authorize the said Persons or any five or more of them, forthwith to view, apprize and value all the vacant Land conveinient or fitt to build on, as alsoe all ruinated, decayed and untenantable houses within this city; And to make return to us as per former order: whereof they are desired not to fayle.

Dated this 18th o February, 1675-6.

Adrian Westerhouse making application for satisfaction For his ground that was taken away to make the New Street, the said Adrian did consent and agree to Convey his Right and title therein to the Citty And in Consideration thereof its ordered that he be free of all Public taxes For the use of the said Citty During the terme of Six Yeares from the date hereof, ei's alsoe freed from the payment of what is already taxed.

New Yorke, the 17th day of October, A. D. 1675.

EDMUND ANDROS, Esq., *Seigneur*, of Sausmarez, Lieut. Governor Generall under his Royall Highnesse James, Duke of Yorke and Albany &c. of all his Territoryes in America, To all to whom these presents shall come sendeth greeting.

By vertue of his Majesties Letters Patents, unto his Royall Highnesse and the Authority derived unto mee, I do hereby appoint and authorize you, Mr. William Dervall, to bee Mayor, Mr. Gabriel Minvielle, Mr. Nickolas De Meyer, Mr. Thomas Gibbs, Mr. Thomas Lewis, and Mr. Stephanus van Courtlandt, to be Aldermen, Mr. John Sharpe to be Sheriffe of this Citty, giving and graunting unto you the said Mayor and Aldermen or any four of you, whereof the Mayor or Deputy Mayor to be always one (unless in case of necessity by their absence, sicknesse or otherwise, when the Eldest Alderman is to preside) And upon equality to have the Casting and decisive voyce, with full power and authority to keepe Courts, Administer Justice as a Court of Cessions; And Rule and Governe all the Inhabitants of this Citty, Corporacon or libertyes thereof, and Strangers within thee same according to the Generall Laws of this Government, Priviledge and Practice of this place; And also to appoint such under officers as you shall judge necessary for the orderly execucon of Justice.—Hereby requiring all Persons, whom it may concerne to give that due Obedience unto you, as Majestrates constituted by his Majesties Authority as above, as they and every of them will answer the contrary at their utmost Perills. And for your so doing this shall, this shall bee to you, and every of you, and every of you a surficient warrant and discharge in that behalfe. This Commission to be of force untill the thirteenth day of October next, which will be in the year one thousand six hundred seventy-six, being the usual time and day of election Given under my hand and Sealed with the Seale of the Province of New Yorke, this seventeenth day of October, in the Twenty-Seventh year of his Majesties Reigne Annoe Domini 1675. E. ANDROS.

Citty of New Yorke. } By the Deputy Mayor and Aldermen. Whereas his honor the Governor, by his Proclamacon bearing date the 13th day of March, 1674, Sett forth that wereas there hath been a change of Government, and other oathes imposed upon the Inhabitants, hee in his Majesties name required all such persons as intended to live under his Majesties obedience within his Royall Hignesses Government, that they should appear at such time and places as the Magestrates within their respective Townes and places wherein they live should appoint, to take the usuall Oathes of Allegence and fidelity; And thereby commanded all Officers and Magestrates to give order therein, and to attend the taking the said Oathes, as by the said proclamacon may appear. And whereas the Mayor and Aldermen in persuance thereof

did appoint Mund y, the 15th of March, 1674, for the taking the said Oathes, and adjourned from time to time for the doeing thereof. Nevertheless we being informed and finding severall persons within this Citty either by sickness or otherwise have not as yet taken the said Oathes of Allegiance and fidelity, as by the said proclamacon was directed. Therefore that none that doe intend to continue and remain in this Citty may for the future upon any pretence whatever pleade ignorance. Wee in further pursuance of his honor's proclamacon, doe hereby give notice to all persons, that not as yet taken the said Oathes, that they appeare at the City Hall on Wednesday, the 24th of November next, by nine of the clock in the morning, at ye third ringing of the Bell, for to take the said Oathes, where the Deputy Mayor and Aldermen have appointed an Especial Sessions for that purpose, and will be ready there at that time for the receiving and giving the said Oathes to all such persons as shall come to take the same. And that all persons that shall, shall neglect to come or refuse to take the same, take notice thereof at perrills; Given under our hands this 30th day of October, 1675.

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BY THE MAYOR AND ALDERMEN.

Ordered that all and every person and persons being inhabitants Living within this Street called Here graft: Shall forthwith and without delay fill up the Graft Ditch or Common Shoare: and make the same Levell with the Street and then to pave and pitch the same: before their doors: with Stones: soe far as every Inhabitants house shall be fronting: towards the said Graft or Ditch: upon pain of every person so neglecting shall have such fines inflicted upon them as the Court shall thincke fitt. Dated this 9th day of May, 1676—then Proclaimed.

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Att a Counsell held in New Yorke the 26th day of May, 1676. Upon Consideration of the Return of the Valuations of the Vacant Land about this Citty, brought in by the appraisers: Resolved, that all Vacant Land without fence not improved, as directed by the law, shall bee deemed vacant, and disposed of according to Lawe. That all decayed houses or Lotts of Lands to the street convenient for Building shall be ascertained, to any that will be willing to pay the Purchase to the right owners according to the appraisment, unless the owners will build themselves, which building soe to bee made by the right owners or purchasers and to bee sufficient dwelling houses, and to bee built within one yeare after the publication hereof, or otherwise to bee considered uncapeable of building upon the saide land hereafter and the Land to bee lookt upon as other vacant Land and valued accordingly, and disposed of by the Governor for the Public good.

By order of the Governor in Council,
MATTHIAS NICOLLS, Sec.

Proclaymed ye 13th June, 1676.

To the Mayor, or Deputy Mayor and Aldermen of the Citty of New Yorke, to publish this order.

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Citty of New Yorke. } ss. Att a meeting the 24th day of July, 1676. Present,

Mr. Deputy Mayor,
Mr. Gabrell Minvile,
Mr. Stephanus Van Courtlandt, Aldermen.

In pursuance of former orders, made for the building of houses in this Citty, and setting fourth ye ground, It is Ordered that noe person or persons whatsoever, shall build, erect or sett up any house or houses upon any ground within this Citty unless the same be first viewed, allowed and sett fourth under ye hands of Peter Jacobson, Gulyan Ver Planke, Francis Rumbolt, Adolph Peterson, Peter Kings.

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ARRIVAL OF GOV. DONGAN FROM ENGLAND.

August ye 27th, 1683, being Munday.

Coll. Thomas Dongan, Governor of this Province, who arrived here ye 25th Instant, was this day pleased to appoint ye Magistrates to meet him at ye Citty hall about ten of ye clock, where he read and published his Commission to be his Royall Highness Lieutenant & Governor &c., & his Commission for vice Admirall, & shewed his Instructions wherein he was ordered to give & Confirm to this Citty all their Rights & privileges & more if necessary, & that for ye ffuture all writs & warrants should Issue out in his Royall Highness name, & declared, that his Royall Highness had Commissionated Mr. John Spragg Secretary of ye Province, for all Which ye Magistrates returned thanks to his Royall Highness and his Honour, & waiting on him to ye Forte, they Invited his Honour to dine with them att ye Citty Hall ye next day, and severall of ye old Magistrates & and ancient Inhabitants to accompany him, Where his Honour received a large & plentifull Intertainment; and they had great satisfaction in his Honours Company.

PETITION OF THE MAYOR, ETC., FOR A CHARTER FOR THE CITY OF NEW YORK.

Petition presented to ye Governor in ye name of ye Mayor, Aldermen, and Commonalty of ye Citty for a Charter.

To the Right Honorable Col. Thomas Dongan, Esq. Lieutenant & Governor & vice admirall and his Royall Highness James Duke of Yorke & Albany, &c., of New Yorke and dependencyes in America.

The humble petition of ye Mayor Aldermen and Commonalty of ye Citty of New York.—Sheweth

That this Citty hath had & enjoyed severall antient Customes privileges and Ammunityes which were confirmed and granted to them by Coll. Richard Nicholls, late Governor of this Province by authority and his Royall Highnesse, Anno 1665, who Incorporated ye Inhabitants thereof—New Harlem and others Inhabiting on ye Island manhattan, whereon this Citty standeth as one body Pollitique and Corporate under ye Government of a Mayor Aldermen & Sheriffe, in which manner it hath continned in practice ever since, and hath had and Injoyed ye Customs libertyes and priviledges following, viz.:

1st. That all ye Inhabitants on ye Island Manhatans was under ye Government of ye Citty of New Yorke.

2nd. That ye Government of said Citty was by seven Magistrates & a schout formerly called Burgormaster and Schepen, now one Mayor, six Aldermen & one Sheriffe.

3d. These Magistrates had power to appoint all Inferior Officers, as Constables & Overseers under Sheriffs, Cryers, & Marshalls throughout ye whole Island, and also did make such pecular orders as they judged convenient ffor ye well Governing ye Inhabitants of said Corporation, & held once in 14 dayes or ofiener on special desire or occasion, a court of Judicature at ye Citty Hall were they did heare and determine all causes and matters whatsoever brought before them, by Jury or in equity as ye cause required. The Mayor or Chief Magistrate had power to determine all matters that came before him under 40*s* without appeale or any other processe than a verball hearing of.

4th. The Sheriffe served all writts & summons, & attachments within ye Lymitts of ye Corporation, & acted as Water-bayliffe on ye Water.

5th. They had their own Clerk and kept ye Records of ye Citty distinctly.

6th. This City was ye staple port of ye whole province, where all merchandize was shipped and unloaden.

7th. None were to be esteemed Freemen of the Citty but such as admitted (to sell) by (retayle) ye Magestrates uforesaid, and none before such admission to sell by retayle or exercise any bandycraft trade or occupation, and every merchant or shop keeper was to pay for ye public use of ye Citty 3*l* 12*s*, every handy Crafiman 1*l* 4*s* on being made free.

8th. No Freemen of ye Citty was to be arrested or have their goods attached unless it was made appear that they were departing or conveying away their estates to defraud their Creditors.

9th. No person was admitted to trade up Hudson River except he was a Freeman and had been arrival Inhabitant in this Citty offor ye space of 3 years, and if any ffreeman should be absent out of ye Citty ye space of 12 month, and not keep ffire and candle & pay seat and cott, should loose his freedome.

10th. All ye Inhabitants up Hudson River were forbid to trade over sea.

14th. No Flower was to be bolted or Packed or Biskett made for exportation but in ye Citty of New Yorke, being for ye Incouragement of trade and keeping up ye reputation of New Yorke fflower, which is in great request in ye West India and ye (Inhabitants) only support and maintenance of ye Inhabitants of this Citty, and if not confirmed to them, will ruin and depopulate ye same.

12th. That ye said Citty had a Common seale to serve ffor ye dealing of all and singular their affairs matters and business touching ye said Corporation.

All which said ancient customs priviledges and lybertys ye said Mayor and Aldermen in behalf of themselves and ye Citizens of ye said City do humbly present & make known to yr Honour, humbly beseeching yr honor in their behalf to Interceed & procure that ye same be Confirmed to them by charter ffrom his Royall Highnesse with these additions following:

1. That ye said Corporation be divided into six Wards.

2. That ye ffreemen in each Ward do once every year ellect their own officers to say Aldermen, Common Councilmen, Constable, Overseers of ye poor, Scavengers, Questmen or other officers usefull and necessary ffor ye said Corporation & Wards.

3 That there be a Mayor & a Recorder, who with ye said six Aldermen & Common Councilmen shall represent ye whole body of ye said Citty & Corporation & shall have power to make pecular Laws and ordinances ffor ye good Government and support thereof.

4. That a Mayor be appointed every year by ye Governour & Councill, & to be one of ye Aldermen chosen as aforesaid.

5. That all Magistrates so chosen shall not be admitted to ye execution of their offices until swoine before ye Governor and Council.

6. That ye Recorder be appointed by ye Governor and Council, who shall be judge of ye city and corporation and be ayding and assisting ye Mayor, Aldermen and Common Council in all matters yt relate to ye well being thereof.

7. That a Sheriffe be annually appointed by the Governor and Council.

8. That ye Coroner and Towne Clark be appointed by the Governor and Councill.

9. That ye Mayor, Recorder, Aldermen and Common Councill do appoint a Treasurer for collecting and paying all public debts and Revenues.

This and whatsoever else your Honor and his Royall Highnesse shall think fitt, necessary and convenient ffor ye good rule, order and welfare of this citty or Corporation, your Petitioners humbly pray may be granted and confirmed to them, in as full and ample manner and fform as his majesty hath been graciously pleased to grant to other Corporations within his Realme of England, ffor ye.

Of which they again humbly begg your honor to become their supplyant, whose kindness and service therein shall be most thankfully acknowledged.

New York, 9bre, ye 9th, 1683. And as in duty bound, your petitioners shall ever pray, &c.

EXPLANATIONS ASKED OF THE MAYOR, &c. AS TO CERTAIN PARTS OF THE FOREGOING PETITION BY THE GOVERNOR AND COUNCIL.

Some objections made by ye Governor and Councill to ye petition presented in the name of the Mayor, Aldermen and Commonalty with desire to be explained.

Att a Councill held in New Yorke ye 10.h 9bre, 1686.

Present

The Governor,
Mr. Frederick Phillips,
Mr. Lewis Sancton.

A Petition from ye Deputy Mayor, Aldermen and Commonalty of ye citty of New Yorke being read, was concluded as follows:

In answer to the first article it is thought reasonable that the Towne of Harlem shall have liberty to determine all matters yt come before them under 40s., att their own Towne Court. To ye third article it is answered, that there being these words, these Magistrates had power to appoint all Inferior Officers, and Constables, Overseers, under Sheriffs, Cryers and Marshals. it is desired that it may be explained what is meant by Marshall in ye second article; it is also desired yt it may be explained what is meant by peculiar Laws, and how far they will extend, as likewise what is meant by Court of Judicature, and how ffar ye s'd Court is to extend, and yt ye Court of Judicature under forty shillings being allowed it is thought convenient to distinguish betwixt ye s'd Courts, and make two articles of this one, being ye third article to ye fourth article, it is thought yt ye water Bailiffs belongs to ye admiralty, and ye seventh article Jews are to be accepted who are left to ye discretion of ye Governor.

By order in Councill,
JOHN SPRAGG, Sec'ry.

EXPLANATIONS TO THE FOREGOING, GIVEN BY THE MAYOR, &c.

An Explanation of several heads contained in ye petition lately presented to his honor ye Govenor, by ye Mayor, Aldermen and Commonalty of ye citty of New Yorke, pursuant to ye desire of the Governor and Councill, Humbly presented to his honor's further consideration.

The Towne of Harlem is a village belonging to this Citty and Corporation ffor ye more easy administration and dispatch of Justice. Officers have been annually appointed by ye Mayor and Aldermen to hold Courts and determine matters not exceeding 40s., both at Harlem and the Bowery, and shall do ye like for ye *future*, and is intended to be one of ye six Wards.

3. Marshall is an under officer assistant to ye Sheriffe in serving writs, summoning Jurys, looking after prisoners and attending ye Court, and that Officer and the Cryer has hetherto been one person.

Pecular Laws, and Laws and Ordanancees by the Mayor, Aldermen and Common Councill, ffor ye well and good government of this Citty and Corporation, and to extend as ffarr as the limit thereof.

Court of Judicature is a Court to hear ane determine all causes and matters whatsoever brought before them, both Civill and Criminall, not extending to life, limb or member, and had jurisdiction over all the harbours and Bayes, Coves, Crecks and Inletts belonging to ye same.

The whole Island being one Corporation, ye inhabitants are all members of one body and conceive no need of distinction. The Mayor, Aldermen and Common Councill having ye care and charge to make all things as easy and convenient ffor ye Inhabitants as possible, and will have the same regards thereto as formerly.

A Watter Bailliffe is an officer belonging to a Corporation, and ye Sheriffe of this Citty hath usually exercised the office by serving arrests and attachments in ye harbours, Bayes, Coves, Creeks and Inletts belonging to this Corporation, by Warrant ffrom ye Mayor, Sheriffe or other his superiors to him directed as Sheriffe or Watter Baylliffe, as well in Civill as Criminall matters.

What belongeth to the Governor or prerogative, think not fitt to meddle with or any way restrane.

New Yorke, 9bre. 19th, 1683.

NEW MAGISTRATES COMMISSIONED BY THE GOVERNOR.

Citty of New Yorke,
Saturday ye 24th of 9bre, 1683.

The old Magistrates, Mr. Cor's. Steenwick, Mr. N. Bayard, Mr. Jo. Joinns, Mr. Wm. Pinhorn, Mr. Guline Verplanke, Mr. Robertson and Mr. Wm. Cox being sent for, all waited on ye Governor at ye ffort except Mr. Cox, where ye old Magistrates were discharged, and a Commission given to Mr. Cornelius Steenwick to be Mayor and the other person above named to be Aldermen ffor the Citty of New Yorke untill ye useuall time of New Elections, being the 14th of 8bre, and Mr. Jo. Inder was likewise appointed Sheriffe of ye s'd Citty, and were all sworne accordingly.

The old magistrates conducted ye new ones to ye Citty Hall, where there Commission was read in ye Court Chamber, and they resigned to ym ye Bench, who took their places as nominated in ye Commission. Mr. Wm. Cox, who was absent when ye Mayor and ye next of ye old Aldermen were sworne, had ye oath of an Alderman administered by ye Secretary, ye then Mayor and Aldermen ordered their Commissions to be published att ye door of the Citty Hall, which was accordingly performed by ye Towne Clerke.

Such under officers as you shall judge necessary ffor whom this may concerne to give due obedience unto you as they and every of them will answer ye contrary att their perills, and ffor so doing this shall be to you and every of you a sufficient Warrant and discharge, this Commission be of force untill ye 14th day of 8ber, next ensueing in ye year 1684, or till further order. Given under my hand and sealed with ye seal of ye province att ffort James ye 24th day of 9ber, 1683.

THO. DONGAN.

TOWN CLERK COMMISSIONED BY THE GOVERNOR.

Commission of John West to be Clerke of ye City of New Yorke, Coll. Thomas Dongan, Lieutenant and Governor, and Vice Admirall, &c., of New Yorke and dependencyes in America.

By virtue of ye Authority derived unto me from his Royall Highness, I do hereby constitute and appoint you, Mr. John West, Clerke of the City of New Yorke, authorizing you to take into your custody all Records, Books and Papers of Publicke Concerne belonging thereto, and to act in ye said employ as a clerke, may and ought to do according to law and practice, and that during my pleasure only. Given under my hand and seal att Forte James, ye 24th day of 9bre, 1683.

Tho. Dongan.

Passed ye office, John Spragg, Secty.

PETITION OF THE MAYOR AND ALDERMEN TO THE GOVERNOR AND COUNCIL FOR FURTHER PRIVILEGES AND GRANTS.

To the Right Honourable Thomas Dongan, Lieutenant and Governor under his Royal Highness James Duke of Yorke and Albany of New Yorke, and dependencye in America.

The humble petition of ye Mayor and Aldermen of ye City of New Yorke Showeth,

That whereas ye necessary public works belonging to this city are much out of repair and decayed, and ye revenue yt was to supporte and maintaine ye same ffor ye present lost and distroyed, and whereas ye 9th Instant a Petition was presented to your honor by your petitioners, in ye name of ye Mayor and Aldermen and Commonalty of this city, sitting ffurth ye priviledges, usuage, custome, and practice of ye said city, and what they conceived further necessary for ye Weal good Government and support thereof, which they prayed your honour would procure to be confirmed to them by charter to them ffrom his Royal Highness. Your petitioners do hereby likewise humbly pray and desire yt with this alteration only yt ye city may have ye choice of their Towne Clerke for ye ffuture, and yt since it cannot be so soone effected as ye urgent affairs of this citty doth require, your honour will be pleased to order and declare yt ye fforme and method therein prescribed, may be put in practice until such time as his Royal Highness pleasure shall be further known therein, and yt your honour will be ffurther pleased to confirme to this citty all ye (benefitt of granting lycences, to all ye) vacant lands within this island to low water marke, the benefitt of granting lycences to all yt keep public houses, ye benefitt of ye (ferry,) docke, warfe and bridge, markett and markett house, with ye ferry now between ye said citty and Long Island, or yt hereafter shall be appointed between ye said citty and Corporation, or any other place which may helpe to enable them to deffray their public charge and expence and their publicke works;

And your petitioners shall ever pray, &c.

Cornelius Stenwick,
N. Bayard,
Jo. Inions,
Wm. Pinhorne,
Guleine Verplanke,
John Robertson,
Wm. Cox,

Dated at ye Citty Hall ye 27th day of 9bre, 1683.

ANSWER OF THE GOVERNOR AND COUNCIL TO THE FOREGOING PETITION.

Answer of ye Governor and Councell to ye petition of ye Mayor and Aldermen, dated ye 6th 9bre, 1683.

At a Councell held in New Yorke ye 6th day of December, 1683.

The Governor,
Capt. Anthony Brockholls,
Mr. Fred. Phillips,
Mr. Steph. Courtlandt,
M. Lucas Sancton.

The petition of ye Mayor and Aldermen being read, the Governor in Councell gave answer thereto in ye following Resolutions and Proposals:

That he much wondered yt having lately granted almost every particular of a large and considerable petition lately offered by ye preceeding Mayor and Aldermen, he should so suddenly receive another petition from ye present Magistrates to request either what was before granted or anything contrary to their former petition, however is willing to oblige them as ffarr as can be Reasonably done, as may be seen by ye following particulars. Their ffirst request Concerning ye Charter is already granted, with a Recorder, according to fformer desire.

The Ferrys Granted, with a proviso, that two boates ffor passengers be kept on each side of ye River, and one boate for cattle on each side of the River also.

The Towne Clerke is Reffered to his Royal Highness his nomination. The vacant Lands to low Water marke within this Island, are already disposed of.

The whole Island is ordered to be surveyed, and when yt is done, some land in ye woods not yet disposed off, shall be appointed for the use of ye citty.

The Dock and Warfe is allowed to ye citty provided it be well kept and cleared, if not it shall be ffforfeited, but no duty is to be paid upon ye Bridge. No fferry in any other place allowed but what is already. The Lycences always belong to ye Governor, the benefitt of ye Markett and Markett houses is Granted, Provided there be nothing sold, but upon Wednesday and Saturday, beginning betwixt Nine and Ten of ye Clock in ye fforenoon. And all brought into ye markett place, nothing being allowed to be sold in any vessel, boat, or canoe whatsoever; only Butchers meat is to be sold every day in ye week, Sunday excepted, but to be sold in ye markett and no were else.

That it is convenient a clerk of ye markett be appointed, and that by ye Governor, who shall see after ye weight and measures and due Regulations of ye markett. That there be Twenty carmen and no more allowed and their wages regulated, and ye number of sworne porters stated, with their wages likewise. The Mayor is also to look after ye weights and value of bread, and ye value and measures of all liquors sold and retayled, and to put a price upon all other things sold, according as ye season shall require, and all Bakers shall be obliged to sell and keep good household bread ffor any who will demand it.

That ye said household Bread be baked as ye meale comes ffrom ye mill. That ye citty will appoint one or more if necessary to look after ye chimneys for ye preventing of ffire, and yt all houses keep one or more leather bucketts.

By order of Councell, Jo. Spragg, Secy.

ORDER MADE BY THE GOVERNOR AND COUNCIL AS TO THE TEMPORARY GOVERNMENT OF THE CITY.

The Governor to put in practice ye fforme prescribed in ye petition of 9bre ffor the Government of this citty.

By the Governor.

In answer to a petition presented by ye Mayor and Aldermen bearing date the 27th November Past, Ordered that ye fforme and method prescribed in a petition presented by ye fformer Mayor and Aldermen, bearing date ye 9th 9bre past, ffor ye Weal and Government of ye said citty, be put in practice untill such time as his Royal Highness pleasure be furthere knowne thereon. Given under my hand att Forte James ye 10th day of Xbre, 1683.

Tho. Dongan.

Passed ye Office, John Spragg, Secry.

RECORDER APPOINTED BY THE GOVERNOR AND COUNCIL, AND HIS COMMISSION.

A Recorder appointed, and oath of fidelity administered by ye Mayor.

Citty of New Yorke.

The Court of Record of the citty afores'd, holden att ye Citty Hall within ye s'd citty on *Tuesday*, ye 15th day of January, 1684,

Before

Mr. Cornelius Stenwick, Mayor,
Mr. Nicholas Bayard,
Mr. Jo. Inians,
Mr. Wm. Pinhorne,
Mr. Guleine Verplanck,
Mr. Wm. Cox, Aldermen.

Before ye opening of ye Court, Mr. Secretary Spragg and Mr. Suncton come to ye Citty Hall and presented Mr. James Graham to ye (Governor held) Mayor and Aldermen, and acquainted them that his Honour ye Governor had been pleased to commissionate him Recorder of this citty, whose commission was accordingly Read, as followeth:

The Recorder's Commission.

By the Governor—

Whereas the Mayor and Aldermen of ye Citty of New Yorke, by petition, in ye name of themselves and the Commonalty of ye s'd citty, desired a confirmation of their Ancient Rights and Priviledges with several alterations and additions within specified, and countaining, as is usuall and practicable in other cittys and corporations, and having thought ffitt and necessary that a Recorder be appointed to be assistant to the Mayor and Aldermen in ye Rule and Government of ye s'd citty, and administration of justice in their

Court of Record—I do hereby, in virtue of ye authority derived unto me, constitute, authorize, and appointe you, Mr. James Graham, to be Recorder of ye s'd citty, giving unto you ffull power and authority to execute and performe what to ye office of a Recorder within a citty and corporation doth of Right belong and appertaine both ffor ye weale and governm't of said citty administration of Justice in ye s'd Court of Record during pleasure.

Given under my hand and seale, att Forte James, in New Yorke, ye 4th day of December, 1683.

THOMAS DONGAN.

Passed ye office. Jno. Spragg, Sec't'y.

THE FIRST RECORDER OF THE CITY OF NEW YORK SWORN INTO OFFICE, AND TOOK HIS SEAT.

Wednesday, ye 16th January, ye Court being adjourned to meet in ye afternoon, the Mayor, Recorder, and Aldermen, Sheriffe, and Clerke, were sent ffor to ye Forte, before ye Governor and Councell, were ye oath of fidelity to His Royal Highness, as in ye old Law book, was administered to them, and ye Record'r sworne in his office, ffrom whence they went to ye Citty Hall and held Court according to adjournment.

The Recorder took his place on ye Bench on ye right hand of ye Mayor.

Citty of New Yorke.

Proceedings att a Common Councill held att the Citty Hall for the sayd Citty, on Monday the 2d day of February, 1684—

Present—Mayor, Recorder, N. Bayard, Mr. Jno. Lawrence, Mr. Andrew Bowne, and Mr. Cerfleek, and Mr. Wm. Merritt, Mr. Abm. Corbett, Mr. Debruque, Mr. Sam'l Wilson, Mr. Kipp, Common Councell.

Resolved, unanimously, That the Governour be Treated with to confirme to this citty all the vacant land in and about this citty and island, to low water mark. The Ferry and all the severall Pattents to the Inhabitants, the Citty Hall and Land thereto belonging, Markett house and Markett Place, Dock, Bridge, and Streets, and w'th all Royaltyes and Priviledges thereunto belonging.

1686.

PROCEEDINGS OF THE MAYOR, ETC., IN RELATION TO GOV. DONGAN'S CHARTER.

Att a Common Councell held for the Citty of New Yorke, the 24th day of Aprile, Anno Domini 1686—

Upon reading the Charter, It is agreed, by the Common Councell, that they will pay his honour 200*l.* upon signing the same, and give him security for 100*l.* more in six months. That the fee for Lycences to retaile Drinke exceed not 5*l.*, the Fine for retailing 19*s*, and the fee for freedom 5*l.* That the Mayor take care to raise the said 200*l.*, paying therefore such interest as to him shall seem fitt. And do likewise to care to secure the said 200*l.* to the person of whom he shall take up the same, and the said 100*l.* to the Governour.

Resolved, That next Common Council to be held in this Citty Effectual Care shall be taken for the Reimbursement of the said 300*l.*, and other the charges concerning the said Charter.

REPORT OF THE MAYOR THAT HE HAD RAISED THE MONEY AND PAID FOR THE CHARTER.

Att Common Councell held att the Citty Hall for the Citty of New Yorke, the Eleventh Day of May, 1686,

The Mayor Reports that he hath paid 300*l.* for the Pattent and 24*l.* to the Sec'ry, and hath taken 4 sums up at ten per cent. interest, to be paid in a yeare, w'ch is allowed off, and Resolved, that care be taken pursuant to the above ord'r, to raise money for sattisfying thereof, and what other charges shall be expended thereon.

Resolved and ordered, That Mr. Mayor, Mr. Alderman Depeyster, Mr. Demyeo, and Mr. Dekey be appointed as a Committee to consider what waeys proper for raising the money paid for the Pattent, and if they shall thinke fitt that same be raised by sale of Lands, That then they be hereby impowered to sell and dispose of so much land as will amount to the sums for the moste benefite and advantage off which to make repoñe.

AN ANCIENT ANTI-ASSESSMENT MAN.

A Common Councell held in the City of New Yorke the 10th of September, 1686—

Mr. Smith refused to produce any title to the Land in the Dock, but said, if the citty thought fitt to meddle with it he would endeavour to maintain a Right. The rest of the Inhabitants have time given till Monday, in the afternoon, to consider and make their proposalls concerning the Ground in the Dock.

IN CHANCERY.

Before the Hon. MURRAY HOFFMAM, Assistant Vice Chancellor of the 1st Circuit.

Jacob Westervelt & an'or,

vs.

The Mayor, Aldermen, and Commonalty of the City of New York.

The Bill on this case was filed against the Corporation to restrain them from selling certain lots of the complainants', situate on both sides of thirty-first Street, westwardly of the ninth Avenue, for assessments for opening 31st Street from the ninth Avenue to the East River, for regulating and grading the same street from the ninth Avenue to Hudson River, and regulating ninth Avenue.

The grantor of the complainants had ceded the land opposite the premises in question, in 31st Street, in consideration, as they alleged, of paying no assessments for opening that street.

Among the other objections to the proceedings of the Corporation were the following:

I. That the Common Council, as organized under the act of 1830, have no power to open or to regulate Streets and Avenues; or to confirm assessments for grading, &c., and that their proceedings are void for want of jurisdiction.

II. That if they had jurisdiction in the premises, their acts and proceedings are void for irregularity in several particulars, among which were the following:

1st. That the resolutions and ordinances relating to these proceedings were not passed in either Board, by calling the ayes and noes as required by Section 7th, of the act of 1830.

2d. That in the regulating 31st Street and 9th Avenue, no estimate of the expense was ever made, and no assessment until after the work was done—contrary to the provisions of the 175th and 176th Sections of the act of 1813, by which only a supplementary assessment is authorized after the completion of the work.

3d. That the persons who acted in making the assessment, to wit, the Street Commissioner, his Deputy, and first Clerk, were not disinterested and proper persons, and were not properly appointed under a general ordinance authorizing them to act in all cases of regulating streets.

4th. That the assessment List for regulating the 9th Avenue, was not signed by the assessors, contrary to the requisition of the statute that they should certify it in writing.

5th. That no application was ever made or authorized by the Corporation, for the appointment of Commissioners of estimate and assessment for the opening of 31st Street, the application having been made by the Mayor or Counsel, under a general resolution to open all the Streets and Avenues up to and including 42d Street in 1836, but without the usual additional direction to the Corporation Counsel to take all necessary steps for that purpose.

6th. That the ordinances were never regularly passed, having been loosely enclosed in a wrapper by the Street Commissioner, and only the endorsement on the wrapper read in either Board, and only the wrapper signed either by the Clerk or the Mayor.

7th. That the neglect to publish the reports and resolutions, as required by the 7th Section of the act of 1830, was a withholding the only notice required by law in case of regulating Streets, and the only useful notice in regard to opening Streets; so that the confirmation either by the Common Council or Supreme Court was *ex parte* and not binding on the complainants.

8th. That the act of 1813 is unconstitutional in not providing any just compensation to the owners of property taken for public use.

Various minor questions arose, but the foregoing were those of most general interest. The case was argued on Bill, Answer and Replication.

It will be seen that the questions raised were of the most momentous importance, since their determination against the Corporation will be decisive of their jurisdiction in all the proceedings for opening and regulating streets and building sewers since the act of 1830.

This being the first case in which these questions have been brought up, on final hearing, before any of our courts—from the important interests involved, and the great consideration which will be attached to the decision of the Judge so eminent for his profound knowledge of Chancery Law, and so peculiarly qualified by his intimate acquaintance with the powers of the Corporation—the greatest interest has been excited by the discussion.

The argument was opened on the part of the complainants, on Tuesday, by Lewis H. Sandford, Esq., who occupied nearly six hours in a clear, logical, and forcible argument. Each point was closely and powerfully discussed by him, with that discrimination and vigor of reasoning which a powerful mind, long trained to close habits of legal discussion, might be expected to display on a question of so much importance. The early laws and charters were examined, and the English and American cases bearing in any way upon the numerous points were collected and discussed, and the legal and historical bearing connected with the powers of the Corporation, was chiefly exhausted. It would be impossible within our limits to give such an analysis of Mr. Sandford's argument as

to do it justice, or afford any adequate idea of its force and completeness.

On Wednesday, Mr. Cowdry, of counsel for Corporation replied. He omitted nothing which his acknowledged learning and perfect familiarity with the powers, duties, and proceedings of the Corporation enabled him to render available, in defending their several acts in the particulars complained of. He replied to the points raised in order, examined and controverted the positions assumed by the counsel for the complainants and the authorities cited, and with great ability and learning sustained, by every possible authority and argument, the course of proceeding hitherto adopted by the Corporation.

Mr. Holland of counsel for the complainants, made the concluding argument on Wednesday P. M. and Thursday.

Mr. H. commenced with a luminous and powerful exhibition of the extent and character of these powers of the corporation. He then proceeded to examine the various legal questions involved; presenting them in many new and striking views, and enforcing his argument with great ability, profound historical and legal research, and commanding eloquence.

We present below an outline of Mr. Holland's opening remarks, as taken from his minutes, on the general character of the power exercised by the Corporation in the opening and regulating of streets.

After discussing the question of the jurisdiction of the court, Mr. Holland said that he requested attention to the extraordinary nature of the power conferred upon the corporation in these cases, and the equally extraordinary manner in which it is to be exercised, and hoped thereby to strengthen the position for which he contended, that nothing should be granted by way of implication or intendment or liberal construction in favor of so extraordinary a jurisdiction.

The power claimed by the corporation in these matters, is *in derogation of common right.* It is taking private property for public use; the highest exercise of supreme power known or recognized in civilized communities—the *right of eminent domain.*

A principal object of society is the security of private property; and its appropriation by the public, without the owner's consent, going to impair one of the dearest rights of the citizen, can never be justified but by *absolute necessity.*

To this point he cited nearly all the standard writers on the laws of nations and the principles of natural justice.

So sacred is this right of private property, that it is carefully guarded by a particular provision in the Constitution of the United States and of this state, requiring just compensation to be made.

In the present instance, this highest prerogative of power is not directly exercised by the supreme authority in the state, but had been delegated to an inferior tribunal to be exercised at its discretion. The constitutionality of such a delegation of power had been seriously questioned, but he admitted it had been sustained in this state by our highest courts. It is at least verging upon the extreme of constitutional power.

Again, the mode of exercising this high prerogative in the present instances was equally extraordinary, and he believed unparalleled in any other country where either the common law or civil law is recognized.

Lands may be taken, buildings torn down, streets opened and regulated, and assessments laid, not only without any application on the part of any citizen, either adjacent to or remote from the proposed improvement, but (until the act of 1830) against the remonstrance of every person in interest, upon the mere will and determination of the corporation.

No notice need be given, in case of regulating, until the collector calls for the assessments; and in case of street openings, only 14 days' notice, before a confirmation, which transfers the fee to the corporation and makes the assessment a lien.

A jury, even, is not summoned to assess the damages,—a precaution required in England,—in all our neighboring states, and in this state, until comparatively a recent period. And this, too, in the face of the provision of the constitution, for a trial by jury in all matters involving even a small amount, and the provision requiring all newly constituted courts to proceed according to the rules of the common law; as well as in practical contravention of the acknowledged principle, that every person shall have an opportunity to be heard and a right to contest by regular proofs and due pleadings, every question of right affecting his person or estate.

But here, instead of twelve independent jurors from the body of the people, sworn in court, and proceeding upon legal evidence—the assessment of damages and awards, involving even millions of property, is confided to two or three persons, selected in one case, by the coporation itself, and in the other, appointed *ex parte* on their application.

And these powers so appointed have no regular place of meeting or hearing proofs; take no regular legal testimony as used in courts, but proceed *ex parte* when and where they please, in private or public, upon their own inspection or judgment, or on hearsay and the representation of any body, whether interested or not; and their decisions are held to have the force of the verdict of a jury, and when confirmed, are conclusive on all parties.

In case of regulating and building sewers, no opportunity is provided by law to object to their proceedings. In opening streets, objections must be made within ten days; and then objections are hampered by technical difficulties and rules nearly rendering the privilege useless. Affidavits of disinterested persons must be used, and none will be received by the supreme court which have not been presented to the commissioners. To prevent confirmation by the supreme court, the affidavits must show facts sufficient to set aside a verdict as against evidence; opinions have no weight, and though the commissioners may be guided by *hearsay*, their judgment cannot be controlled by the sworn judgment of a hundred citizens well acquainted with the facts.

Such are the devices of the law to prevent the possibility of arresting these extraordinary proceedings.

It was granted that our courts have adjudged these assessments without a jury not to be violations of the constitution; but it was contended that in this respect the law in question verges on the extreme of legality, and requires to be most strictly kept within the letter of the statute.

Even highways in the country, where land is of comparatively little value, cannot be cut through improved lands without an assessment of the damages by a jury at the option of the owner; and cannot be laid through a garden or orchard of four years' standing, without an express act of the legislature; so much more carefully are the rights of the citizen protected elsewhere, than under the jurisdiction of this corporation.

Again, the power in question is extraordinary in selecting from the whole body of the political community a few individuals to bear all the expense.

In the country, the expense of a road is borne by the whole town; in all neighboring states, either by the whole city or town or county, or by voluntary subscriptions or cessions.

In this city, for street openings laid out in 1807, the whole expense is thrown upon the owners of land on each side within half the distance to the next street.

Mr. H. said he doubted the constitutional power of the Legislature to select from one political body, a certain number of individuals within defined limits, and compel them to pay for an improvement obviously beneficial to the whole. It was like passing a law to tax a single man for the public expense. At any rate, it was an obnoxious feature in this law, and seemed to show the necessity of confining its operations strictly to the letter, in matters of form as well as substance.

Again, there is virtually no notice for any practical purpose in either of these classes of proceedings. In respect to street Regulations, the law of 1813 provides for no actual notice.

The 14 days' notice in the Street openings is, indeed, *legal* notice—but of no practical value. The proceedings are often one or two years in progress, and finally, a short notice of confirmation in 14 days, is published in some corner of a newspaper, after which, but ten days are allowed to make objections. To absentees *femmes couvertes* and minors, this is no actual notice.

Every owner of real estate must watch every ten days for these notices, and on discovering one, must go to the clerk's office and examine a manuscript sometimes of several hundred folios, to ascertain whether his property is assessed. Amid the hurry of a city life, this is utterly impracticable. Yet this is the only notice, except the publication of corporation proceedings, required by the act of 1830, which the corporation openly disregard in all cases.

Now every man has a right to be heard when his property is demanded from him, and a law providing no notice of such a proceeding, or no useful notice, ought not to be enlarged in its operation by a liberal construction in derogation of common right.

Again the proceedings are obnoxious to remark for their expensiveness. It is the most expensive mode of taxation known to modern times. The whole apparatus of official agents, the surveyors, appraisers, inspectors, commissioners, collectors, court and counsel, to say nothing of advertisements, certificates and leases, involves an expense almost unparalleled in any other instance.

It is said by Arthur Young, that in 1792 the expense of collecting 1,330,000*l.* of stamp duties in Great Britain, was but one half of one per cent.

By document No. 45, of the Board of Aldermen, 1838-9, the whole amount of awards and damages for opening the 7th Avenue, is stated to be $28,142, and the costs of making the assessment and counsel and court fees, are $13,550!

Mr. H. said he knew of no parallel to this except an instance mentioned in Sully's Memoirs, when, of 150,000,000 livres taken out of the pockets of the tax payers, but 30,000,000 livres were brought into the treasury.

Again, it is a tax laid exclusively on land and there-

fore unequal. Personal property does not contribute directly to build any sewers, or open or regulate any streets or avenues.

And to whom is the exercise of this extraordinary power committed? To seventeen Aldermen and seventeen Assistants.

Every small body is liable to sinister influences in a greater degree than a larger assembly; and this is peculiarly true in a great city.

In the number of its inhabitants, the amount of its wealth, and the variety and importance of its public interests, the city of New York exceeds many of the smaller states of the Union. Its annual expenses ranging from a million to a million and a half, and at this time enormously extended by extraordinary undertakings, the utmost vigilance is necessary to secure responsibility in its officers. The General Assembly of Connecticut consists of 229 members; even that of R. Island of 82. Here are great temptations to improvidence—large patronage—numerous offices—lucrative contracts—vast chances for speculation.

When the law requires votes to be taken by ayes and noes in the Common Council—when it requires them to publish their proceedings; when it requires a previous estimate before public works can be executed, and that assessments shall be certified in writing, will it not be contrary to all sound principle and dangerous to the last degree to allow a body thus constituted in the exercise of such powers to avoid all responsibility by neglecting these requisitions through a *liberal* construction of the statute? When the law says they *shall* pursue a certain course, is it not dangerous to construe its commands as *directory*, and wrong to indulge in any presumptions or implications to excuse a palpable violation of the letter and spirit of the law?

It is also to be noticed, that there is a great distinction between a corporation deriving all its powers from a written law, and a state legislature exercising the supreme power of the people, and only limited by a written constitution. Every presumption is against the former authority; and even the latter is not allowed to extend its powers by a liberal construction.

It is indeed claimed by some of the officers of the corporation, that its powers are beyond the control of the legislature. The city comptroller, an officer of reputed intelligence and of high character, in his recent report seems to intimate a higher authority for the powers of the corporation than any bestowed by the sovereign people of the State of New York. It is unnecessary to controvert these preposterous claims; our courts have held that all political incorporations may be altered even without a two thirds vote; but it is well to regard an official document from such a source as indicating the spirit of usurpation and encroachment inherent in this as in all powerful political bodies.

The encroachment, if any, is by no individual—no simple executive officer—no judge, whose discretion may mistake,—but by a power, the extent of which is felt before its approaches can be seen—which proceeds under the high sanction of extraordinary prerogatives most lavishly conferred, and which, in violating the law, adds a perfidious abuse of a great public trust, to that crime against society which is involved in all illegal oppression.

But there would be less danger to be apprehended from the exercise of these extraordinary powers by this extraordinary tribunal, in the unusual and dangerous methods before described, if the various charters and acts of the legislature under which they are assumed to be conferred, were condensed into one single connected statute—and were not to be sought for in hundreds of volumes and through a period of more than one hundred years.

Dongan's charter in 1686, and Cornbury's in 1708, are rehearsed in Montgomerie's of 1730; and these are all claimed to be of binding force, together with the subsequent enactments, neither few nor brief, which the colonial and state legislatures have from time to time adopted.

In the course of this argument, I shall be constrained to examine these dusty records in detail; and it will then appear how full of vagueness and contradictions they are, and how difficult it is to interpret and define the exact effect of separate acts—often inconsistent with each other, yet the only sources of the extraordinary jurisdiction asserted in these cases.

Again, in opposing this powerful political body in its alleged aggression upon private rights, the solitary citizen struggles to great disadvantage. No single case can present anything more than a few specimens of the exercise of unlawful power; a thousand different cases could only present the great aggregate. Complainants are silenced and overwhelmed in detail. Combined resistance is not practicable under our forms of justice, for the grievance of one man is not the grievance of his neighbor. So discouraging is the struggle that hundreds submit in despair. It is a thankless and wearisome undertaking to wade through the necessary records and statutes and charters which must be examined in questioning these powers. The community suffer long before any one will stand forth the champion of their common rights. Many are ruined, but private injuries here attract little attention. Some have been assessed into their graves; others have had the whole course of their lives harassed by vain endeavors to secure their estates from confiscation.

Under the exercise of this extraordinary power, Mr. H. said his clients were now suffering, and, as they claim, from its *illegal* exercise;—a power which, in its rightful exercise, assumes the highest prerogative of sovereignty in taking private property—a power in derogation of common right—exercised by a body open to improper influences—acting under vague and contradictory rules, covered in part by the dust of ages—by methods unknown to the common law, and verging toward the very bounds of unconstitutionality—without trial by jury, or due notice or regular evidence—an extraordinary jurisdiction, involving immense amounts—departing from general taxation to local—onerous in its expenses—and vested in a body having every inducement and every opportunity for encroachment, when the oppressed has every embarrassment in resisting.

Already we begin to perceive the dangers to which we are exposed. It is charged in this bill, and admitted in this answer, that the plain commands of the law have in many particulars been openly defied.

A Common Council, only invested with *legislative* powers, usurps the exercise of such as are undoubtedly *judicial*.

They proceed without petition or on improper petition; was it ever heard that they heeded remonstrances! They refuse to publish their proceedings—refuse to vote by ayes and noes, and evade the little responsibility imposed by law! They make a sweeping vote to open a hundred streets, on a certain principle, and leave the plan unexecuted!

Their law officer takes up the proceeding and multiplies the operation to an extent as yet unknown to any person but himself. They appoint their own subordinate officers, assessors, and by one ordinance despatch the appointment for numberless separate and important proceedings.

They proceed in enacting their ordinances without the decent forms of business observed in all legislative bodies, and pass important acts without one reading—enclosed in wrappers—as if they were afraid to look into the contents. They neglect to open streets for which they collect assessments.

Instead of a legal preparatory estimate, they make none, or take virtually the estimate of some speculating or favorite contractor, as it may be, and a clerk distributes the amount among the unfortunate sufferers.

They allow their own officers to assess their own fees and compensation, and pay them from the city funds.

They have come at last to adopt assessment lists "certified in writing," without any written certificate or signature.

They accept a donation of land for a street, and disregard or forget the condition of the cession.

They proceed in these steps till men can pay no longer; and 7,000 lots are offered for public sale in a single advertisement.

Thousands are first awakened to a sense of their proceedings, by the sound of the auctioneer's hammer disposing of their estates for 500, 1000, or 5000 years, for the *benefit* conferred by their gracious undertakings.

I speak not the words of empty declamation, I state facts, mostly sworn to in this bill of complaint and not denied in the answer. It is the complaint of no solitary malcontent murmuring without cause and dissatisfied without reason; but it is the reluctant appeal of persons who hold an honorable place in the estimation of the public, and who come here as a last resort, to ask protection from acts which they believe to be unauthorized by law, and which they feel to be ruinous.

Even one of our most venerable institutions of learning has been constrained to solicit legislative aid to prevent the sequestration of its real estate by the operation of this miscalled system of improvements.

We but ask that the law shall be made the rule of conduct for this mighty Corporation as well as for the humble village; that when the law commands, it shall be obeyed. If we then suffer we shall submit, as such is the will of our rightful sovereign, the people.

The legislature have pronounced their judgment by the act of 1839, making the objection of a majority of persons in interest, effectual. The power to injure in future has been taken away: we ask this Court to heal the wounds already inflicted.

Mr. H. then proceeded at length to discuss the jurisdiction of the Common Council in these matters; and to examine in detail the several alleged abuses as set forth in the bill.

Document No. 22.

BOARD OF ASSISTANT ALDERMEN.

February 25th, 1839.

Report of the Committees on Assessments and Laws, on the petition of sundry owners of property on Chapel street and its vicinity, for relief from the payment of assessments, for re-grading and re-paving said street, and building a sewer therein; and former reports of the Assessment Committee thereon. By Mr. Anderson, member of the Committee on Laws. Laid on the table, and three times the usual number ordered to be printed.

J. Newkouse, Clerk.

The Joint Committee on Assessments and Laws, to whom was referred the petition of owners on the line of Chapel street and its vicinity, that the Corporation should assume the payment of the several assessments for paving and grading said street, and for building the

new sewer therein, together with the Street Commissioner's report on the same subject, beg leave respectfully to report:

That in the year 1836, May 16th, an ordinance was passed for re-grading and re-paving Chapel street, and the intersecting streets, which was carried into effect, in that and in the early part of the year 1837. The re-grading consisted in making a slope from Reade to Canal street, elevating the grade in some parts about three feet.

In the same year, and at the same time, an ordinance was passed to construct a new sewer in Chapel street, which was afterwards built, and is the present sewer in said street.

The petitioners ask to be relieved from the payment of part of the assessments for these two improvements.

Previous to the passage of these ordinances, Chapel street had been widened from near Leonard, southwardly to Reade street, by taking such portion from each side as would make it of the uniform width of 90 feet, throughout its whole extent—thus affording a handsome, convenient public avenue. The wide part of the street was provided with an excellent substantial sewer, from where the widening commenced to Canal street, built at the expense of the owners of the vicinity, and which answered all its intended purposes. The grade and pavement of this part of the street was also of good character and fair condition.

The propriety of an assessment for re grading and re-paving that part of the street which had been widened, and for constructing a sewer therein, cannot be questioned. The relief, therefore, upon the present petition ought to be made to apply to the original wide part of the street only, and the intersecting st eets.

Your Committee have been attended by the parties interested, and their counsel, and cannot but think that it presents strong equitable grounds for relief, as well as some legal points of importance. It is apparent that a great part of the value of the widening, grading and paving this street, enures to the public. Property in that street has not yet attained such prices as very liberally to compensate the owners for the inconvenience and expense to which they have been subjected in the improvement, and it is doubtful whether it will attain that point, until the line be extended at each end, so as to make a broad continuous avenue from the upper to the lower part of the city. At present it is but a link in the chain; and though presenting a broad carriage way for the public, does not induce that throng of foot passengers, which renders property in its line most valuable. The public thus enjoying the main benefit of the improvement, have never contributed any part of its cost.

It appears to your Committee, that but few cases have ever happened in our city presenting a more legitimate claim to an allowance of one third of the value of the buildings than this; and yet by some misapprehension the charge has been totally omitted, and the whole sum assessed upon the owners. In the case of William street, recently discussed in this Board, this allowance was distinctly presented by both Committees, as a main point in the case; and the reasoning of the Special Committee, who examined the principle somewhat at large, that in consideration of the additional convenience to the public, such additional allowance should be made, was adopted by a very strong vote of this Board. It is true that such assessment is left to the judgment of the Commissioners, but that they erred most grievously in their judgment in this matter, and that the individual owners are now paying from their own pockets, what ought to have been paid by the public, is quite apparent from the present uses and condition of the street. It may be alleged, however, that the time has passed in which this allowance could have been made a legal obligation; but in dealings with a community, by its representatives, your Committee conceive that liberal equitable principles should be the governing rule of action—not technical points; and that, therefore, be this fact as it may, if the conscience of the community be bound, a misapprehension on the part of its agents should never be allowed to make an injury to any citizen. It appears, also, from the evidence presented to your Committee, that though the grading of the street was contracted to be completed in the month of ———, 1836, it was only partially effected at that time; and that during the whole of the succeeding winter the street was kept in a wet, unwholesome, and almost unpassable condition; that owners of property were consequently compelled to make deductions of rent. In some cases their houses were untenanted; and in many instances considerable expense was incurred in keeping the property from injury by the overflow of water. Besides all this, some individuals, worn out by the delays of the contractor, filled in the side walks at their own expense; thus doing the contractor's work, and paying the contractor for it in addition. Had the work been done according to contract, the accruing rents thus lost, might, in many cases, have equalled the assessments the owners are now called upon to pay. No allowance has ever been made for this damage, nor for the expense of filling in what the contractor ought to have filled in, under his contract. However great was the inconvenience, the owners were without remedy, except through the Corporation. Your Committee are not aware that the law would allow any suit by the owners against the contractor—nor should they have been exposed to the necessity of sueing him. His contract is with the Corporation, and not with the proprietors on the street; and thus they were compelled to stand by, suffering month after month by this gross negligence. The Corporation, in matters of this kind, is, your Committee are aware, an agent. But receiving from one and paying to another, is not all its duty. A careful endeavor to carry out the whole business in such manner as may best subserve the interest of the public, and of the individuals who pay for the improvement, is a part, and the highest part of its duty. The Corporation is not only an agent, but a trustee, and a guardian of all these interests; and, as such, should be prompt and faithful in the discharge of its duty. Herein your Committee think the Corporation has failed. A prompt exercise of its power might have saved these owners large sums of money, and more, possibly, (though your Committee have made no estimate of the amount,) than they are now called upon to pay.

It appears also that the owners on the wide part of the street, very generally remonstrated against altering its grade; but, as has been stated, were induced to soften their opposition, upon representations made to them by a member of the Corporation, and its officers, while acting officially on the matter; that, from the then peculiar state of the city, the expense would be little or nothing. These opinions, your Committee doubt not, were honest and sincere; and they would not press this fact as affording the shade of a legal point; but they do think it of some importance as an equitable consideration, when taken in connection with others of stronger character. The petitioners were thus certainly induced to act upon anticipations which were not realized, which anticipations were founded upon the opinions of those who were necessarily best conversant with the subject; and might have acted otherwise if no such opinions had been thrown out.

As to the sewer, your Committee have been unable to discover from the report of the Street Commissioners, who had personally examined the old sewer, or from any of the testimony, the necessity for constructing a new sewer. The measure, however, was examined at the time in the proper manner, and passed upon; and has thus (though this point is denied by the petitioners and their counsel,) become, as your Committee believe, a matter of regular assessment, if such assessment be lawful.

It seems to your Committee, however, to present a strong case for the equitable consideration of the Board.

The builders of the old sewer, and others who had examined its condition, appeared before your Committee, and your Committee have no hesitation in saying, that a more substantial piece of work has not been constructed at any time in our city, nor one better answering the purposes for which it was intended. It was of sufficient size for all purposes, having a bottom, sloping to the centre, with perpendicular sides to the springing of the arch. Consequently, lateral sewers could be let into the common sewer at a point no great distance above the bottom, thus allowing the construction of cellars almost as deep as the sewer itself. The work was altogether so good, and so well adapted to its purposes, that the superintendant of the new sewer was induced, as well by the advice of some of the inhabitants of the Ward, as by his own sense of the excellence of the old work, to arrest the progress of the new sewer, until the proper authorities could again make an examination, in the hope that the old work might be suffered to remain.

The present sewer is circular in its form, and rests on the bottom of the former, which was not taken up. It is consequently not as deep, by from 4 to 8 inches, as the old sewer; and its circular form does not present lateral drains, to be let in much below the centre. The inhabitants are thus prevented from making as deep cellars as they might have done had the old sewer been allowed to remain; and cellars, which were dry with the old sewer, have been occasionally flooded since the construction of the new. In one instance, a proprietor, after constructing a sewer from his premises, parallel to the public sewer, for some two hundred feet, in order to gain a proper declination, was compelled to cement the whole of his cellars, which had been formerly dry.

The petitioners also aver, that the new sewer is of bad workmanship—has already burst in many places, and must ere long require extensive repairs.

Now if these be facts, and the Corporation has the right, at its will and pleasure, to take up a substantial sewer, already built by the inhabitants, and to construct a new one, at their expense, how long will it be ere a third assessment shall be levied upon them to replace the present insufficient work?

The inhabitants, one and all, assert that they are not as well off with the new sewer as with the old one; and the anomaly is thus presented of an assessment for a *benefit*, when in truth a *damage* has been sustained.

The reports of the Assessment Committee have already presented to the Board the large sums in which this part of the street has already been taxed for improvements of various kinds. Your Committee will only observe that the fact deserves the kind consideration of the Board.

Your Committee have already observed that they were attended by the counsel of the petitioners. This gentleman presented to your Committee a written argument, which, at the instance of the Committee, was replied to by the counsel of the Corporation.

Your Committee have examined the arguments of counsel with care, and present the following as the points appearing to them to deserve most attention.

The counsel for the petitioners contends that the power of pitching and paving streets, and building and altering sewers, at the expense of the parties benefited, being a power conferred by statute, when once exercised, is exhausted; and 2dly—that by the true construction of the statute of 1813, sections 175 and 176, the assessment must first be made and the money collected, before the improvement be commenced.

Your Committee have examined the statute in connection with these opinions, and cannot say that they believe much weight ought to be attached to the first point, so far as the pitching and paving of streets is concerned; but as to the building of sewers, think the opinion carries with it much weight.

The law relating to the subject (vol. 2 R. S. p. 407, sec. 175.) reads thus:

"And be it further enacted, That it shall be lawful for the said Mayor, Aldermen, and Commonalty, to cause common sewers, drains, and vaults to be built in any part of the said city; and to order and direct the pitching and paving the streets thereof, and the cutting into any drain and sewer, and the altering, amending, cleansing, and scouring of any street, vault, sink, or common sewer, within the said city, at the expense of the parties benefited."

The powers thus to be exercised by the Corporation, at the expense of the persons benefited, are—1st, to cause common sewers, drains and vaults to be built. 2d, to pitch and pave streets. 3d, to cut into any drain or sewer. 4th, to alter, amend, cleanse, and scour any street, vault, sink, or common sewer; and a fifth power is added, not contained in the above extract, to raise, reduce, level, or fence any vacant lot.

The terms alter and amend, apply, in the statute, both to sewers and streets. Now, in the opinion of your Committee, these terms can fairly be made to apply to, and in fact be the precise things meant in repaving, and re-grading a street; but they doubt much whether they can be made to apply to the taking up, the destruction of a sewer already built, at the expense of the parties benefited, and replacing it with one of different form and construction—inasmuch as it is not an alteration or amendment, but a total destruction. If this be so, your Committee may well admit that the Corporation having once built a sewer at the expense of the inhabitants, the power to build again at their expense is exhausted, and that the power is thereafter limited to altering and amending only, at the expense of the persons benefited.

But your Committee think there is as much, if not greater force, in the second point urged by the counsel for the petitioners. That the assessment must be made and the money collected, before the improvement be commenced. By the 176th section, the next succeeding section to that in which the power to pitch and pave streets and build sewers, is contained, it is provided "that, if upon completing any such regulation," it shall appear that a greater sum of money had been, *bona fide*, expended in making such regulation than the sum es-

timated, and collected as aforesaid, it shall be lawful to make a new assessment for the balance, and if more had been collected than was necessary, the surplus should be refunded.

Now it is urged by the petitioners, and with great reason, as it appears by your Committee—that, had such assessment been made before the improvement commenced, as they contend to be the true meaning of the Act, this body would have hesitated in passing any ordinance imposing so great an amount upon them, when they had already been assessed so largely for other improvements; and that they themselves would have had such positive information in their possession as would have enabled them to meet the question with such measures on their part as would have defeated it altogether, or at least to so far modify the improvement as would have made it less onerous.

But a more controlling point, it appears to your Committee, is to be found in the Act of April 16, 1816 (L. rel. to City of N. Y., p. 746.) This Act recites in the preamble, that the opening and improving streets not unfrequently makes it necessary to elevate or depress streets already regulated; and that buildings already erected, according to the previous regulation, may be damaged by such new regulation; and that there is no mode by which such damage can be appraised. And then directs in its 1st section, that the Commissioners of Estimate and Assessment shall, in all cases, obtain from the Corporation of New York, a profile or plan, showing the intended regulation of such street, and of the adjacent streets, as to the elevation or depression thereof, after such improvement; and if, in their opinion, such intended regulation will injure any building or buildings, not required to be taken down, they are bound to assess the damage. This is the precise case of the wide part of Chapel street and the intersecting streets.

Now, the ordinance for widening Chapel street was passed December 31, 1833, and ordered to be carried into effect the 15th of May, 1836, by resolution adopted Jan. 28, 1835. The ordinance to re-grade the street was passed May 16th, 1836; and to rebuild the sewer the same time, 16th May, 1836. In the opinion of your Committee, the widening, re-grading, re-paving, rebuilding the sewer, and extending its length, are so far simultaneous operations, or at least have followed each other so immediately, that, in the judgment of law, they may be pronounced *but one whole improvement*, however broken up by separate and distinct ordinances of the Common Council. In fact, the whole series of reports in these various measures, will show that, in the mind of the Common Council, it was but *one*. All subsequent reports refer to previous reports, and constant allusions and references are made throughout to this fact.

If this be so, then upon the very first ordinance to widen the street, the Commissioners should have been furnished with a profile of the grade, as it was afterwards carried out, in order that the petitioners might have had their damages assessed by reason of such grade. This was not done—on the contrary, the profile of the street as it then stood, was put in the hands of the Commissioners, and thereby your Committee consider that the faith of the Corporation was pledged to that profile and to no other; and the attempt to assess for a new grade and pavement, because it was directed by a subsequent ordinance, may fairly be doubted to consist with the fair faith of the city. May it not be said that the petitioners were thus tricked out of their claim for damages, caused by the change of grade, by this splitting up of ordinances.

Your Committee having thus given, perhaps, too much at large, the leading features of the case, offer the following as a summary of their conclusions:—

1st. That the widening, grading and paving Chapel street, is essentially more a public benefit than a benefit to the individuals assessed.

2d. That, as such, the charge upon the City Treasury of one third the value of the buildings, ought, in justice and equity, to have been made.

3d. That though the time has elapsed when this could have been made a legal charge, it is never too late to do justice, and that the mistake in judgment of the Commissioners, when palpable, should not be allowed to work any injury to any citizen.

4th. That the neglect of the contractor to fill in the street within the time fixed by his contract, has caused large losses to the petitioners; and that the Corporation having failed to collect these damages from the contractor, is bound, in justice and equity, to indemnify the petitioners.

5th. That the petitioners were informed, by those who necessarily are the most competent authority on such subjects, that the improvement would cost them nothing, and acted differently under this information from what they would have done, had they anticipated this assessment.

6th. That the old sewer was in all respects sufficient, requiring only some few repairs, and that the new sewer does not answer the same purposes as effectually.

7th. That the Corporation having, in the year 1820, constructed, at the expense of the neighborhood, a good and sufficient sewer, it is a question whether its power was not thereafter limited to alterations and amendments only, at their expense, and that therefore the taking up the old sewer and constructing a new one in its place, has become a city charge.

8th. That it is a matter of doubt whether, under the 175th and 176th sections of the Act of 1813, an assessment should not have been made before the improvement was commenced, (as is always done in the opening and extension of streets,) in order that the Common Council might more accurately judge whether the improvement would be beneficial or not.

9th. That the widening of Chapel street, the regrading and re-paving of the same, and building a sewer therein, though done under different ordinances, *is but one whole improvement*, and that under the act of April 16, 1816, the owners of property affected by the re-grading of the wide part of Chapel street, should have been allowed the damages sustained by them in consequence of such re-grading.

Your Committee therefore recommend the following resolutions:—

Resolved, That the Comptroller draw warrants in favor of the owners of property on Chapel street, between Canal street and the centre of the block, between Franklin and Leonard streets; and also on the intersecting streets intermediate, for the sums paid by them for the building of the new sewer, and the recent regulating and paving of Chapel street, and streets intersecting the same.

Resolved, That the assessments upon property, as above, which have not been paid, be remitted, and that the Comptroller draw his warrant for the amount in favor of the contractor.

DANIEL F. TIEMANN,
C. C. CROLIUS, Jun.
FREEMAN CAMPBELL,
DAVID GRAHAM, Jun.
ABEL T. ANDERSON,
M. B. HART,
} Committee on Assessments and Laws.

OPINION OF ALEXANDER HAMILTON,

Of Discretion in Assessments and Taxation.

The biographer of the great patriot and statesman, Alexander Hamilton, on the subject of Assessments, thus remarks and quotes that great man, "He was governed by a consideration to which he attached great weight."

"The arbitrary system of Assessments."

"Do we imagine, (he had remarked in the Constitutionalist) that our Assessments operate equally? Nothing can be more contrary to the fact. Whenever a discretionary power is lodged in any set of men over the property of their neighbors, they will abuse it. Their passions, prejudices, partialities, dislikes, will have the principal lead in measuring the abilities of those over whom their power extends; and Assessors will ever be a set of petty tyrants,—too unskilful, if honest, to be possessed of so delicate a trust,—and too seldom honest to give them the excuse of want of skill. The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands. Whatever liberty we may boast in theory, it cannot exist in fact, while Assessments continue. The admission of them among us, is a new proof how often human conduct reconciles the most glaring opposites; in the present case, the most vicious practice of despotic governments with the freest institutions and the greatest love of liberty."

It will be borne in mind, that Mr. Hamilton used these words in 1783, when Assessments were imposed for different and various purposes, but the principle is the same.

FIRST STEAM BOATS.

We give below a copy of the act passed by the Legislature of this State in 1787—fifty-four years ago What a change this short space of time has produced: The act is, under all circumstances, a great curiosity! This act is to be found in the 2d Vol. Laws State o New York, published in 1789, p. 116.

An ACT *for granting and securing to* John Fitch *the sole Right and Advantage of making and employing, for a limited Time, the Steam-Boat by him lately invented.*

Passed 19th March, 1787.

WHEREAS *John Fitch*, of *Bucks'* County, in the State of *Pennsylvania*, hath represented to the Legislature of this State, that he hath constructed an easy and expeditious Method of impelling Boats through the Water by the Force of Steam, praying that an Act may pass, granting to him, his Executors, Administrators, and Assigns the sole and exclusive Right of making, employing, and navigating all Boats impelled by the Force of Steam or Fire, within the Jurisdiction of this State, for a limited Time: Wherefore, in order to promote and encourage so useful an Improvement and Discovery, and as a Reward for his Ingenuity, Application, and Diligence;

I. *Be it Enacted by the People of the State of* New York, *represented in Senate and Assembly, and it is hereby Enacted by the Authority of the same*, That the said *John Fitch*, his Heirs, Executors, Administrators and Assigns, shall be, and they are hereby vested with the sole and exclusive Right and Privilege of constructing, making, using, employing and navigating a and every Species or Kind of Boat, or Water Craft, which may be urged or impelled through the Water by the Force of Fire or Steam, in all Creeks, Rivers, Bays and Waters whatsoever, within the Territory and Jurisdiction of this State, for and during the full End and Term of *fourteen* Years, from and after the present Session of the Legislature.

II. *And be it further Enacted by the Authority aforesaid*, That if any Person or Persons whomsoever, without being properly authorized by him the said *John Fitch*, his Heirs, Executors or Administrators, shall make, use, employ or navigate any Boat or Water Craft, which shall or may be urged, impelled, forced or driven through the Water by the Force, Power or Agency of Fire or Steam as aforesaid, within the Territory or Jurisdiction of this State, every Person or Persons so offending against the Tenor, true Intent and Meaning of this Act, for each and every such offence, shall forfeit and pay unto the said *John Fitch*, his Heirs, Executors or Administrators, or to such other Person or Persons, as he the said *John Fitch*, his Heirs or Assigns, shall authorize and empower for that Purpose, the Sum of *One Hundred Pounds*, to be recovered by Action of Debt, in any Court of Record within this State, wherein the same may be cognizable, with Costs of Suit; and shall also forfeit to him the said *John Fitch*, his Heirs or Assigns, all such Boats or Water Craft, together with the Steam Engine, and all the Appurtenances thereof, to be recovered in Manner aforesaid, with Costs of Suit.

III. *Provided always, and be it further Enacted by the Authority aforesaid*, That neither this Act, nor any Clause, Matter or Thing therein contained, shall be taken, deemed or construed to prohibit or prevent any Person or Persons from making, using, employing or navigating, within this State, any Kind of Boats or Water Craft, heretofore invented, or hereafter to be invented, on any other Principles, Construction or Model, which may be urged, impelled or driven along through the Water, by any other Power, Force, Agency or Means, except Fire or Steam.

ASSESSMENTS.—10th WARD.

We have understood that this ward has not been depredated upon by the municipal officers; that not a house has been injured, or a foot of land confiscated by a street opening, widening, or extending, in the 10th ward. The representatives of this ward deserve credit for keeping such a sharp look out for the interests of their constituents.

PRESIDENT HARRISON'S INAUGURAL.

We extract from the Inaugural Address of this worthy Chief Magistrate, some most excellent declarations. We shall occasionally make farther extracts. These bespeak a sound head and a good heart.

Before concluding, fellow citizens, I must say something to you on the subject of the parties existing in our country. To me it appears perfectly clear that the interest of that country requires that the violence of the spirit by which those parties are at this time governed, must be greatly mitigated, if not entirely extinguished, or consequences will ensue which are appalling to be thought of.

If parties in a Republic are necessary to secure a degree of vigilance sufficient to keep the public functionaries within the bounds of law and duty, at that point their usefulness ends. Beyond that, they become destructive of public virtue, the parents of a spirit antagonist to that of liberty, and eventually, its inevitable conqueror. We have examples of Republics, where the love of country and of liberty, at one time were the dominant passions of the whole mass of citizens.—And yet, with the continuance of the name and forms of free government, not a vestige of these qualities remaining in the bosom of any one of its citizens. It was the beautiful remark of a distinguished English writer, that "in the Roman Senate Octavius had a party, and Anthony a party, but the Commonwealth had none." Yet the Senate continued to meet in the Temple of Liberty, and to talk of the sacredness and beauty of the Commonwealth, and gaze at the statues of the elder Brutus and of the Curtii and Decii.

And the people assembled in the forum, not as in the days of Camillus and the Scipios, to cast their free votes for annual magistrates or pass upon the acts of the Senate, but to receive from the hands of the leaders of the respective parties their share of the spoils, and to shout for one or the other, as those collected in Gaul, or Egypt, and the Lesser Asia, would furnish the larger dividend. The spirit of liberty had fled, and, avoiding the abodes of civilized man, had sought protection in the wilds of Scythia or Scandinavia; and so, under the operation of the same causes and influences, it will fly from our capitol and our forums. A calamity so awful, not only to our country, but to the world, must be deprecated by every patriot; and every tendency to a state of things likely to produce it immediately checked. Such a tendency has existed—does exist. Always the friend of my countrymen, never their flatterer, it becomes my duty to say to them from this high place to which their partiality has exalted me, that there exists in the land a spirit hostile to their best interests—hostile to liberty itself. It is a spirit contracted in its views, selfish in its objects. It looks to the aggrandisement of a few, even to the destruction of the interests of the whole. The entire remedy is with the people. Something, however, may be effected by the means which they have placed in my hands.

It is union that we want, not of a party for the sake of that party, but a union of the whole country for the sake of the whole country.

CONTINUATION OF THE PROPOSED BILL TO BE OFFERED TO THE LEGISLATURE TO BE PASSED INTO A LAW.

Sec. It shall be the duty of commissioners authorized to make any estimate and assessment for any improvement recited in this act, to give notice to the owner or owners, and occupant or occupants, of all houses and lots, and improved or unimproved land affected thereby, that they have completed the estimate and assessment, and will meet at the commissioners' office in the city of New York, to hear the objections of all persons interested, to the said estimate and assessment, who may appear and make objections thereto.

Sec. Such notice may be served personally, or by leaving the same at the dwelling-house of the owner and occupant, with any person of suitable age and discretion belonging to the family of such owner and occupant, or by leaving the same at the place of business of such owner and occupant, with the person having charge of the business of such owner and occupant.

Sec. The notice provided for in the two last preceding sections, shall state the amount of the assessment or assessments, the street where the property is situate, and the day and hour on which the commissioners will meet to hear objections to the estimate and assessment, and state the place of meeting, and shall be signed by the chairman of such board of commissioners.

Sec. It shall be the duty of the commissioners to employ a suitable person at a reasonable compensation, to make service of the notices provided for by this act; and such person shall make oath or affirmation to the due service of each of said notices, in a general return to be made to the said commissioners, who are hereby authorized to administer such oath or affirmation, and to endorse the same upon the said general return of due service, which shall be appended to the assessment list.

Sec. It shall be the duty of the commissioners to take down in writing the objections which any person interested in opposing the assessment may make thereto, at the time when such commissioners shall meet to hear objections, and shall carefully read the same over to such objector, who, if he approve the same as correct, shall sign his name thereto, and such objections shall be attached to the assessment list.

Sec. Whenever houses and lots, or improved or unimproved lands, shall be assessed for any improvements specified in the first section of this act, it shall be the duty of the commissioners to assess all property belonging to one and the same owner or owners, which adjoins and is held in one parcel or tract, in one sum, unless required by such owner or owners to assess the same separately, which requirement shall be in writing, and be signed by the person or persons making it, and shall be appended to the assessment roll.

To be continued.

COMPTROLLER'S REPORT AGAIN.

We have not had time to examine this report and compare it with former reports. We believe, however, that the expenses of the city are continually increasing, and in looking throu h the report, we do not yet see that there is any diminution of expenses in any of the branches of the departments. The account is made up to the first day of January, near two months and a half before it is published. I do not think the Comptroller would like that a law should be passed by the Legislature prohibiting the issuing of any more bonds unless provision is first made for those which are now out. There is a large amount of street opening expenses, such as surveyors' fees, counsel fees, commissioners' fees, &c. &c., which belong to last year's account, which the anti-assessment citizens have kept in abeyance. These would have swelled the amount a great many thousand dollars! These are not yet paid.

We give below the section of the law passed in 1813, authorizing the issuing of bonds for awards for street openings. This operation, we believe, authorized if the street proceedings are legal, but the bond should bear on its face the authority under which it is issued. We, however, doubt the authority of the corporation altogether in the matter of doing that in the Board of Aldermen and Assistants, which was given to the Mayor, Recorder, and others to do. There would be just as much propriety in the Board of Assistants acting as supervisors of the city and county of New York as in this matter; there is no law for either. If the law authorizes a select class to do a certain act, and others join in it, the act is void. This question is, however, before the courts, and will probably soon be decided.

And be it further enacted. That all debts and expenses incurred by the said mayor, aldermen and commonalty, for or on account of the opening of any street, avenue, square or public place, or any particular part or section of any street or avenue laid out by the said commissioners of streets and roads in the city of New York, under and by virtue of the act, entitled "an act relative to improvements, touching the laying out of streets and roads in the city of New York, and for other purposes," passed April 3d, 1807, may be funded at such interest, in like manner and under the same limitations and restrictions, as is authorized by the act, entitled "an act to regulate the finances of the city of New York," passed June 8th, 1812. 2 vol. R. L. 1813, page 422, sec. 190.

FORMATION OF THE ISLAND OF NEW YORK.

Persons who have been in the habit of digging cellars in the lower part of the city, and those who have sunk wells, will no doubt recollect that the layers or stratas of sand dip toward the ocean, and appear to have been made by the washing up of successive layers of earth by the waters. We shall, in a future number, give an account of the Geological formation of the Island from the reports of the State Geologists.

AMENDMENT OF THE ASSESSMENT LAWS.

In 1839, the venerable Morgan Lewis, Ex-Governor of the state of New York and Ex-Judge of the Supreme Court, Murray Hoffman, now assistant Vice-Chancellor, and Alfred A. Smith, now Comptroller of the City of New York, and several others, petitioned the Legislature of the state for an alteration of the assessment laws of this city. The petition was presented in the Senate of this state by that distinguished citizen and able Senator, Grelian C. Verplanck, and was referred to a committee; it was, however, late in the session, and was not therefore acted upon. When Mr. Smith signed this petition, he stated a case of assessment abuse of his own knowledge, and of the sale of a lot of ground for building a fence around it by the Corporation, but the owner had never heard of the assessmeut or the fence either, until after his lot had been sold.

The worthy comptroller has given the public in his present report a statement of all the street openings, widening and extending, from 1811 to 1840; it is a very accurate exhibit, and he is entitled to credit for making it at this time.

We had prepared several articles for this day's paper, which the other lengthy documents will compel us to omit until the next number. Among these is the minority report of Assistant Alderman Bradhurst, in relation to the contemplated extravagant expenditure of public monys for extensive additional buildings on Blackwell's island.

Mr. Assistant Bradhurst is right in this matter; he is well informed upon this subject, having the advantage of the advice of his worthy father, John M. Bradhurst Esq., one of our most estimable citizens, who is one of the commissioners of the Alms House, and understands well the whole subject, aud being a thorough business man, and besides a prudent, safe and deliberate, careful, calculating man, he has looked into the whole matter; and his opinion is decidedly against this great expenditure. The city government should not extend their engagements at this time. The finances of the Corporation will not authorize it. It is well to wait until the Croton expenses shall be first provided for, before *any* new outlays are proceeded in.

We have given in the present number the Constitution of the United States and the Constitution of the State of New York; valuable public documents, which should be carefully treasured up, and often read by every citizen.

We have commenced in this number the publication of the City Charter proceedings, and shall continue them in Chronological order from 1657 to 1841.

We have never met with Governor Nicoll's Charter of 1665. The substance of it is recited in the petition of the mayor and aldermen to Governor Dongan in 1683, which is contained in the present number. We shall endeavor to obtain a copy of it from the secretary of state at Albany, and publish it.

ERRATUM.

In our last number, page 9, third column and third paragraph of the written opinion of Judge Savage, late Chief Justice of the Supreme Court of the State of New York, on the validity of Trusts created by last Will and Testament, to pay over the interest and income of personal estate under the provisions of the Revised Statutes, is a typographical error for the word "one of $15,000," read one of $5,000. It is an invaluable opinion, and therefore we are thus particular.

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THE CHARTER OF THE CITY OF N. YORK.

We have begun at the foundation. We have gone back to the first charter ever granted upon this island, when it was called the island of Manhattoes, and when this city was called by the name of Amsterdam in the New Netherlands. The first charter granted was in 1657; it is very brief, and contains very limited grants of power.

The next important proceeding is the capture of the city by the English in 1664. We give the articles of capitulation; and next, in chronological order, the order or sentence of confiscation of the property of the subjects of the United Belgicke Provinces in this city by Governor Richard Nicolls. This last document we have never found in print. It is recorded in a book kept in Fort James, in 1665, which is now in the surrogate's office of the city and county of New York, and marked No. 1. The Dutch charter we have copied from Kent's Notes on the Charter; and the articles of capitulation from Smith's History of New York; the subsequent proceeding of Governor Andros, and Governor Dongan, from the manuscript record of the Common Council, in Books No. 1 and 2; and the charter or patent of Governor Dongan we have copied from Kent's notes on the charter, which the Chancellor remarked that he had taken that in his book from a printed copy published in 1792. There is a manuscript copy on record in the office of the Secretary of State, in Book of Patents, vol. 1, pp. 278 to 309. From all we have been able to learn we believe that the charter of Dongan was sent to England for confirmation, and not returned. We shall continue the publication of the charter in chronological order up to 1830, manuscript as well as printed. These papers in continuous order in which they were made, will be interesting, and are not all of them anywhere else thus to be obtained in print. It is well for the citizen to know what is in the charter, and also for the members of the Common Council and officers of the Corporation to have the whole of the documents before them, that they may be able to see what powers they have, and thereby be able to keep within the powers granted them.

(*From the Evening Star of 11th inst.*)

IMPORTANT STREET ASSESSMENT CAUSE IN THE COURT OF CHANCERY.

On Tuesday morning came up for argument before the Hon. Murray Hoffman, Assistant Vice Chancellor, one of the numerous assessment causes now pending. Lewis H. Sanford, one of the counsel for the complainants, opened with an able argument of six hours, in which he went into the whole question very fully.—When he had closed the court adjourned. On Wednesday morning, Peter A. Cowdrey, Esq., counsel for the corporation, commenced in reply, and continued his argument until 2 o'clock. He was followed by W. M. Holland, Esq., one of the counsel for the complainants. Mr. Holland spoke until the hour of adjournment, and resumed his argument again this morning, and continued speaking until our paper went to press.

The question of the legality of these assessments is now in a fair way of being tested. This is the first full argument which has been had upon any of those questions; and the corporation counsel remarked to the court that both parties now have the opportunity of a full and deliberate argument. The court listened to the arguments with great patience and attention; authorities were cited in great numbers by the complainants' counsel.

In Chancery—Jacob Westervelt et al., *vs.* the Mayor, Aldermen, and Commonalty of the City of New York. Complainants' points:

First—The assessment upon the complainants' lands for opening 31st street, from the 10th Avenue to the East River, is illegal and void, and should be set aside, because,

I. Thirty-first street, from the 9th avenue to the *East River*, having, previous to these proceedings, been ceded and conveyed by the owners thereof to the corporation, and accepted by the latter, and used and treated by them and others as an open and public street, the corporation had no authority or jurisdiction to institute or conduct proceedings under the statute for opening that part of such street by commissioners.

And all such proceedings, and all assessments under the same upon lots fronting on that part of 31st street, are null and void.

II. There was no resolution or action of the corporation authorizing either the opening in question or the application for the appointment of commissioners of estimate and assessment, or any of the proceedings complained of. The general resolution for opening the streets not previously opened, up to and including 42d street, not only excludes 31st street, west of 9th avenue, but does not authorize a separate proceeding for opening any single street.

It was passed for the express purpose of preventing any such separate proceeding.

And it does not direct or authorize any application to the supreme court for the appointment of commissioners.

III. The above resolution, under which the opening in question is justified by the corporation, is null and void, and inoperative, because it was acted upon and adopted by the common council and approved by the Mayor, under the organization prescribed by the act of 1830, amending the charter of the city. The opening of streets is a *judicial power* of the corporation, and cannot be exercised by the common council and the Mayor under that statute.

If they can exercise it at all, it must be done in the manner prescribed by the act of 1813, by which the power is conferred.

1. That this power is a *judicial* not a *legislative* power.

2. The power granted to the corporation of the city to decide upon the opening of the streets, &c., laid out by the commissioners under the act of 1807, can be exercised only in the manner, and *by the integral parts of the corporate body* expressed in the grant.

3. This power is conferred upon the corporation by *the act of* 1813; and was to be exercised by the *Mayor, Recorder, Aldermen, and Assistant Aldermen, convened in* common council.

4. The act of 1830, amending the city charter, does not affect the power in question. It cannot be exercised in the manner prescribed for the *legislative powers* in that act.

IV. The resolution in question, if within the act of 1830, is also null and void, because it directed "a specific improvement involving the assessing of the citizens of the city," and the vote thereon was not taken by ayes and noes, in either Board of the Common Council. By the seventh section of that statute, the vote on such resolution could not be taken in any other manner.

V. There was no publication of the resolution, the reports of committees, or of the ayes and noes on the votes in relation thereto, as is expressly required by the seventh section of the act of 1830.

VI. The assessment is unconstitutional and void, because it is an indirect mode of taking private property for public use without compensation.

Second.—The respective assessments charged upon the complainant's lands, for the excavating and regulating 9th avenue from 29th to 33d streets, and the grading and regulating of 31st street from the 9th avenue to the Hudson river, are illegal and void, and should be set aside by this court.

I. The ayes and noes were not called on taking the vote upon these improvements, either upon the alleged resolutions, or the ordinances on the confirmation of the assessments, or in any of such votes.

II. The ordinances in question were never read in either board, or signed or certified by any officer of either board, or by the Mayor. They never were adopted in any manner.

III. There was no publication of any one of the resolutions, ordinances, reports of committees, or ayes or noes on taking the votes, upon either of these improvements.

IV. There was no estimate of the expense of these improvements ever made, nor any assessment till after the completion of the works in question. And as there is no authority for making such assessments except before doing the work, and conjointly with such estimates, the assessments in question are for that cause also illegal and void.

V. The assessors being officers of the corporation were not "competent disinterested persons," and therefore not authorized to make any assessment.

VI. No assessment was in fact ever made or "certified in writing" to the Mayor, &c., in either case. The pretended assessment not being in any manner certified or authenticated as required by law.

VII. The confirmation of these assessments is a judicial act or power of the corporation which must be done by the Mayor, &c. in Common Council convened, and cannot be done by the Mayor, Aldermen and Assistants, acting separately as distinct bodies. And as the assessments are alleged to have been confirmed in that manner, the confirmation thereof is a nullity.

VIII. The confirmation alleged, if not void for the reason last stated, is null because the resolutions therefor were not signed or certified by any corporate officer, were not taken or adopted by ayes and noes in either Board, and neither the votes, reports, or resolutions in relation thereto were published.

IX. The assessment for regulating, &c. the 9th Avenue is also illegal, because the lands in question, on which it is imposed, are not situated thereon, but are on 31st street, near the 10th avenue, and not within the range of such assessment. The same lands being grievously assessed for the 31st street regulating before mentioned.

ASSESSMENT DIFFICULTIES.

Some short time since, Alderman Graham offered the following resolution in the Board of Aldermen which was after some discussion adopted.

"Alderman Graham offered the following preamble and resolution:—

"Whereas, grave and important questions have arisen as to the legality and regularity of the proceedings of the Corporation, in opening, grading and paving streets, constructing sewers, and making other improvements, some of which have been presented to various courts of law and equity, and others have been brought before the Common Council on petition: And whereas, it is due to the interests of the city and rights of parties aggrieved, that the complaints referred to should be maturely considered by the Common Council: And whereas, such complaints involve difficult and complicated questions of law: Therefore—

"Resolved, That it be referred to the Counsel of the Corporation, in conjunction with two eminent legal gentlemen, to be designated by the Common Council, to examine the said questions in reference to all the proceedings in opening, grading, and paving streets, constructing sewers, and making other improvements, which have been, or may, before the 10th of March next, be brought before the courts or the Common Council, and report their opinion thereon on or before the 1st day of April next; and further, to report whether a re-assessment can legally be ordered or applied for in cases where the same shall be deemed just, and whether any and what amendment of the law is necessary for that purpose."

"Alderman Benson opposed the project of Alderman Graham, and the latter defended his preamble and resolution, which were modified, after a very prosy debate, and referred to a special committee, consisting of Aldermen Graham, Woodhull and Rich."

It would no doubt be satisfactory to the persons who have suffered by the almost numberless abuses which have been practised, in the imposition and confirmation of ruinous assessments, to have the whole subject referred to a commission composed of the three venerable-ex-chief justices of the Supreme Court of this State, viz.: James Kent, Ambrose Spencer, and John Savage. A commission composed of these three gentlemen, would be satisfactory to everybody interested What a combination of talent, of experience and wisdom, a Bench composed of these three ex-judges would make! The citizen, in standing in the presence of such a Court, would feel a reverence for the dignity of human nature, and would view the opinions of such a commission with the most profound respect, and yield to it unqualified submission. These venerable men

are rich in knowledge, full of wisdom, of experience, and of stern and undaunted integrity. They may be said to be an ornament to the human race.

Professor Good, in speaking of the human understanding, quotes Lord Bacon and Adam Locke, thus—

"All our knowledge," *says Lord Bacon*, "is derived from experience."

"Whence," *enquires Mr. Locke*, "comes the mind by that vast store which the busy and boundless fancy of man has painted on, with an almost endless variety? Whence has it the materials of reason and knowledge? I answer, in a word, from *experience*. In this all our knowledge is founded; from this the whole emanates and issues."

The venerable ex-president, John Quincy Adams, in speaking of the New York University and of academic honors, remarked that it was no additional credit to Sir Humphrey Davy to be made a member of the Academy of Sciences in France, but it was a credit to the society to have such a member, and it would be a credit to our city to have a commission composed of these three citizens—it would be a credit to our country and to the present age.

Appointing Commissioners of Estimate and Assessment.

In a conversation we had a few days ago with that worthy citizen, Ex-Alderman Morss, he remarked, that many years ago, when the Chancellor sat upon the bench as one of the Judges of the Supreme Court, that Mr. Jones, the counsel of the Corporation of the City of New York, applied to the court to have three persons appointed commissioners for opening or obtaining a public street, and the counsel at the same time handed in to the court the names of three gentlemen to be appointed commissioners;—Judge Kent said, on this occasion, "well, well, Mr. Jones, this wont do, the court must have something to say about the appointment of commissioners. We will not appoint the persons you have named, but the court will select three suitable persons." The court accordingly named the commissioners.

Opening Streets Formerly.

When John-street was wanted to be extended to Pearl-street, in 1793, an application was made to the legislature for an act to authorize it. The legislature of the state was then sitting in the city, and before they would pass the bill, appointed a committee of seven of their members to view the premises. This fact we have from the lips of a distinguished citizen, the worthy Ex-collector of the Port of New York, Jonathan Thompson, Esq., now president of the Manhattan Company. It would be well if we had such cautious and prudent legislation now-a-days.

WASHINGTON CITY.

BOARD OF COMMON COUNCIL.

Washington, March 8, 1841.

All present except Messrs. Johnson, Bassete, Maddox, Houston, and Clark.

The following communication was received from the Mayor:

Mayor's Office, March 8, 1841.

To the Board of Aldermen and
Board of Common Council:

Gentlemen—On considering the bill which has passed the two Boards entitled "An act establishing fish docks, and repealing all laws relating thereto heretofore passed," and which has been laid before me for my signature, it appeared to me questionable whether the provision which grants to A. B. McLean (under severe penalties for its infraction) the exclusive privilege of using his wharf as a fish-dock for the space of four years, and of charging certain rates therefor, although the privilege is granted for and in consideration of a prospective bonus to the Corporation, does not constitute a monopoly not within the competency of the Corporation to grant. Although thus doubting the right of the Corporation to pass such a law, I hesitated to place my judgment in opposition to that of the two Boards, and I submitted the question of the legality of the grant to the counsel of the Corporation for his opinion thereon. I find by his reply, herewith enclosed, that he coincides with and confirms my own impression, that the act exceeds the just authority of the Corporation, and I find myself constrained therefore, most reluctantly, to withhold my signature from the bill, and to return it to the Board in which it originated, begging leave respectively to refer you to the opinion of the Attorney of the Corporation on the subject, and the reasons on which that opinion is founded.

Very respectfully, your obedient servant,

W. W. SEATON.

Sir—I have carefully examined and considered the act submitted to me by you entitled "An act establishing fish-docks, and repealing all laws relating thereto heretofore passed," and I am fully satisfied that the Corporation has no power to pass it.

The power of the Corporation over this subject can be found only in the general powers of police regulation, including that of guarding against and removing nuisances. And although in the exercise of this power it may unavoidably, to a certain extent, become necessary to grant to individuals the exclusive right, for limited periods, to exercise certain trades, or pursue certain occupations, yet it never could have been contemplated by Congress that this exclusive right should extend beyond the shortest practicable period, and then should be placed so as to invite competition, and to give an opportunity to others in their turn to exercise it.

The Corporation exercises the same right over slaughter houses, brick-kilns, &c. as they do over the subject of fish-wharves. They come under the same general power. So of all trades or occupations which affect the public health, or are or may become nuisances.

Congress could not have intended, in regard to all these trades, &c., to invest the corporation with power to grant the exclusive right to an individual to exercise them. Indeed, it may well be doubted if Congress itself has such power.

If this right—this exclusive right—can be granted for four years, why may it not for ten, and if for ten, why not for a hundred years? Yet the bare suggestion would startle every one, and the illegality of such a grant would be too obvious for any argument.

These views strike me as so conclusive, that I scarcely think it necessary to extend them.

I am, sir, with great respect, your obedient servant,

JOS. H. BRADLEY,
Attorney for the Corporation.

W. W. Seaton, Esq., Mayor, &c.

The communication having been read, the question was put, 'Shall the bill pass, notwithstanding the objections of the Mayor?" and decided in the affirmative as follows:—

Yeas—Messrs. Easby, Wilson, Stewart, Orme, Bacon, Bryan, Harkness, McDonnald, Byington, Van Reswick, and Hanly—11.

Nays—Messrs. Fulmer and Crandell—2.

So the bill was passed by a majority of more than two-thirds.

PRESIDENT OF THE BOARD OF ALDERMEN.

This officer, is by virtue of his office of President, in the absence, &c. of the Mayor, the acting Mayor, and Mayor in fact of the city,—and as such is required to sign his approval of all ordinances and proceedings of the Common Council presented to him, or if he disapprove, to return the same with his objections to the Board, in which the same originated, &c., within ten days.

The Mayor is, by the amended charter, vested with a power to veto any act of the Common Council which he does not approve of; under the old charter the Mayor was a member of the Common Council, and possessed no veto power. The acting Mayor possesses all the power, of the Mayor elected by the people.

The 15th sec. of the amended charter provides that, neither the Mayor or Recorder shall be a member of the Common Council after the 2d Tuesday of May, 1831.

The Vice-President of the United States is, by virtue of his office, President of the Senate; and so with the Lieutenant-Governor of the state of New York, he is, by virtue of his office of Lieutenant-Governor, President of the Senate of this state.

The President of the United States Senate vacates his seat before the adjournment of Congress and the Senate appoints a President *pro tem.*; so with the Lieutenant-Governor of this state. In case that the Vice-President is called to act as President, he would not take his seat in the Senate as President of that body, and so with the Lieutenant-Governor.

It is wholly inconsistent with the spirit of our institutions that one person should hold two offices, and pass upon the same subject-matter twice at the same time. This is far from being democratic.

It is said, we understand, by learned counsel, that if the president of the Board of Aldermen should not take his seat and preside at the meeting of the Board, that his seat would become vacant and consequently both offices would be affected. With great respect, we beg leave to differ in opinion. The seat of a member cannot become vacant by any such act or cause, any more than the Mayor's absence vacates his seat. The president *pro tem.* of the Board of Aldermen is not by virtue of his office, acting Mayor of the city, under any circumstances, and a president *pro tem.* would only sit in the absence of the president.

The practice of the worthy acting Mayor to preside as president of the Board under the amended charter, is certainly not parliamentary or even authorized by the charter. The acts of the Common Council under such proceedings, we believe, are void.

Comptroller's Report.

The Comptroller advances some doctrine in his report in relation to city stocks, which is not quite orthodox, as we believe. He says that the Croton Water stock was authorized by the people in their primary assemblies; so it was, to the extent of near six millions, but not to the extent of the present amount of stock, and we contend that any further increase of stock should be also submitted to the people at the next election. If the state cannot emit bills of credit, can they authorize others to do what they cannot do themselves? We are in favor of completing the Croton Water Works, because they have been begun, and as public stocks do not generally possess that confidence that these descriptions of paper have heretofore done, let those issued by the city be made as good as it has ability, and let there be no objection to it on the score of proper authority.

There is no property holder for the payment of this stock but the property belonging to the corporation of the city of New York, and so far as this will go to make the stock safe, it is so. The property belonging to the coporation cannot be alienated by the Mayor, Common Council, or officers of the corporation, nor by all of them combined.

THE COMMERCE OF THE CITY OF NEW YORK IN 1691.

The following is a copy of a petition presented to the Colonial Legislature in 1691, by the principal merchants of this city at that time. What a wonderful change has been produced in one hundred and fifty years.

To the Honorable their majesties Commander-in-chief and their majesties Council of The Province of New York. The petition of the merchants of the City of New York whose names are subscribed.

That by the navigation and traffic of New York, (allmost) the whole revenue for the support and maintainance of their majesties government of this province, doth arise and grow, and alltogether depend upon the same.

That by the importation of European goods from Boston and other places, the money, Bullion, Furs, and other returns, are drawn away from hence; whereby the merchants are disabled to send for goods directly from *England*, and by that means our number of shipping being decreased, our seamen diminished, and our trade discouraged; our provisions and other produces of the country, will lie upon our hands for want of exportation, and our neighbours will be able in a short time, not only to set their own price upon whatever goods they bring to us, but also upon such goods of our own production as they transport from us.

That the exportation of wheat to any of the neighboring colonies is a great detriment to this city and province, and the impoverishing and destruction of numbers of people, viz: Boatmen, Millers, Bakers, &c., who otherwise get a livelihood, and maintain their families out of the same. That the exportation of whale *oyl* taken and made in this province, otherwise than from this city, is manifestly hurtful to trade, and a general inconvenience to this city and province, our neighbors thereby reaping all the proffit and gain of the labor, hazard, and industry of the people of this government.

They therefore pray that the premis may be taken into consideration.

Rip van Dam,	Stephen Delancy,
Christopher Gore,	Richard Jones,
James Mills,	Thomas Newhan,
Charles Lodwick,	A Depeyster,
Samuel Brent,	John Barbaire.

ANCIENT CHARTER PROCEEDINGS

Continued from No. 2, p. 27.

CHARTER OF GOVERNOR DONGAN TO THE CITY OF NEW YORK.

1. Thomas Dongan, lieutenant-governor and vice-admiral of New York, and its dependencies, under his majesty Ja es (the second) by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, supreme lord and proprietor of the colony and province of New York, and its dependencies in America, &c. To all to whom this shall come, *sendeth greeting: Whereas*, the city of New York is an ancient city within the said province, and the citizens of the said city have anciently been a body politic and corporate; and the citizens of the said city have held, used, and enjoyed, as well within the same, as elsewhere, in the said province, divers and sundry rights, liberties, privileges, franchises, free-customs, pre-eminences, advantages, jurisdictions, emoluments, and immunities, as well by prescription as by charter, letters patent, grants, and confirmations, not only of divers governors and commanders-in-chief, in the said province, but also of several governors, directors, generals, and commanders-in-chief, of the Nether Dutch nation, whilst the same was, or has been under their power and subjection. *And whereas* divers lands, tenements, and hereditaments, jurisdictions, liberties, immunities, and privileges, have heretofore been given and granted, or mentioned to be given and granted, to the citizens and inhabitants of the said city, sometimes by the name of Schout, Burgomasters, and Schephens of the city of New Amsterdam; and sometimes by the name of The Mayor, Aldermen, and Commonalty of the city of New York; sometimes by the name of The Mayor, Aldermen, and Sheriff, of the city of New York; sometimes by the name of The Mayor and Aldermen of the city of New York; and by divers other names as by their several letters patents, charters, grants, writings, records, and minuments, amongst other things, may more fully appear. *And whereas* the citizens and inhabitants of the said city have erected, built and appropriated, at their own proper costs and charges, several public buildings, accommodations and conveniences for the said city, *That is to say*, the City Hall, or Stat-House, with the ground thereunto belonging, two Market-Houses, the bridge into the dock, the wharves, or docks, with their appurtenances; and the new burial place without the gate of the city; and have established and settled one ferry from the said city of New York to Long Island, for the accommodation and conveniency of passengers, the said citizens, and travellers.

And whereas several the inhabitants of the said city, and of Manhattan's Island, do hold from and under his most sacred majesty respectively, as well by several and respective letters patents, grants, charters, and conveyances, made and granted by the late lieutenants, governors, or commanders-in-chief, of the said province, as otherwise, several and respective messuages, lands, tenements, and hereditaments, upon Manhattan's Island, and in the city of New York, aforesaid, and as well as the said Mayor, Aldermen, and Commonalty, of the said city, and their successors, as also, the inhabitants of the said Manhattan's Island, and the city of New York, aforesaid, and their heirs, and assigns respectively, may hold, exercise, and enjoy, not only such and the same liberties, privileges, and franchises, rights, royalties, free customs, jurisdictions, and immunities, as they have anciently had, used, held, and enjoyed; but also such public buildings, accommodations, conveniencies, messuages, tenements, lands, and hereditaments, in the said city of New York, and upon Manhattan's Island aforesaid, which, as aforesaid, have been by the citizens and inhabitants erected and built, or which have, as aforesaid, been held, enjoyed, granted, and conveyed unto them, or any of them, respectively.

2. *Know ye, therefore*, That I, the said Thomas Dongan, by virtue of the commission and authority unto me given, and power in me residing, at the humble petition of the now Mayor, Aldermen, and Commonalty of the said city of New York, and for divers other good causes and considerations, me thereunto moving, have given, granted, ratified, and confirmed, and by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs, successors, and assigns, do give, grant, ratify, and confirm unto the said Mayor, Aldermen and Commonalty of the said city, all and every such and the same liberties, privileges, franchises, rights, royalties, free customs, jurisdictions, and immunities, which they by the name of the Mayor, Aldermen, and Commonalty, or otherwise, have anciently held, used, or enjoyed, *Provided always*, That none of the said liberties, privileges, franchises, rights, free customs, jurisdictions, or immunities be inconsistent with, or repugnant to, the laws of his majesty's kingdom of England, or any other the laws of the general Assembly of this province; and the aforesaid public buildings, accommodations, and conveniences in the said city, *That is to say*, The aforesaid City-Hall, or Stat-House, with the ground thereunto belonging, two Market-houses, the bridge into the dock, the wharves or dock, the said new burial place, and the aforementioned ferry, with their and every of their rights, members and appurtenances, together with all the profits, benefits and advantages which shall or may accrue and arise at all times hereafter, for dockage, or wharfage, within the said dock, with all and singular the rents, issues, profits, gains, and advantages which shall or may arise, grow, or accrue by the said City-Hall, or Stat-House, and ground thereunto belonging, market-houses, bridge, dock, burying place, ferry, and other the abovementioned premises, or any of them; and also, all and every the steets, lanes, highways and alleys within the said city of New York, and Manhattan's Island aforesaid, for the public use and service of the said Mayor, Aldermen and Commonalty of the said city, and of the inhabitants of Manhattan's Island aforesaid, and travellers there; together with full power, license and authority to the said Mayor, Aldermen, and Commonalty, and their successors for ever, to establish, appoint, order and direct the establishing, making, laying out, ordering, amending and repairing of all streets, lanes, alleys, highways, water-courses, ferry and bridges, in and throughout the said city of New York and Manhattan's Island aforesaid, necessary, needful and convenient for the inhabitants of the said city, and Manhattan's Island aforesaid, and for all travellers and passengers there: *Provided always*, That this said license so as above granted, for the establishing, making, laying out of streets, lanes, alleys, highways, ferries and bridges, be not extended or be construed to extend, to the taking away of any person or person's right or property, without his, her, or their consent, or by some known law of said Province. And for the considerations aforesaid, I do likewise give, grant, ratify, and confirm unto all and every the respective inhabitants of the said city of New York and of Manhattan's Island aforesaid, and their several and respective heirs, and assigns, all and every these veral and respective messuages, tenements, lands, and hereditaments, situate, lying and being in the said city, and Manhattan's Island, aforesaid, to them severally and respectively granted, conveyed and confirmed, by any the late Governors, Lieutenants, or Commanders-in-chief, of the said Province, or by any of the former Mayors, or Deputy Mayors and Aldermen of the said city of New York, by deed, grant, conveyance, or otherwise howsoever: *To hold* to their several and respective heirs and assigns for ever.

3. And I do by these presents, give and grant unto the said Mayor, Aldermen and Commonalty of the said city of New York, all the waste, vacant, unpatented and unappropriated lands, lying, and being within the said city of New York, and on Manhattan's Island aforesaid, extending and reaching to the low water mark, in, by and through all parts of the said city of New York, and Manhattan's Island aforesaid, together with all rivers, rivulets, coves, creeks, ponds, waters and water-courses, in the said city and island, or either of them, not heretofore given or granted, by any of the former Governors, Lieutenants, or Commanders-in-chief, under their or some of their hands and seals, or seal of the Province, or by any of the former Mayors or Deputy Mayors and Aldermen of the said city of New York, to some respective person or persons, late inhabitants of the said city of New York, or Manhattan's Island, or of other parts of the said province.

And I do by these presents, give, grant, and confirm unto the said Mayor, Aldermen and Commonalty o the said city of New York, and their successors for ever, the royalties of fishing, fowling, hunting, hawking, minerals and other royalties and privileges, belonging or appertaining to the city of New York, and Manhattan's Island aforesaid, (gold and silver mines only excepted,) to have, hold and enjoy all and singular the premises, to the said Mayor, Aldermen and Commonalty of the said city of New York, and their successors for ever, rendering and paying therefor unto his most sacred majesty, his heirs, successors, or assigns, or to such officer or officers, as shall be appointed to receive the same, yearly for ever hereafter, the annual quit-rent or acknowledgement of one Beaver skin, or the value thereof in current money of this province, in the said city of New York, on the five and twentieth day of March, yearly for ever.

4. And, moreover, I will, and by these presents do grant, appoint, and declare, that the said city of New-York, and the compass, precincts and limits thereof, and the jurisdiction of the same, shall from henceforth extend and reach itself, and may and shall be able to reach forth and extend itself, as well in length and in breadth as in circuit, to the farthest extent of, and in, and through all the said Island Manhattan's, and in and upon all the rivers, rivulets, coves, creeks, waters and water-courses, belonging to the same island, as far as low water mark. And I do also, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, firmly enjoin and command, that the aforesaid Mayor, Aldermen and Commonalty of the city aforesaid, and their successors, shall and may freely and quietly have, hold, use, and enjoy, the aforesaid liberties, authorities, jurisdictions, franchises, rights, royalties, privileges, exemptions, lands, tenements, hereditaments, and premises aforesaid, in manner and form aforesaid, according to the tenor and effect of the aforesaid grants, patents, customs, and letters patents of grant and confirmation, without the let, hindrance or impediment of me, or any of my successors, governors, lieutenants, or other officers whatsoever.

5. And also, I do, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, grant to the Mayor, Aldermen, and Commonalty of the said city of New York, and their successors, by these presents, that for the better government of the said city, liberties, and precincts thereof, there shall be forever hereafter within the said city, a Mayor and Recorder, Town Clerk, and six Aldermen, and six Assistants, to be appointed, nominated, elected, chosen and sworn, as hereinafter is particularly and respectively mentioned, who shall be forever hereafter called, *The Mayor, Aldermen, and Commonalty* of the City of New York; and that there shall be forever, one Chamberlain, or Treasurer, one Sheriff, one Coroner, one Clerk of the Market, one High Constable, seven sub-constables, and one marshal or serjeant at mace, to be appointed, chosen, and sworn in manner hereinafter mentioned.

6. And I do, by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs, successors, and assigns, declare, constitute, grant, and appoint, that the Mayor, Recorder, Aldermen, and Assistants, of the said city of New York, for the time being, and they which hereafter shall be the Mayor, Recorder, and Aldermen, and Assistants, of the said city of New York, for the time being, and their successors, forever hereafter, be, and shall be, by force of these presents, one body corporate and politic, in deed, fact, and name, by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York; and them by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, one body corporate and politic, in deed, fact, and name, I do really and fully create, ordain, make, constitute, and confirm by these presents; and that, by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, they may have perpetual succession; and that they, and their successors, forever, by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, be, and shall be, forever hereafter, persons able, and in law capable, to have, get, receive, and possess lands, tenements, rents, liberties, jurisdictions, franchises, and hereditaments to them and their successors, in fee-simple, or for term of life, lives, or years, or otherwise; and also goods and chattels; and also, other things, of what nature, kind, or quality soever; and also to give, grant, let, set, and assign, the same lands, tenements, hereditaments, goods and chattels; and to do and execute all other things about the same, by the name aforesaid. And, also, that they be, and forever shall be hereafter, persons able in law, capable to plead, and be impleaded, answer, and be answered unto, defend, and be defended, in all or any of the courts of his said majesty, and other places whatsoever, and before any judges, justices, and other person or persons whatsoever, in all and all manner of actions, suits, complaints, demands, pleas, causes and matters, whatsoever, of what nature, kind, or quality soever, in the same, and in the like manner and form as other people of the said province, being persons able, and in law capable, may plead, and be impleaded, answer, and be answered unto, defend, and be defende

by any lawful ways and means whatsoever; and that the said Mayor, Aldermen, and Commonalty of the said city of New York, and their successors, shall and may forever hereafter, have one common seal to serve for the sealing of all and singular their affairs and businesses touching or concerning the said corporation. And it shall and may be lawful to and for the said Mayor, Aldermen, and Commonalty of the said city of New York, and their successors, as they shall see cause, to break, change, alter, and new-make, their said common seal, when, and as often as to them it shall seem convenient.

7. *And further, know ye*, That I have assigned, named, ordained, and constituted, and, by these presents, do assign, name, ordain, and constitute, Nicholas Bayard, now Mayor, of the said city of New York, to be present Mayor of the said city; and that the said Nicholas Bayard, shall remain and continue in the office of Mayor there, until another fit person shall be appointed and sworn in the said office, according to the usage and custom of the said city; and as in and by these presents is hereafter mentioned and directed. And I have assigned, named, ordained, and constituted, and, by these presents, do assign, name, ordain, and constitute, create and declare James Graham, Esq. to be the present Recorder of the said city; to do and execute all things, which unto the said office of Recorder of the said city doth, or may in any wise appertain or belong. And I have assigned, named, ordained, and constituted, and by these presents, do assign, name, ordain, constitute, create, and declare John West, Esq, Town Clerk of the said city; to do and execute all things which unto the office of Town Clerk may in any wise appertain or belong. And I have named, assigned, constituted, and made, and by these presents, do assign, name, constitute, and make, Andrew Bown, John Robinson, William Beekman, John Delaval, Abraham De Peyster, and Johannes Kip, citizens and inhabitants of the said city of New York, to be the present Aldermen of the said city. And also, I have made, assigned, named, and constituted, and by these presents, do assign, name, constitute and make, Nicholas De Myer, Johannes Van Brugh, John De Brown, Teunis De Key, Abraham Corbit, and Wolford Webber, citizens and inhabitants of the said city, to be the present Assistants of the said city. And, also, I have assigned, chosen, named, and constituted, and by these presents, do assign, choose, name, and constitute, Peter De Lanoy, citizen and inhabitant of the said city, to be the present Chamberlain or Treasurer of the city aforesaid. And I have assigned, named, constituted, and appointed, and by these presents, do assign, name, constitute and appoint John Knight, Esq. one other of the said citizens there, to be present Sheriff of the said city, and have assigned, named, constituted, and appointed, and by these presents do assign, name, constitute, and appoint Jarvis Marshal, one other of the said citizens there, to be the present Marshal of the said city. And I do, by these presents, grant to the said Mayor, Aldermen, and Commonalty of the said city of New York, and their successors, That the Mayor, Recorder, Aldermen, and Assistants of the said city for the time being, or the Mayor, Recorder, and any three or more of the Aldermen, and any three or more of the Assistants, for the time being, be and shall be called The Common Council of the said city, and that they, or the greater part of them, shall or may have full power and authority, by virtue of these presents, from time to time, to call and hold common council, within the common council house, or City Hall of the said city: and there, as occasion shall be, to make laws, orders, ordinances, and constitutions, in writing; and to add, alter, diminish or reform them, from time to time, as to them shall seem necessary and convenient, (not repugnant to the prerogative of his most sacred majesty aforesaid, his heirs and successors, or to any of the laws of the Kingdom of England, or other the laws of the General Assembly of the Province of New York,) for the good rule, oversight, correction, and government of the said city and liberties of the same, and of all the officers thereof, and for the several tradesmen, victuallers, artificers, and of all other the people and inhabitants of the said city, liberties, and precincts, aforesaid, and for the better preservation of government, and disposal of all the lands, tenements, and hereditaments, goods and chattels of the said corporation; which laws, orders, ordinances, and constitutions, shall be binding to all the inhabitants of the said city, liberties, and precincts aforesaid; and which laws, orders, ordinances, and constitutions, so by them made, as aforesaid, shall be and remain in force for the space of three months, and no longer, unless they shall be allowed of, and confirmed by, the governor, and council for the time being. And I do further, on the behalf of his sacred majesty aforesaid, his heirs and successors, appoint and grant, that the said common council of the said city, for the time being, as often as they make, ordain, and establish such laws, orders, ordinances, and constitutions, as aforesaid, shall or may make, ordain, limit, provide, set, impose, and tax, reasonable fines and amerciaments against and upon all persons offending against such laws, orders, ordinances, and constitutions, as aforesaid, or any of them, to be made, ordained, and established as aforesaid, and the same fines, and amerciaments shall and may require, demand, levy, take, and receive by warrants under the common seal, to and for the use and behoof of the Mayor, Aldermen, and Commonalty of the said city, and their successors, either by distress and sale of the goods and chattels of the offender therein, if such goods and chattels may be found within the said city, liberties, and precincts thereof, rendering to such offender and offenders, the overplus, or by any other lawful ways or means whatsoever.

8. And I do, by these presents, appoint and ordain the assigning, naming, and appointment of the Mayor and Sheriff of the said city, that it shall be as followeth, (viz.) upon the feast day of Saint Michael the Arch-angel, yearly, the Lieutenant Governor or Commander-in-Chief, for the time being, by and with the advice of his council, shall nominate and appoint such person as he shall think fit to be Mayor of the said city, for the year next ensuing; and one other person of sufficient ability and estate, and of good capacity in understanding, to be Sheriff of the said city of New York, for the year next ensuing; and that such person as shall be named, assigned, and appointed Mayor, and such person as shall be named, assigned, and appointed Sheriff of the said city, as aforesaid, shall, on the fourteenth day of October then next following, take their several and respective corporal oaths, before the governor and council, for the time being, for the due execution of their respective offices as aforesaid; and that the said Mayor and Sheriff, so to be nominated, assigned, and appointed, as aforesaid, shall remain and continue in their said respective offices, until another fit person shall be nominated, appointed, and sworn, in the place of Mayor; and one other person shall be nominated and appointed in the place of Sheriff of the said city, in manner aforesaid. *And further*, That according to the now usage and custom of the said city, the Recorder, Town Clerk, and Clerk of the Market of the said city, shall be persons of good capacity and understanding, and such persons as his most sacred majesty aforesaid, his heirs and successors, shall, in the said respective offices of Recorder, Town Clerk, and Clerk of the Market, appoint and commissionate; and for defect of such appointments, and commissionating, by his most sacred majesty aforesaid, his heirs and successors, to be such persons as the Lieutenant Governor and Commander-in-chief of the said province for the time being, shall appoint and commissionate; which persons so commissionated to the said offices of Recorder, Town Clerk, and Clerk of the Market, shall have, hold, and enjoy, the said offices, according to the tenor and effect of their said commissions, and not otherwise. *And further*, That the Recorder, Town Clerk, Clerk of the Market, Aldermen, Assistants, Chamberlain, High Constable, Petty Constables, and all other officers of the said city, before they, or any of them, shall be admitted to enter upon and execute their respective offices, shall be sworn faithfully to execute the same, before the Mayor, or any three or more of the Aldermen for the time being. *And I do*, by these presents, for and on the behalf of his most sacred majesty, his heirs and successors, grant and give power and authority to the Mayor and Recorder of the said city, for the time being, to administer the same respective oaths to them accordingly. *And further*, I do by these presents, grant, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, that the Mayor and Recorder of the said city for the time being, and three or more of the Aldermen of the said city, not exceeding five, shall be justices and keepers of the peace of his most sacred majesty, his heirs and successors, and justices to hear and determine matters and causes within the said city and liberties, and precincts thereof; and that they or any three or more of them, whereof the Mayor and Recorder, or one of them, for the time being, to be there, shall and may forever hereafter, have power and authority, by virtue of these presents, to hear and determine all and all manner of petty larcenies, riots, routs, oppressions, extortions, and other trespasses and offences whatsoever, within the said city of New York, and the liberties and precincts aforesaid, from time to time, arising and happening, and which arise or happen, and any ways belonging to the offices of justices of the peace, and the correction and punishment of the offences aforesaid, and every of them, according to the laws of England, and the laws of the said Province; and to do and execute all other things in the said city, liberties, and precincts aforesaid, so fully and in ample manner, as to the commissioners assigned, and to be assigned for the keeping of the peace in the said county of New York, doth or may belong.

9. And, moreover, I do by these presents, for and on behalf of his most sacred majesty aforesaid, his heirs and successors, appoint, that the Aldermen, Assistants, High Constable, and Petty Constables, within the said city, be yearly chosen on the feast day of St. Michael the Arch-angel, forever, (viz.) one Alderman, one Assistant, and one Constable, for each respective ward, and one Constable for each division in the out-ward, in such public place in the said respective wards, as the Aldermen for the time being, for each ward, shall direct and appoint; and that the Aldermen, Assistants, and Petty Constables, be chosen by majority of voices of the inhabitants of each ward; and that the High Constable be appointed by the Mayor of the said city for the time being; and that the Chamberlain shall be yearly chosen, on the said feast day, in the said City Hall of the said city, by the Mayor and Aldermen and Assistants, or by the Mayor, or three or more of the Aldermen, and three or more of the Assistants of the said city for the time being. *And I do*, by these presents, constitute and appoint the said John West, to be the present Town Clerk, Clerk of the Peace, and Clerk of the Court of Pleas, to be holden before the Mayor, Recorder and Aldermen, within the said city, and the liberties and precincts thereof. *And further*, I do by these presents, for and on behalf of his most sacred majesty aforesaid, his heirs and successors, require and strictly charge and command, that the Sheriff, Town Clerk, Clerk of the Peace, High Constable, Petty Constables, and all other subordinate officers in the said city, for the time being, and every of them respectively, jointly and severally, as cause shall require, shall attend upon the said Mayor, Recorder, and Aldermen, of the said city, for the time being, and every or any of them, according to the duty of their respective places, in and about the executing of such the commands, precepts, warrants, and processes, of them and every of them, as belongeth and appertaineth to be done or executed; and that the aforesaid Mayor, Recorder and Aldermen, and every of them, as justices of the peace, for the time being, by their or any of their warrants, all and every person and persons for high treason or petty treason, or for suspicion thereof, or for other felonies whatsoever, and all malefactors and disturbers of the peace, and other offenders for other misdemeanors, who shall be apprehended within the said city, or liberties thereof, shall and may send and commit, or cause to be sent and committed, to the common gaol of the said city, there to remain and be kept in safe custody, by the keeper of the said gaol, or his deputy, for the time being, until such offender and offenders shall be lawfully delivered thence. *And I do*, by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, charge and require the keeper and keepers of the said gaol, for the time being, and his and their deputy and deputies, to receive, take, and in safe custody to keep, all and singular such person and persons so apprehended, or to be apprehended, sent, and committed, to the said gaol, by warrant of the said justices, or any of them as aforesaid, until he and they so sent, and committed to the said goal, shall from thence be delivered by due course of law.

10. *And further*, I do grant and confirm for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, that the said mayor of the said city for the time being, and no other (according to the usage and custom practised in the said city of New York, in the times of my predecessors, the several Lieutenants, Governors, and Commanders-in-Chief, of this Province,) shall have power and authority to give and grant licenses annually, under the public seal of the said city, to all tavern keepers, innkeepers, ordinary keepers, victuallers, and all public sellers of wine, strong waters, cyder, beer, or any other sort of liquors, by retail, within the city aforesaid, Manhattan's Island, or their liberties and precincts thereof; and it shall and may be lawful to and for the said Mayor of the said city, for the time being, to ask, demand, and receive, for such license, by him to be given and granted, as

aforesaid, such sum or sums of money, as he and the person to whom such license shall be given or granted, shall agree for, not exceeding the sum of thirty shillings for each license. All which money, as by the said Mayor shall be so received, shall be used and applied to the public use of the said Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors, without any account thereof to be rendered, made or done, to any of the Lieutenants or Governors of this province, for the time being, or any of their deputies.

11. *And know ye*, That for the better government of the said city, and for the welfare of the said citizens, tradesmen, and inhabitants thereof, I do by these presents, for and on the behalf of his most sacred majesty, his heirs and successors, give and grant to the said Mayor, Aldermen, and Commonalty of the said city, and their successors, that the Mayor, Recorder, and Aldermen, or the Mayor and any three or more of the Aldermen for the time being, shall, from time to time, and all times hereafter, have full power and authority, under the common seal, to make free citizens, of the said city, and liberties thereof; and no person or persons whatsoever, other than such free citizens, shall hereafter use any art, trade, mystery, or manual occupation, within the said city, liberties, and precincts thereof, saving in the times of fairs there to be kept, and during the continuance of such fairs only. And in case any person or persons whatsoever, not being free citizens of the said city, as aforesaid, shall at any time hereafter use or exercise any art, trade, mystery, or manual occupation, or shall, by himself, themselves, or others, sell, or expose to sale, any manner of merchandise or wares whatsoever, by retail, in any house, shop or place, or standing within the said city, or the liberties or precincts thereof, no fair being then kept, in the said city; and shall persist therein after warning to him or them given, or left by the appointment of the Mayor of the said city, for the time being, at the place or places where such person or persons shall so use or exercise any art, trade, mystery, or manual occupation; or shall sell or expose to sale, any wares or merchandize, as aforesaid, by retail; then it shall be lawful for the Mayor of the said city for the time being, to cause such shop windows to be shut up, and also to impose such reasonable fine for such offence, not exceeding five pounds for every respective offence; and the same fine and fines so imposed, to levy and take by warrant under the common seal of the said city, for the time being, by distress and sale of the goods and chattels of the person or persons so offending in the premises, found within the liberties or precincts of the said city, rendering to the party or parties the overplus; or by any other lawful ways or means whatsoever, to the only use of the said Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors, without any account to be rendered, made, or done, to the Lieutenants, Governors, or Commanders-in-Chief, of this province for the same: *Provided*, That no person or persons shall be made free as aforesaid, but such as are his majesty's natural born subjects, or such as shall first be naturalized by act of General Assembly; or shall have obtained letters of denization, under the hand of the Lieutenant Governor or Commander-in-Chief, for the time being, and seal of the province: and that all persons to be made free as aforesaid, shall and do pay for the public use of the said Mayor, Aldermen, and Commonalty, of the said city, such sum and sums of money as heretofore hath been used and accustomed to be paid and received on their being admitted freemen as aforesaid: *Provided*, it is not exceeding the sum of five pounds.

12. *And further*, I do by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, grant to the Mayor, Aldermen, and Commonalty, of the said city, that they and their successors be forever, persons able and capable, and shall have power to purchase, have, take, and possess in fee simple, lands, tenements, rents, and other possessions within or without the said city; to them and their successors forever, so as the same exceed not the yearly value of one thousand pounds per annum, the statute of Mortmain, or any other law to the contrary notwithstanding; and the same lands, tenements, hereditaments, and premises, or any part thereof, to demise, grant, lease, set over, assign, and dispose at their own will and pleasure; and to make, seal and accomplish, any deed or deeds, lease or leases, evidences or writings, for or concerning the same, or any part thereof, which shall happen to be made and granted by the said Mayor, Aldermen, and Commonalty, of the said city, for the time being.

13. *And further*, I do by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, grant to the said Mayor, Aldermen, and Commonalty, that they and their successors shall and may forever hereafter, hold and keep within the said city, in every week of the year, three market days, the one upon Tuesday, the other upon Thursday, and the other upon Saturday, weekly forever.

14. *And also*, I do by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs and successors, grant to the Mayor, Aldermen, and Commonalty, of the said city, that they and their successors and assigns, shall and may at any time or times hereafter, when it to them shall seem fit and convenient, take in, fill, and make up, and lay out, all and singular the lands and ground in and about the said city and Island Manhattan's, and the same to build upon, or make use of, in any other manner or way, as to them shall seem fit, as far into the rivers thereof, and that encompass the same, at low water mark aforesaid.

15. *And I do*, by these presents, for and on the behalf of his most sacred majesty aforesaid, his heirs, and successors, give and grant unto the aforesaid, Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors, that they and their successors shall and may have, hold, and keep, within the said city, and liberties, and precincts thereof, in every week in every year forever, upon Tuesday, one Court of Common Pleas, for all actions of debt, trespass, trespass upon the case, detinue, ejectment, and other personal actions; and the same to be held before the Mayor, Recorder, and Aldermen, or any three of them, whereof the Mayor or Recorder to be one, who shall have power to hear and determine the same pleas and actions, according to the rules of the common law, and acts of general assembly of the said province.

16. *And I do*, by these presents, for and on behalf of his most sacred majesty aforesaid, his heirs, and successors, grant to the said Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors, that the said Mayor, Aldermen, and Commonalty, of the said city, and their successors, shall have and enjoy all the privileges, franchises, and powers, that they have and use, or that any of their predecessors at any time within the space of twenty years last past, had, took, or enjoyed, or ought to have had, by reason, or under any pretence of any former charter, grant, prescription, or any other right, custom, or usage, although the same have been forfeited, lost, or have been ill used, or not used, or abused, or discontinued, albeit they be not particularly mentioned; and that no officer shall disturb them therein under any pretence whatsover, not only for their future, but their present enjoyment thereof; provided always, that the said privileges, franchises, and powers, be not inconsistent with, or repugnant to the laws of his majesty's kingdom of England, or other the laws of the General Assembly of this province as aforesaid. And saving to his most sacred majesty aforesaid, his heirs, successors, and assigns, and the Lieutenants, Governors, and Commanders-in-Chief, and other officers under him and them, in Fort James, in or by the city of New York, and in all the liberties, boundaries, extents, privileges thereof, for the maintenance of the said fort and garrison there, all the right, use, title, and authority, which they or any of them, have had, used, or exercised there; and, also, one messuage or tenement, next the City Hall; and one messuage by the Fort, now in the possession of Thomas Coker, gent. The piece of ground by the gate, called the Governor's Garden, and the land without the gate, called the King's Farm; with the swamp next to the same land, by the fresh water; and saving the several rents and quit rents, reserved, due, and payable, from several persons, inhabiting within the said city, and Island Manhattan's, by virtue of former grants to them made and given, and saving to all other persons, bodies politic and corporate, their heirs, successors, and assigns, all such right, title, and claim, possessions, rents, services, commons, emoluments, interest in and to any thing which is their's (save only the franchises aforesaid) in as ample manner as if this charter had not been made.

17. *And further*, I do appoint and declare, that the incorporation to be founded by this charter, shall not at any time hereafter do or suffer to be done, any thing by means whereof the lands, tenements, or hereditaments, stock, goods, or chattels thereof, or in the hands, custody, or possession of, any of the citizens of the said city, such as have been sett, lett, given, granted, or collected, to, and for pious and charitable uses, shall be wasted or misemployed, contrary to the trust or intent of the founder or giver thereof, and that such and no other construction shall be made thereof, than that which may tend most to advantage religion, justice, and the public good; and to suppress all acts and contrivances to be invented, or put in use, contrary thereunto. *In witness* whereof, I have caused these presents to be entered in the Secretary's office, and the seal of the said Province to be hereunto affixed, this seven and twentieth day of April, in the second year of the reign of his most sacred majesty aforesaid, and in the year of our Lord God, One Thousand Six Hundred and Eighty-six. THOMAS DONGAN.

May it please your Honer,

The Attorney General hath perused this PATTENT, *and finds nothing contained therein prejudicial to his Majestie's interest.* JAMES GRAHAM.

Recorded in Book of Patents No. 1, p. 278 to 309, in the office of the Secretary of State, at Albany.

The recorded copy is in the old fashioned way of writing and spelling.

The ACT of the Colonial Assembly of the Province of New York, which follows Dongan's Charter in chronological order, and the proceedings of the Governor, Council, and Assembly, therein entitled, "An Act for Regulating the Buildings, Streets, Lanes, Wharfs, Docks, and Allies of the City of New York," passed Oct. 1st, 1691, and confirmed by King William III., May 11th, 1697, is to be found in No. 1 of this volume, p. 3, and 3d column.

To his Excell'cy Coll. Henry Houton, Capt. Generall and Commander in Chiefe in and over their Majesties Province of New Yorke and Territories depending thereon.

The Peticon of the Mayor, Aldermen, and Comonalty of New Yorke.

Humbly offers to yo'r Excell'cy—

That Whereas in the time of the Governm't of Kenert and Stevenson, Governors of this Province under the States General. This Citty then called by the name of New Amsterdam was ruled by Burgormasters Schepens, and had all that time the benefit of the Weigh House; and in Governor Nicholls his time, as by the Articles of Surrender, the former priviledges of the Citty were confirmed and the Weigh house granted a Perquestise thereto belonging, and after in the year 1673 and so forward to November 1674, remained in the possession of the Citty, and all proffits arising therefrom accounted to the citty the better to enable them to maintaine there Fortifications; and Whereas by a Charter of Incorporation and Priviledges granted by Coll. Thomas Dongan, bearing date April the 27th, 1686, confirming to the Mayor, Aldermen, and Commonalty of the Citty and their successors, that they shall have and enjoy all the priviledges, ffranchises, That any of their Predecessors att any time within the space of Twenty years last past, had tooke or enjoyed or ought to have held by reason or under pretence of any former Charter, Grant, Prescription, or any other Right, Custome, or Usage, although they have bin at any time since disused or be not particularly mentioned therein.

Yet so it is for severall years past the Citty have not had the benefitt of said Weigh house, or received any of the Proffitts arising therefrom.

Wherefore pray that your Excell'ncy would be pleased to order said Weigh house with the Revenue and Proffitts thereof, for time to come, To be and remaine as of custome and right belong to the Mayor, Aldermen, and Comonalty of this Citty.

And your Petitions shall ever pray, &c.

City of New Yorke. At a Common Councill held at the Citty Hall of said Citty, on Thursday the 17th September, in the afternoon, Anno 1691.

John Lawrence, Esqr. Mayor.
William Pinhorne, Recorder.

Aldermen.
- William Beehman,
- William Meritt,
- Johannes Kipp,
- Balsh Bayard,
- Brant Schuyler,

Comon Councill.
- Theunnis de Key,
- Ebenezer Willson,
- Stephen de Lancy,
- Thomas Coher,
- Thomas Clarke,

Ordered, Mr. Mayor, Mr. Recorder, with Mr. Schuyler, Mr. Bayard, Mr. Wilson, and Mr. Clarke, doe attend the Commander-in-Chief and Councill, to move for a return to their peticon formerly given In relating to the Weigh house.

—

At a Common Councill held att the Citty Hall at the Citty of New York, within the said Citty, on Thursday the thirteenth day of October, 1687—

Ordered, that from henceforth the Weigh Masters weigh no hides whatsoever with ye Horns or any part of the scull or bones to them, under such penalty as the Mayor shall appoint.

—

City of New York. } ss. At a Common Councill held att the Citty Hall of said Citty on Friday, April 24th, A. D. 1691.

Present,
John Lawrence, Esq., Mayor.
William Beeckman,
William Merritt,
Balsh. Bayard,
Brant Schuyler, Aldermen.
William Pinhorne, Recorder.

Present,
Teunis de Key,
Thomas Coher,
Thomas Clarke,
Ebenezer Willson, Common Councill.

The Petition of his Excellency for obtaining the Weigh House unto the use of the Citty, read and approved of. Mr. Recorder being desired to present the same to his Excellency.

That the Mayor receive for his fees, six shillings for every Great Seale and three shillings for a Small Seale.

That no person or persons whatsoever, within this Citty or Libertyes, doe keep shop and sell any goods or wares by Retail, or exercise any Hand Craft, trade, occupacon but such as are ffreemen thereof, or so admitted by the Mayor or Court of Aldermen, for the time being, under penalty of ffive pounds for each offence, and all persons hereafter to be made free, shall pay as follows: Every Marchant, Trader, or shop keeper, the summe of three pounds Twelve Shillings besides fees, and every handecraft man one pound four shillings besides fees. On being made as aforesaid for the use of this Citty.

Mr. Mayor makes report to this Board that he hath Lett out the Shop in the Market House to one John Ellison for Three pounds ten shillings per annum, to be paid quarterly, and he to repayre the same at his own charge, a pare of Hinges for the door only excepted.

Ordered, that a Standard of Weights and Measures bee appointed for the Citty.

That the Marks of Weights and Measures be affixed as formerly—M. with ye addition of a Crowne.

City of New York. } ss. At a Common Councill held at the City Hall of said Citty on Thursday 23d Aprill, Anno Dom. 1691.

Present,
John Lawrence, Esq. Mayor,.
William Pinhorne, Recorde .
William Beeckman.
Johannes Kipp,
William Merritt,
Balsh Bayard,
Brant Schuyler, Aldermen.
Teunis de Key,
Nich. Wm. Stevenson,
Thomas Coher,
Thomas Clerke, Common Councill.

Ordered, that the Clerke of the Mayor's Court make Enquiry after and receive in the Books and papers Relating to the Publique business and Records of this city, to draw an Inventory of them and to be charged with them by Intenture, Signed with the Mayor of this City and Deputy, Signed by the Clerke, to Remain in the hands of the Mayor. E. & B.

And that the Treasure of the City doe in like manner Referred to Mr. Recorder, that he draw an Address to his Excellency to Represent this to the Weigh house, and that Mr. Wm. Merritt, Johannes Kipp, Mr. Thomas Clarke and Mr. Thomas Coher accompany Mr. Recorder to present the same to his excellency.

The Porter Petition Referred till next meeting.

1692.

COMMON COUNCIL.

City of N. Yorke, } ss. At a Court of Record held at ye Citty Hall of ye s'd Citty, on Saturday ye 4th day of February, Anno Dom 1692.

A. D. Peyster, Mayor.
James Graham, Recorder.
William Beeckman,
William Merritt,
Johannes Kipp,
Brant Schuyler,
Robert Darkin, Aldermen.
Ebenezer Wilson,
Thomas D. Key,
Stephen D. Lancy,
Arnam Van Schaick,
Johannes Vande Spregel, Assistants,

Ordered, that ye Recorder draw up an address to his Excellency, to desire their Majesties grant of Confirmation of the Charter of this Citty, together with ye ancient privileges.

Ordered, that ye Recorder draw up an Ordinance for the paving of the Streets according to ye Report of ye Committee, with such suitable Clauses for the effectual doing thereof, as shall cause the said paving totally performed by the first of August next.

Ordered, that the Gentlemen of ye Committee appointed to inquire how long the Ground before Mr. Broughan's door has been vacant and High ways, do draw up a particular Report thereof, and make return thereof, to the next Common Councill.

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City of N. Yorke, } ss. Att a of Common Councell held att the Citty Hall of the said Citty, on Saturday ye 11th day of February, Anno Dom. 1692—

A. D. Peyster, Esq., Mayor,
James Graham, Esq., Recorder,
William Beeckman,
William Merritt,
Garrett Low, Aldermen,
Ebenezer Wilson,
Teunis D. Key,
Stephen D. Lancy,
Johannes Vandespregel,
Thomas Clarke, Assistants.

The following Ordinance was this day Published att the Citty Hall after ye Ringing of three Bells, and ordered to be Recorded.

City of N. Yorke, } ss. An Ordinance of the Mayor, Recorder, and Aldermen, and Assistants, convened in Common Council, for the paveing of ye Streets, Lanes, and Alleys within this City.

For as much as the former Orders made for the paving of ye Streets, within this Citty Hath of late been much neglected, whereby the Citizens and Sojourners within the Citty are much Annoyed, and ye intercourse of trade amongst the Inhabitants thereby much Lessened, for Regulations whereof, The Mayor, Recorder, Aldermen and Assistants convened in Common Councill at the Citty Hall of the s'd Citty, did by these presents ordain, and itt is hereby ordained, that all and every ye Freeholders and Inhabitants that live within this Citty in the respective Streets, Lanes and Alleys hereinafter named and Expressed, shall after the publication hereof, and before the first day of August next ensueing, well and truly pave or cause well and truly (*paved*) to be paved, with good and sufficient pebble stones, suitable for paving at their own proper cost and charges, so much of the Streets, Lanes and Alleys hereinafter named, as shall Front the Respective buildings or lotts of Ground, that belongs to them respectively in the Streets, Lanes and Alleys hereinafter as aforesaid, according to the dimensions, quantity and proportion hereafter mentioned (that is to say) there shall be paved, in manner aforesaid, in the street commonly called ye Bridge Street, beginning at the cornerhouse of Lukes Kerkstead unto the house of Peter D. Lancy's, ten feet English measure from ye front of each house into the street. The whole street, from Peter D. Lancy's to the middle of the Broad street, by Farmers, from Mr. Cortlandt's corner house to the Citty Hall ten feet, ten feet from the Citty Hall to Martin Clock's, ten feet from Ditto corner to the Mayor's, inclusive, ten feet from Mrs. Lewises down to the Citty and so up to the corner of the Broad street, and soe down to the house of Albert Ring's, ten feet, the whole of Church street. The West side of the Broad street from Jacob Monney's up to Ben. Devall's ten feet, that ye Broadway be paved on both sides ten feet, down to Mr. Smith's on one side, and to ——— on the other, and that ye Beaver street be put in good repair ten feet on both sides. That the street going down from the Mayor's to Walkington's, be wholy paved That the street going to the French Church be wholy paved.—That Pearl street be put in good repair, and soe paved down to White Hall ten feet. That the street that Hull lives in be wholy paved. And that Eaght Jans, in the Broad street, pave wholy before her door, and that all ye Pav'd streets of this Citty be put in good and sufficient repair. And for the more Regular paving of the Respective Streets, Lanes, and Alleys, aforesaid, it is hereby Ordained, that an Alderman and one Assistant in each respective Ward within ye said Citty shall supervise and allott ye quantity of each respective pavement aforesaid, and direct that they be regularly done and accomplished within ye time aforesaid, and duly provided with proper decents for water cources, without annoyance to one or other. And it is hereby further Ordained, that if any Citizen, Inhabitant, or Freeholder as aforesaid, shall refuse, delay or neglect to make his or their proportionable pavement before their Buildings and Lotts of Ground, as aforesaid, within ye time aforesaid, shall, for such his default, forfeit the sum of Twenty Shillings Curr't money, to be leveyed by disstress, upon the goods and chattells of each Defaulter: the one half to the Informer, and the other half to the Treasurer, for the use of the Citty; and that the pavement aforesaid, may be more effectually done within the time limited, as aforesaid, be it further Ordained, that if any person or persons shall after such their Default as aforesaid, further neglect, refuse or delay (shall happen shall) to make their proportionable pavements as aforesaid, then, and in such case, the Alderman and Assistant of the Respective Ward where such neglect or Delay shall happen, shall take Care to provide Stones and other things necessary for the said Pavement, and cause the same to be speedily done; and the amount of the same shall be leveyed upon the Goods and Chattells of such further defaulter untill the same shall be sattisfyed, together with ye Costs and Charges that shall arise thereon, and a reasonable allowance to the said Alderman and Assistant for their attendance thereon; and all the Respective Citizens, Inhabitants, and Freeholders are hereby required to render an entire Complyance to accordingly.

A. D. Peyster, Ebenezer Wilson,
James Graham, Teunis D. Key,
William Beeckman, Stephen D. Lancy,
William Merritt, Tho. Clarke,
Garret Dow, John Vanderspragel,

—

The following Act was passed by the Assembly of the Colony of New York, in October 1695, was confirmed by King William, May 11, 1697, and continued a Law of the Province during the remainder of the time New York was under the British Government. This Act was confirmed by the Constitution in 1777,—was not repealed by the repealing act of the Legislature of the State of New York in 1787, which confirmed all the Colonial Laws which were not repealed by their titles;—was again confirmed by the Constitution of 1821; and finally repealed with all the Colonial Laws by the Revised Statutes in 1830.

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An ACT against unlawful By-Laws and unreasonable Forfeitures. Confirmed by the King, 11th May, 1 97.

In all humble manner the representatives of this their Majesties' Province of New York, show and complain unto your Excellency, and their Majesties' Council, That the People of the City of New York, under color and pretext of their Charter, or custom, or both, have taken upon them to make and publish certain by-laws, orders, ordinances or regulations, whereby they forbid the bringing of anye Flour or Bread, for exportation, to New York, under the penalty of forfeiture of the same; which said city being the principal port of this

province for the sending forth the produce and manufacturage thereof, and the Chief Market within the same, they thereby not only prohibit the importation and selling such Flour and Bread at the same city, and obstruct and hinder all bolting of Flour and baking of Bread for exportation, which are lawful mysteries, crafts, and trades in all other parts of the province; but also arrogate to themselves the sole bolting, bakeing, using, making, and selling, of all such flour and bread, raised or to be produced within this Province; and under color and pretence of the said Orders, By-Laws, Ordinances, and regulations, have taken, condemned, and converted to their own uses, divers quantities of flour belonging to several of their Majesties' good subjects of this province—All which being contrary to Law, to the grievous damage and impoverishing of many of their Majesties' good people, and the said By-Laws and orders, are unreasonable, and of evil, dangerous, and pernicious consequence to all of their Majesties' subjects of this province—They therefore most earnestly pray that it may be enacted, and it is hereby enacted, by his Exelencey, the Council, and Representatives of their Majesties' Province, in General Assembly met and assembled, and by authority of the same, That the said pretended By-Laws, orders, ordinances, or regulations of the people of New York, made in the name of Mayor, Aldermen, and Commonalty of the city of New York, or in or by any other name or stile whatsoever, and every claim or thing in the same, or any other rule, order, or ordinance contained, in any wise concerning the restraint of bolting of Flour, Baking of Bread, or importing of Flour or Bread to New York aforesaid, OR CONCERNING OR RELATING TO THE PROHIBITION, OBSTRUCTION, OR HINDRANCE OF THE USEING, PRACTICING, OR ENJOYING OF ANY OTHER LAWFUL TRADE, MYSTERY, OR OCCUPATION, or against the importing in or to, or exporting from the city of New York, or any other lawful port in the province, any Wine, Corn, Flour, Bread, Flesh, Fish, Victuals, Wares, Merchandize, and all other things vendable and not, by the Common Law or Statutes of the realme prohibited; and all process, proceedings, judgements, and executions thereupon hereafter to be issued, ordered, entred, awarded, published, or executed, shall be entirely void and holden for none; and they are hereby declaired void and null to all intents and purposes whatsoever; any pretended by-law, order, ordinance, custom, usage, or practice, to the contrary hereof in any wise notwithstanding.

And further, Be it Enacted, &c., That if any time after the making and publishing this Act, any officer, minister, or other person or persons whatsoever, shall presume, by or under color of any such pretended by-laws, ordinances, or regulations, to take, seize, condem, or convert to his or their own uses, any flour, or other goods or merchandize whatsoever, not by Law prohibited at any time to be imported from the said city of New York, or any other lawful port in this province, *he, and they, and every of them shall forfeit to the owner of such flour, bread, and other goods or merchandize, treble the value of the flour, bread, or other gopds or merchandize, so to be taken, seized, condemned, or converted, as aforesaid, and also his treble costs, to be recovered by action of debt in any of the Majesties' Courts within this province, wherein no essoign protection or wager of Law, nor any more than one impartance shall be allowed,* Provided always, and it is the true intent and meaning of this Act, that no officer, minister, or other person or persons, shall at any time be impeached, prosecuted, condemned, troubled or disquieted, by virtue of this Act, or upon any construction or interpretation of the same, for any fact, matter or thing acted, done, perpetrated or committed at any time before the making or publication hereof; but that such officer, minister, or other person or persons, as to any such fact, matter or thing, heretofore acted, done, perpetrated, or committed, shall be and remain in such plight, state, and condition, as if this Act, and every clause therein contained, had never been made, any thing before herein expressed to the contrary hereof in any wise notwithstanding WM. III., pp 23 and 24, Law 1719, London Edition, Acts passed by the General Assembly of the Colony of New York, in March, July, and October, 1695.

Anne, By the Grace of God, of England, Scotland, France and Ireland, Queen, Defender of the Faith, &c.

To all to whom these presents may in any wise concern, Sendeth Greeting.

WHEREAS the Mayor, Aldermen, and Commonalty of the city of New York, by their petition to our right trusty and well beloved cousin Edward Viscount Cornbury, our Captain-General and Governor-in-Chief, in and over our Province of New York, and territories depending thereon in America and Vice Admiral of the same, &c. preferred in Council; therein setting forth, That they having a right and interest, under divers ancient Charters and Grants, by divers former Governors and Commanders-in-Chief of our said Province of New York, under our noble progenitors, in a certain ferry from the said province of New York, over the East River to Nassau Island, (alias Long Island.) and from the said Island to the said city again, and have possessed the same, and received all the profits, benefits, and advantages thereof, for the space of fifty years and upwards; and perceiving the profits, advantages, and benefits usually issuing out of the same to diminish, decrease, and fall short of what might be reasonably made of the same, for the want of the bounds and limits, to be extended and enlarged on the said island side, whereby to prevent divers persons transporting themselves and goods to and from the said Island Nassau (alias Long Island) over the said river, without coming or landing at the usual and accustomed places, where the ferry boats are usually kept and appointed, to the great loss and damage of the said city of New York; have humbly prayed our grant and confirmation, under the great seal of our said province of New York, of the said ferry, called the Old Ferry, on both sides of the said East River, for the transporting of passengers, goods, horses and cattle, to and from the said city, as the same is now held and enjoyed by the said Mayor, Aldermen, and Commonalty of the said city of New York, or their under tenant, or under tenants; and also of all that, the vacant and unappropriated land, from high-water-mark, to low-water-mark, on the said Nassau Island (alias Long Island) lying contiguous and fronting the said city of New York, from a certain place called The Wall-About, unto the Red-Hook, over against Nutten-Island, for the better improvement and accommodation of the said ferry; with full power, leave, and license to set up, establish, maintain, and keep one or more ferry or ferries, for the ease and accommodation of all passengers and travellers, for the transportation of themselves, goods, horses, and cattle, over the said river, within the bounds aforesaid, as they shall see meet and convenient, and occasion require; and to establish, ordain, and make bye-laws, orders, and ordinances, for the due and orderly regulation of the same: The which Petition we being minded to grant. *Know ye*, That of our especial grace, certain knowledge, and meer motion, we have given, granted, ratified, and confirmed, and in and by these presents, for us, our heirs, and successors, we do give, grant, ratify and confirm, unto the said Mayor, Aldermen, and Commonalty of the city of New York, and to their successors and assigns, All that the said ferry, called the Old Ferry, on both sides of the said East River, for the transportation of passengers, goods, horses, and cattle, over the said river, to and from the said city and island, as the same is now used, held, and enjoyed, by the said Mayor, Aldermen and Commonalty of the city of New York, or their under tenant or under tenants, with all and singular the usual and accustomed ferriage, fees, perquisites, rents, issues, profits, and other benefits and advantages whatsoever, to the said Old Ferry belonging, or therewith used, or thereout arising; and also, all that the aforesaid vacant and unappropriated ground, lying and being on the said Nassau Island (alias Long Island) from high-water-mark to low-water-mark aforesaid, contiguous and fronting the said city of New York, from the aforesaid place called the Wall-About, to Red-Hook aforesaid, *That is to say*, from the east side of the Wall-About, opposite the now dwelling house of James Bobine, to the west side of the Red-Hook, commonly called the Fishing Place, with all and singular the appurtenances and hereditaments to the same, or any part or parcel thereof belonging, or in any wise of right appertaining; together with all and singular the rents, issues, profits, ways, waters, easements, and all other benefits, profits, advantages, and appurtenances, which heretofore have, now are, and which hereafter shall belong to the said ferry, vacant land, and premises, hereinbefore granted and confirmed, or to any or either of them in any wise appertaining, or which heretofore have been, now are, and which hereafter shall belong, be used, held, received, and enjoyed; and all our estate, right, title, and interest, benefit and advantage, claim and demand of, in, or to, the said ferry, vacant land, and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders; together with the yearly and other rents, revenues, and profits, of the premises, and of every part and parcel thereof; except and always reserved out of this our present grant and confirmation, free liberty, leave, and license, to and for all and every person or persons, inhabiting or having plantations near the said river, by the water side, within the limits and bounds above mentioned, to transport themselves, goods, horses and cattle, over the said river, to and from the said city of New York, and Nassau Island (alias Long Island) to and from their respective dwellings or plantations, without any ferriage or other account to the said ferry, hereby granted and confirmed to be paid or given; so always as the said person or persons do transport themselves only, and their own goods, and in their own boats only, and nor any stranger, or their goods, horses, or cattle, or in any other boat: *To have and to hold*, All and singular the said ferry, vacant land, and premises, hereinbefore granted, and confirmed, or meant, mentioned, or intended to be hereby granted and confirmed (except as is hereinbefore excepted) and all and singular the rents, issues, profits, rights, members, appurtenances, to the same belonging, or in any wise of right appertaining unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors and assigns for ever; to be holden of us, our heirs and successors, in free and common soccage, as of our manor of East Greenwich, in the county of Kent, within our kingdom of England; yielding, rendering, and paying unto us, our heirs and successors for the same, yearly, at our custom house of New York, to our collector and receiver general there for the time being, at or upon the feast of the nativity of St. John the Baptist, the yearly rent or sum of five shillings, current money of New York.

And we do further, of our especial grace, certain knowledge, and meer motion, for us, our heirs and successors, give and grant unto the said Mayor, Aldermen, and Commonalty, and their successors, full and free leave and license to set up, establish, keep, and maintain one or more ferry or ferries, as they shall from time to time think fit and convenient, within the limits and bounds aforesaid, for the ease and accommodation of transporting of passengers, goods, horses and cattle, between the said city of New York and the said island, (except as is herein before excepted) under such reasonable rates and payments as have been usually paid and received for the same; or which at any time hereafter, shall be by them established by and with the consent and approbation of our Governor and Council of our said province, for the time being. *And we do further*, of our especial grace, certain knowledge, and meer motion, give and grant unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors, full and absolute power and authority, to make, ordain, establish, constitute, and confirm, all manner of bye-laws, orders, rules, ordinances, and directions, for the more orderly keeping, and regularly maintaining the aforesaid ferry that is now kept, or any ferry or ferries which shall at any time or times hereafter, be set up, established, or kept, within the bounds aforesaid, by virtue hereof, or of, for, touching, or concerning, the same, (so always as the same be not contrary to our laws of England, and of our province of New York) and the same at all times hereafter to be put in execution, or abrogate, revoke or change, as they in their good discretion shall think fit, and most convenient, for the due and orderly keeping, regulating, and governing the said ferry or ferries herein before mentioned.

And lastly, our will and pleasure is, and we do hereby declare and grant, that these our letters patent, or the record thereof, in the secretary's office of our said province of New York, shall be good and effectual in the law, to all intents and purposes whatsoever, notwithstanding the not true and well reciting or mentioning of the premises, or any part thereof, or the limits and bounds thereof, or of any former or other letters patents, or grants whatsoever, made or granted; or of any part thereof, by us or any of our progenitors, unto any person or persons whatsoever, bodies politic, or corporate, or any law or other restraint, incertainty, or imperfection whatsoever, to the contrary in any wise notwithstanding, and although express mention of the true yearly value, or certainty, of the premises, or of any of them, or of any other gifts or grants by us or by any of our progenitors, heretofore made to the said Mayor, Aldermen, and Commonalty, of New York, in these pfesents, is not made, or any other matter, cause, or thing, whatsoever to the contrary in any wise notwithstanding. *In testimony* whereof, we have caused these our letters to be made patent, and the seal of our said province of New York, to our said letters

patent to be affixed, and the same to be recorded, in the secretary's office of our said province. *Witness* our right trusty and well beloved cousin, Edward Viscount Cornbury, Captain-General, and Governor-in-Chief, in and over our province of New York, aforesaid, and territories thereon depending in America, and Vice Admiral of the same, &c., in Council, at our fort in New York, the nineteenth day of April, in the seventh year of our reign. *Annoq.; Domini*, One thousand Seven Hundred and Eight.

The following Act is not among the Printed Colonial Laws. We copied it from the Manuscript Laws on file in the office of the Secretary of State, at Albany.

An Act to enable the Mayor, Aldermen, and Commonalty of the City of New York, to raise the sum of Five Hundred Pounds for altering the Course of the Common Sewer at the end of Broad street, and for Cleansing and Scouring the Dock of this City.

WHEREAS in the dock within the city of New York, violent sudden *raines* and the great confluence of water from several streets of the city unto the Broad street, and from thence into the dock, brings such large quantities of dirt, sand, and rubbish, ouze, and mudd which cettles and lodges itself in the Bason of the said dock, occasions an insupportable charge for cleansing and scouring of the same, for the future may be prevented by extending or altering the course of the passage of the said common sewer, to convey the same clear of the said dock into the East river. And, whereas, the public rents and yearly income of the said city are at present so small that they are not sufficient to defray the public and necessary charge thereof—to the end that the same dock, and wharf thereof, may be cleaned, scoured, and repaired, so as to make it serviceable for the receiving and harboring of vessels—Be it therefore Enacted by the Governor, Council, and General Assembly of the Colony, and it is hereby Enacted by the authority of the same, That it shall and may be lawful for the Mayor, Aldermen, and Commonalty of the City of New York, for the time being, in Common Council convened, any nine, whereof the Mayor and Recorder shall be two, to order the raising the sum of Five Hundred Pounds, current money in the Colony, by a tax upon the Freeholders and Inhabitants of the said city and county, within the term of one year next after the publication hereof; to be assessed, collected, and paid on or before the first day of September next ensuing; pursuant to which order of Common Council, so as aforesaid to be made, the Mayor of the said city shall forthwith thereupon issue out his Warrant to the Assessors and Collector of each respective Ward within the said city and county, requiring them to make such assessments and collection, and to pay the same to the Treasurer of the said city, for the time being, or to such other person or persons as the said Mayor, Aldermen, and Commonalty, or any nine of them, whereof the Mayor and Recorder be two, shall think fit to appoint for that purpose, in such convenient times as shall be agreed upon by the said Mayor, Aldermen, and Commonalty, or such nine of them as aforesaid, or such person or persons as shall be so, as aforesaid, appointed to receive the same, be paid to the uses hereinafter mentioned and expressed, and to no other use whatever; and accounted for in such manner and form as other public monies in the hands of former Treasurers of the said city have or ought to be accounted for. And be it further Enacted, by the authority aforesaid, That the said sum of Five Hundred Pounds to be raised by virtue of this act, shall be and is hereby appropriated to and for the carrying the said common sewer from the end of the said Broad street through the side dock into the East river, as the said Mayor, Recorder, Aldermen, and Commonalty shall think convenient; and for cleansing and scouring of the basin of said dock from all rubbish, ouze, *mudd*, and sand, so as to render it useful and serviceable for the harboring and sheltering of vessells, especially in the winter season; and for the repairing and mending of the public wharf of the said city. And be it further Enacted by the authority aforesaid, That it shall be in the power of the said Mayor, Aldermen, and Commonalty, or any nine of them, whereof the Mayor and Recorder be two, to appoint such person or persons as they shall see *fit*, to be overseers of the said work, and to purchase materials necessary, and agree with workmen, and to order the payment of the said money for the uses aforesaid, as they shall think *fit*.

City of New York, Die Sabbat, 27th April, 1717, in the 3d year of his Maj'y's Reign—General Assembly for the Colony of New York. This bill having been read three times, Resolved, The Bill do pass.

By order of the General Assembly.

N. NICOLL,
Speaker.

New York, the fourteenth day of May, 1717. I assent to this Bill enacting the same, and order it to be enrolled.

R. HUNTER.

The Streets and Avenues, up to and including Forty-second Street.

There has been great complaint made by the persons immediately interested in the Lands embraced in that portion of the Island within the limits we have stated above, in relation to the assessment proceedings; and these complaints are well founded, and we believe require legislative investigation.

There is great blame somewhere in these proceedings, and nothing short of a most thorough investigation will be satisfactory to the people.

We give below the Resolution under which these proceedings were commenced, the Report of the Street Committee upon that Resolution, and the subsequent action of the Board of Aldermen and Mayor of New York upon that Report.

This Report states, as will be seen, that the whole proceeding was to be had by one Board of Commissioners, that *nineteen-twentieths of the usual expense of opening streets in detail may be saved, and also to prevent Lots being twice or three times assessed for street opening.*

No authority it appears was given by the resolution for any application to the Supreme Court for the appointment of Commissioners. About thirty different sets, more or less, however, were appointed by that Court on application of officers of the Corporation, and twelve sets of these Commissioners were appointed on petitions filed in June, 1836. It will be recollected that from the 10th day of May to the 1st day of July, 1836, the City of New York was without a Common Council, the Board of Aldermen being at that time equally divided as to political parties, viz., 8 and 8; consequently no President was chosen in the Board of Aldermen, and no organization of that Board could be had until the President should be first chosen. This is a well settled matter—when it happens in Congress that the House of Representatives cannot elect a Speaker, (as was the case last year,) the Senate do no business, and the President withholds his annual message until the House is organized.

The chairman of the Street Committee of the Board of Assistant Aldermen, who signed the report below, has stated to us that the committee, at the time they signed the report, calculated that the whole expense of opening all the streets and avenues contemplated by the report, was estimated by them at about five thousand dollars at the outside.

These streets have been proceeded with in detail, of single streets, and parts of single streets, by which the expenses have been most enormously increased.

In May, 1840, notice was given by the commissioners appointed, as stated above, for an applicatian to the Supreme Court for the confirmation of the reports for the opening 29th, 30th, and 39th streets. These notices were published in *three newspapers, and not in four and in handbills as required by the Act of April* 20, 1839. See No. 1 of this Gazette, p. 15, § 9, of column 2.

Objections were made by two of the parties interested in 29th and 30th streets, to the confirmation of the assessments. These objections were argued before the court at the September special term, by Ward Hunt, Esq., of Utica, on the part of the objectors; and notwithstanding the non-compliance with the Law by the commissioners of 1839, the court confirmed the assessment without note or comment.

Since the confirmation as above, the two Boards composing the Common Council have each acted upon petition of the citizens in relation to this matter; and a committee from each Board met as a joint committee, or rather as two committees, to investigate the subject.—These committees held two meetings in the court room of the Assistant Vice-Chancellor, and Mr. Leonard, a highly respectable citizen, appeared before the committee, and stated that he was one of the commissioners appointed to make the estimate and assessment for opening 29th street, that one of his associates did not attend the meeting of the commissioners at all, that this associate commissioner was allowed the same fees as those who did attend, viz., $4 per day, amounting to several hundred dollars, which sum was included in the assessment. Mr. Leonard also stated the same fact as to the assessment for opening the Second Avenue from 29th to 86th street—that in that proceeding one of the commissioners received more than seven hundred dollars, and did not render a sixpence worth of service; which sum of $700, and more, was assessed upon the property. This is a fair specimen of the whole system.

The chairman of the Street Committee of the Board of Assistant Aldermen, who signed the report which is below, appeared before the committee, and made a lengthy affidavit in relation to this matter, in which he stated that he had proceeded to the office of the Clerk of the Supreme Court, at Albany, to examine the proceedings; and he also amplified and confirmed what is stated in the report, that the whole section was to be opened by one set of commissioners, &c., &c. This committee have not yet reported, and probably will not make a report, inasmuch as in that case they must report against their own officers.

"Board of Assistant Aldermen, April 6th, 1835.
By Mr Holden—
Resolved, That it be referred to the Street Committee to inquire into the expediency of Opening all Avenues and Streets (not all already opened) up to and including Forty Second Street.
Referred to Street Committee."

"JUNE 1st, 1835.

The unfinished business of the old Board was then taken up, and the various papers disposed of and referred to appropriate Committees, as follows:

Resolution to open Avenues and Streets up to and including 42d street. Referred to Street Committee."

"JULY 31st, 1835.

Mr. Townsend presented a report of the Street Committee in favor of the Resolution to open the Streets and Avenues up to and including 42d street, with the following exceptions:

1st, Such parts of the streets and avenues lying within the said limits, as have already been opened, either by deeds of cession from the proprietors thereof or by due course of law.

2d, Such parts of the avenues and streets as are contained within the limits of the public establishments at Bellevue.

3d, Such parts of Fortieth and Forty-first streets as lie between the Fifth and Sixth Avenues—it being understood these lands will be required by the Water Commissioners for uses connected with the Aqueduct.

4th, Such parts of the streets and avenues as are embraced within the lands occupied by the Managers of the House of Refuge for Juvenile Delinquents.

On motion of Mr. Ingraham, the Fourth Exception was stricken out, and the Report and Resolution were adopted and printed. (See Document No. 36.)"

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The Street Committee to whom was referred the annexed resolution, which proposes to inquire into the expediency of opening all the streets and avenues, (not already opened) up to and including Forty-second street

RESPECTFULLY REPORT:

They have caused public notice to be given, of the pendency of the before-mentioned resolution, in the daily papers, in order that the most extensive information should be given to all parties concerned, as in a contemplated movement of such magnitude, it was desirable to obtain a very general expression of public opinion. The only remonstrances which have been presented against opening these avenues and streets, are but from a very small number of proprietors or lessees, whose interest is either limited in amount or of very short duration, while on the contrary an almost universal opinion is loudly expressed in favor of its consummation.

It is a well known fact, that all the lands, comprised within the limits before mentioned, viz.: up to 42d street, and indeed far beyond it, have for several years past been entirely laid out into town lots, bounded on the avenues and streets, and are at present held mostly in small parcels of a few lots, by a great variety of persons, many of whom are anxious to erect buildings, but are at present prevented from doing so, from their inability to obtain access to their property, without passing over the land of other persons, in consequence of the streets, on which their lots are bounded, not being opened.

This fact in the opinion of the Committee, has a very powerful bearing on this question, and is strongly indicative of the great expediency of an affirmative decision thereon.

No position would appear to be better sustained by reasons of sound public policy, than the constitutional authorities of the city should provide, in reasonable and proper time, that every citizen be furnished with the means of access to and enjoyment of his property, and in no other way can this be effected, than by their taking this legal measure, authorized by the statutes of the state, for the opening of streets and public thoroughfares.

The exceedingly rapid increase of our population, and the measures which have been taken to lay out and form public squares, have so much enhanced the value of lots in their vicinity, as to render it desirable for persons of lesser means, to turn their attention to situations somewhat more removed from the denser parts of the city, where lots can be purchased at such moderate prices as come within their means. And unless facilities by opening the streets are afforded, a very large proportion of those classes in society whose means of subsistence arise from their daily labor, will be compelled to locate themselves on the opposite shores of our rivers, instead of fixing their habitations in our more immediate suburbs.

There is however another very substantial reason offered, why the measure proposed, should embrace at one operation the whole extent contemplated, which is the great saving of expense which will thereby be produced. The amount involved, by proceeding in this business, with one general commission, will probably not exceed one twentieth part of the cost, which must unavoidably be incurred if it be suffered to progress in detail by particular sections, of individual streets; besides the much more reasonable assurance of equal justice being done to all parties, when the commissioners are placed in a situation which will enable them to take a general and comprehensive view of the results to be produced, by opening the streets, in a large section of the city, and their relative bearing each upon the other, than in the method heretofore generally practised, of opening special pieces in detail.

Instances are upon record of the same piece of property having been assessed a second and even a third time, for opening some portions of the street or avenue contiguous to it. Now, it is quite clear, that by substituting the general system of opening, as herein proposed, in lieu of the former practice, the expenses consequent thereon may be very much diminished, and this point is thought to be worthy of particular attention as any mode of proceeding which will lessen the amount of assessment on the property interested, is believed to be entitled to a very favorable consideration.

The Committee having fully discussed this matter, are decidedly in favor of the general proposition, as contained in the resolution; yet they still think that existing circumstances render it proper to make some exceptions from its operation, and these relate to the establishment at Bellevue for the poor, the lands occupied by the managers of the House of Refuge for juvenile delinquents, and the square between the fifth and sixth Avenues, and from 40th to 42d streets, originally intended for a Public Cemetery, but now proposed to be occupied as the site for the distributing reservoir by the Water Commissioners.

The reasons for the exceptions abovementioned are obvious, inasmuch as the opening of the avenues and streets through them will necessarily prevent the possibility of their being used for the purposes now designed.

Besides these properties belonging entirely to the public, these streets and avenues passing through them can be opened at any time free of expense.

In conclusion, the Committee report to the Board, that, in their judgment, it is expedient to open all the streets and avenues (not already opened) up to and including 42d street, with the exceptions abovementioned, and offer the following resolutions:

Resolved, That all the streets and avenues, as laid down on the Commissioners' map of the city, be opened up to and including 42d street, excepting,

1st, Such parts of the streets and avenues lying within the said limits as have already been opened, either by deeds of cession from the proprietors thereof, or by due course of law.

2d, Such parts of the avenues and streets as are contained within the limits of the public establishment at Bellevue.

3d. Such part of 41st street as lie between the fifth and sixth avenues, it being understood this land will be required by the Water Commissioners for uses connected with the aqueduct.

All which is submitted.

BENJ'N TOWNSEND,
M. VAN SCHAICK,
EDWARD CURTIS,
} *Committee on Streets.*

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"AUGUST 5th, 1835.

BOARD OF ALDERMEN,

From the Board of Assistants.

A Report and Resolution of the Street Committee, That all the streets and avenues, as laid down on the commissioner's map of the city, be opened up to and including 42d street, &c. Referred to the Street Committee."

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"NOVEMBER 14th, 1835.

The Street Committee, to whom was referred the Report of the Street Committee of the Board of Assistants, in favor of opening all the avenues and streets (not already opened) up to and including 42d street, presented a Report in favor thereof, which was laid on the table, and directed to be printed for the use of the members."

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Document No. 36.

BOARD OF ALDERMEN,

November 4th, 1835.

The Committee on Streets, to whom was referred the Report from the Board of Assistants, on the subject of opening the Avenues and Streets, up to, and including 42d street, presented the following Report with Amendments thereto, which was laid on the Table, and directed to be printed for the use of the Members.

J. Morton, Clerk.

The Street Committee, to whom was referred a Report from the Street Committee of the Board of Assistant Aldermen, founded on a Resolution to inquire into the expediency of opening all the Streets and Avenues (not already opened) up to, and including 42d street, Respectfully Report:

They have given to the subject embraced by this resolution, that careful consideration which its importance demanded, and have arrived at the same conclusion as is contained in the Report made by the Street Committee of the Board of Assistant Aldermen, viz.: That they are decidedly in favor of the general proposition, as contained in the Resolution, yet they still think that existing circumstances render it proper to make some exceptions from its operations, and these relate to the establishment at Bellevue, for the poor.—The lands occupied by the managers of the House of Refuge, for Juvenile Delinquents, and the Square between the Fifth and Sixth Avenues, and from 40th to 42d streets, originally intended for a public Cemetery, but now proposed to be occupied as the site for the distributing Reservoir, by the Water Commissioners.

The reasons for the exceptions above mentioned, are obvious, inasmuch as the opening of the Avenues and Streets, will necessarily prevent the possibility of their being used for the purposes now designed. Besides these properties belonging entirely to the public, the Streets and Avenues passing through them, can be opened (if required) at any time free of expense. The Resolution as originally and unitedly Reported by the Street Committee of the Board of Assistant Aldermen, embraced all the exceptions recommended in the Report, and which were as follows:

"*Resolved*, That all the Streets and Avenues as laid down on the Commissioners' map of the City, be opened up to, and including 42d street, excepting

First. Such parts of the Streets and Avenues lying within the said limits, as have already been opened, either by deeds of cession from the proprietors thereof, or by due course of law.

Second. Such parts of the Avenues and Streets as are contained within the limits of the public establishment at Bellevue.

Third. Such parts of 41st street as lie between the Fifth and Sixth Avenues, it being understood this land will be required by the Water Commissioners for uses connected with the aqueduct.

Fourth. Such parts of the Streets and Avenues as are embraced within the lands occupied by the Managers of the House of Refuge for Juvenile Delinquents.

Your Committee fully agree in the views and opinions contained in the Report as above recited, and also the Resolutions as originally reported, embracing these four exceptions, three of which having been adopted by the Board of Assistants, the Committee would advise a concurrence therein, and the fourth will form a separate resolution for the decision of this Board, which if favorably entertained, it is believed will promote the public good, and preserve the usefulness of a valuable institution.

The House of Refuge in its operations is much more of a city than a state institution, and ten years of experience has proved its importance.

The subjoined statement, which is obtained from sources fully entitled to belief, will fully establish this opinion. It has received more than sixteen hundred children within its enclosures, fed and clothed them.—The City Authorities, viz.: The Court of Sessions, Police, and Commissioners of the Alms House, have committed more than fourteen hundred of the whole number. The remainder have been received from twenty-two other counties of the State, the United States Courts, and a few from Sing-Sing and Auburn, transferred by authority of the Governor of the State.

There have been indentured to farmers, mechanics, and to sea service, more than fourteen hundred children during the same period.

Towards the erection of buildings and support of the institution, the State Legislature has contributed most liberally, both in funds and the passage of laws in aid of this charity, as will appear from the following statement taken from the books of the institution, viz.:

From the State Treasury, - - -		$12,000
Marine Hospital Fund, passengers payments,		90,400
Tax on Theatres and Circuses, - -		10,250
Tax on Grocers Licenses, (law now repealed,)		9,232
Donations from Citizens of New York, -		21,000
Cash received for Labor of Children, -		25,008
Donation from the Manumission Society, towards building Refuge for Colored Children, - - - - - - - -		5,000
Making, - - - - - - - -		$175,890
From Corporation of New York,		
From Excise Fund, for State Law,	$16,000	
Donation towards Colored Refuge,	5,000	$21,000
		$196,890

It will be perceived by the foregoing account, that the Corporation of the City of New York have not

been called upon for much pecuniary aid; an appropriation of five thousand dollars granted more than a year since, to be paid on the erection and completion of a stone building forty by one hundred and fifty feet, for colored children, has recently been paid by the Comptroller, upon certificates furnished that the building was finished.

Your Committee are farther informed, and believe, that the building alluded to, has cost, including the stone wall enclosing it, upwards of twenty thousand dollars, and is now about to be occupied.

The number of children now upon the premises are two hundred and seventy, being two hundred boys and seventy girls. Your Committee have also been furnished with an official statement from the books of the institution, of the amount of expenditure by the Society for the Reformation of Juvenile Delinquents, for buildings, workshops, walls, &c., &c., upon these premises, amounting to $31,761 90-100, the details of which it has been considered not necessary to append.

Your Committee, attended by several members of the Board, have visited and closely inspected this establishment, and with much satisfaction noted the order, cleanliness, industry, and good discipline prevailing, and the children busily engaged in the workshops and schools.

Under these circumstances, the reflection naturally arises—Where would the 1100 little vagrants and rogues, *committed from this county*, have been, had not a Refuge been established? doubtless, the Penitentiary and State Prison would have been the habitation of most of them. The Committee cannot for a moment believe, that the Common Council would intentionally be the means of destroying this institution, or of materially injuring its usefulness. The Fifth Avenue, 24th and 25th streets would pass through these grounds, if opened, and would cause to be taken down the superintendent's and assistants' houses, a three story brick shop, a stone building 42 by 150 feet, of two stories high, occupied by the boys, about 20 feet of another stone building used for the same purpose, and 30 feet of another stone building occupied by the girls. The grounds thus separated and divided, and several of the buildings destroyed, the institution could not well be continued, or if it were continued, its usefulness must be very materially injured by its then circumscribed limits. Your Committee cannot believe that any greater inconvenience to the public will arise from excepting this site, than the exceptions heretofore made in favor of Washington Square and Union Place; both these enclosures prevent the direct passage of streets through them, and the inconvenience of passing around them, does not counterbalance the good arising from their being enclosed.

Your Committee also think this a proper occasion to state, that the proposition now under consideration before the Committees of Streets, and Public Lands and Places, of this Board, to set apart for public uses a space of ground, which includes the land occupied by the Managers of the House of Refuge, and which proposition appears generally to be very favorably entertained, is another powerful reason for excluding this land from the operation of opening the streets through it: And although the Committee are of opinion the time is not very far distant when it will be expedient to remove this very valuable institution farther from the compact part of the city, yet they still think the public good does not, at this time, require the passage of the Fifth Avenue and 24th and 25th streets through the lands occupied by the Managers of the House of Refuge for Juvenile Delinquents, and beg leave to offer the following resolution:

Resolved, That the Board concur with the Board of Assistants in the resolution adopted by them, viz.: That all the streets and avenues, as laid down on the Commissioner's map of the city, be opened up to and including 42d street, excepting,

1st. Such parts of the streets and avenues lying within the said limits as have already been opened either by deeds of cession from the proprietors, or by due course of law.

2d. Such parts of streets and avenues as are contained within the limits of the public establishment at Bellevue.

3d. Such parts of 41st street as lie between the Fifth and Sixth Avenues, it being understood these lands will be required by the Water Commissioners for uses connected with the aqueduct—and the following additional resolution is offered for the consideration of the Board:

Resolved, If the Board of Assistant Aldermen concur, That such parts of the Streets and Avenues as are embraced within the lands occupied by the Managers of the House of Refuge for Juvenile Delinquents, be excepted from the operation of the order to open all the Streets and Avenues up to and including 42d street.

Respectfully submitted.

FRAS. FICKETT, SAMUEL PURDY, EDWARD TAYLOR, } *Committee on Streets.*

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DEC. 14th, 1835.

A motion was made that Document, No. 36, be called up, being the report of the Street Committee of the Board of Assistants, relative to opening the streets and avenues up to and including 42d street, amending the same by excepting the streets and avenues occupied by the House of Refuge from said operations, which having been read, a motion was made that the Board go into a committee of the whole, which was agreed to, when Alderman Labagh, by request, took the chair. After considerable debate had thereon, the committee, by the Chairman, asked leave to rise, and reported that they had considered the same and recommended the adoption of the said report without amendment, whereupon the President resumed the chair, and put the question on adopting the report, which was carried in the affirmative, and directed to be sent to the Board of Assistants for concurrence.

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BOARD OF ASSISTANTS.

Dec. 21st, 1835.

Papers from the Boa d of Aldermen.

Report of the Street Committee relative to opening the streets and avenues up to and including 42d street. Referred to Street Committee.

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JAN. 25th, 1836.

Mr. Ingraham called up Document, No. 36, being a report of the Street Committee in favor of opening the streets and avenues up to and including 42d street, together with Document, No. 35, of the Board of Aldermen, being a report of the Street Committee of that Board on the same subject, with the following additional resolution, adopted by the Board of Aldermen, and sent to this Board for concurrence.

Resolved, If the Board of Assistant Aldermen concur, that such parts of the streets and avenues as are embraced within the lands occupied by the managers of the House of Refuge for juvenile delinquents, be excepted from the operations of the order to open all the streets and avenues up to and including 42d street.

Mr. Ingraham called for the reading of the Petition of Isaac M. Wooley and others, owners of land on the 5th avenue, requesting to have the avenue opened through the ground of the House of Refuge and up to 129th street. The petition was accordingly read, and referred to the Road Committee.

The Board proceeded to consider the resolution of the Board of Aldermen, in favor of excepting the House of Refuge from the proposed opening of the 5th avenue. Mr. Ward obtained leave to be excused from voting, and the resolution was concurred in.

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BOARD OF ALDERMEN.

February 1st, 1836.

Papers from Board of Assistants.

A resolution non-concurring in the additional resolution of this Board, to the report of the Street Committee, on opening all the streets and avenues up to and including 42d street, by excepting the ground, &c. occupied by the House of Refuge, adopted by this Board on the 14th Dec. last, was, on motion, laid on the table.

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FEBRUARY 8th, 1836.

Document, No. 36, of the Board of Assistants which was laid on the table, was called up. It being the report to open the streets and avenues up to and including 42d street, with an additional resolution passed by this Board. A motion was made to lay the same on the table; after some debate, the motion to lay on the table prevailed.

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"FEBRUARY 15th, 1836.

A motion was made to call up Document No. 36, being the report of the Street Committee of this Board, on the report of the Board of Assistants, on the subject of opening the avenues up to and including 42d street, which report was adopted, together with an additional resolution, and as amended, sent to the Board of Assistants, who non-concurred in the amendment, and come back to this Board, and laid on the table, on the 1st instant, was read, a motion was then made that this Board recede from their additional resolution, which motion was adopted, the report passed, and directed to be sent to His Honor the Mayor for approval.

Approved by

CORNELIUS W. LAWRENCE, Mayor.

Feb. 18th, 1836.

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CITY CONVENTION.

The three following articles we have copied from the New York American of 1829. The first is editorial, and the other two over the signature of "Third Ward," were written by our highly esteemed fellow citizen, Samuel Stevens, Esq., the President of the Board of Water Commissioners:—

City Convention, May 4th, 1829.—The Common Council are, it is understood, this evening to discuss the question of a Convention of the people, in order to consider of an alteration of the City Charter. It seems to be conceded on all hands that something is required to be done; but how the proposed object is to be attained is the difficulty. To us the case seems clearly one that, in the true spirit of our institutions, should be referred to the people. Hence we are quite in favor of the Convention proposed to be called, in which delegates chosen from the respective wards shall assemble, and adopt such amendments and alterations as the public good shall require—and be authorized to transmit the result of their proceedings to the Legislature, in order that a law may be passed in conformity thereto. We particularly approve that part of the proposed scheme of a Convention which puts it in direct communication with the Legislature, without the intervention of the Corporation. They should, as a Corporation, have nothing to do with it. When did any body ever consent to curtail its own powers—lessen its own patronage—admit its own insufficiency?

Yet all these things must the Corporation be expected to do before they could approve the propositions which, without doubt, any convention for reforming the City Charter will present, in regard to what are justly deemed defects on those particular points. It is, then, precisely because the Common Council are not to have a voice in the proceedings on this subject, that we think them most likely to lead to the desired results, and therefore most entitled to popular favor.

The above taken from the American, May 4th, 1829.

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(*For the New York American.*)

THE CONVENTION.

I am one of those who believe that innovations in our institutions have caused the State about as much evil as good, and therefore look at the proceedings of the City Convention with apprehension, lest in their zeal to innovate, they adopt a system not necessary, or adapted to our customs and modes of doing business; and therefore not acceptable to the *legal representatives* of the people nor to the people themselves. The result of which will be, either the rejection of the system, and the consequent loss of the opportunity of benefiting the city, or the adoption of a plan not suited to the wants of this metropolis. I have been led to these remarks by hearing the discussion and adoption of the seventh section to compel "the attendance of absent members, to punish members for disorderly behaviour and to expel members." The provision in the charter of Gov. Dongan, though 140 years old, authorizing the infliction of a fine of twenty shillings on a member who makes default in attendance, when legally noticed, has not only a legal provision, and a provision for carrying it into effect absolutely necessary, but an adaptation to our present wants far exceeding the modern section adopted by the Convention. Let it not be said that the Convention are making a *constitution*, and therefore it is not necessary to go into all its legal provisions. Not so. They are framing a statute for the enactment of the legislature; and if it does not contain the necessary provisions to carry it into effect, the section of the constitution (so called) will be idle and use-

less. How is the first clause of the section to be carried into effect? Is each Board to appoint a Sergeant-at-Arms? Is he to be sent with a mace or warrant to the apprehension of an absent member? To authorize the first, must not a section be introduced giving to the two Boards the common law powers and usages of Parliament, or at least so much of them *as are possessed and exercised by the United States* Congress, or the learned gentlemen supporting this resolution, will not say that a city incorporation possess *these powers* by intendment? Can a warrant be issued? Their corporate seal has never arrested or committed a citizen, and if they have such powers, must they not be conferred by the express letter of the statute? It may be asked, would the Legislature confer such powers, which append of right only to bodies possessing the sovereignty of the people? Is the provision intended to remedy an evil? It cannot be pretended that members do not attend the meetings of the Board; so generally has this duty been performed, that there is no recollection of the fine of twenty shillings ever having been inflicted. But I may be told that Congress have this power by the Constitution!!! Ye Gods! what an argument! The attributes, proper for a tribunal possessing the sovereignty of a nation, compared with those of an incorporation for the enforcement of City regulations, all of which emanate from a State Legislature, who even regulate the hours for opening our markets and the rate of ferriage for eggs. But if we mean to follow the Constitution of the United States, why leave out the concluding clause, "in such manner and under such penalties, as each house may provide?" It would be certainly going the *whole hog*, to have conferred such powers on an incorporation; and the means of enforcing them are, therefore, entirely omitted. We next come to the second clause of the section, "each Board to punish members for disorderly behaviour." If the first section is objectionable for its ambiguity and inoperativeness, much more so is the second. A right to punish! How?—is it to be by stripes or fine, or imprisonment in the Bridewell or Penitentiary, or can the Board introduce any foreign or new mode of punishment? And are these punishments to be in lieu of, or an accumulation of the punishments inflicted by existing statutes against persons guilty of disorderly conduct? Now we venture to predict, that all the statutes of the State may be ransacked, even including those of the *revised* laws, without finding a precedent for such loose legislation, either as to the punishment prescribed (or rather not prescribed) or as to the definition of the crime. We next come to the power "to expel a member," which I apprehend to be the most objectionable feature in the section. It is not called for by the exigencies of the city. Two instances have been referred to—one, of a member committing a crime, and the other some breach of the peace after adjournment. Now, as respects the first instance, the individual fled the city, and thereby vacated his seat, which was supplied by a new election; and in the other, the disturbance was after adjournment, and therefore not affecting the dignity of the Corporation; but supposing it had been during the meetings of the Board, are not the powers of members and magistrates to commit all sufficient? The same power which keeps order in a church or any assembly, is sufficient for all practical purposes—and the theory of the section is not suited to a body like the city Corporation. The power is liable to be abused—warm party times may expel a zealous opposing member of the minority, and perhaps from little other cause than that he fearlessly does his duty. To expel a member for the commission of frauds or of crimes would be constituting the Corporation a legal tribunal for the examination of witnesses, and hearing parties by themselves or by counsel.

The evil is corrected by the almost certain absence of a person really criminal, but if not, a remedy not adverted to in the Convention, a mandamus from the Supreme Court, to show cause why the seat of a member should not be vacated, presents, in some cases, another remedy; and, if you add to this, that *sovereign republican* remedy applied by the people, in the frequent recurrence of elections, you have all that is necessary; and this is done without the necessity of introducing any objectionable feature, the power to expel a representative of the people. But it was said in the Convention that the Corporation have this power, and the section only retains it. But this is not so. Neither charter nor statute ever conferred such powers on them; nor has any member been expelled, and no legal gentleman will pretend that an incorporation has other powers than those expressly conferred. Will it be pretended that the incorporations in Wall street can expel their Directors? It would be at least a new doctrine. The corporation is not a Legislative body. The laws emanate from the State, though they sometimes appear as ordinances of the Corporation, they are in reality the duplicates or counterparts of the State law, authorizing the same; and they can be said no more to make these laws, than a Sergeant-Major can be said to make or give orders, when he communicates the orders of his Colonel. These remarks have already extended to a span beyond their merits. But when all the editors of the city appear to proclaim "*the work goes bravely on*," and when no disposition is manifested to scrutinize the acts of these gentlemen *conventionists*, I cannot but apprehend that some of the changes and alterations may be found highly objectionable. A free discussion, both *in* and *out* of the Convention, will enable the members to draft the best system of laws for the city government. We know the evils of the present system—those of futurity we are yet to experience.

THIRD WARD.

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For the New York American.

THE CITY CONVENTION.

I offer you again, Mr. Editor, a few remarks on the proceedings of this body. It appears the Recorder is to be excluded from the Council board, and that the Aldermen are to be excluded from the bench of Criminal Courts, and, I suppose also from the bench of the Common Pleas; though I do not perceive that the fact of their being judges of this is adverted to. In relation to the office of Recorder, I cannot but think the Convention legislate against the incumbent, rather than for posterity. The moving spirits at Albany acted on the same principle when they destroyed the late judiciary; and the advantages of a system sunk into insignificance, when weighed with the gratification of removing incumbents. All the municipal charters of the state have their state officers, and ex-officio members; and like officers are introduced into many of our moneyed institutions. The state would probably be unwilling not to be, in some degree, represented; but if they would be satisfied to have the Recorder a sitting member, and not to vote, (like the delegates in Congress) except, perhaps, in case of a tie when presiding, I think there could be no objection to his so remaining. The other members have a right to expect much information from a Recorder; and the plan proposed would divest the office of its electioneering and caucus character, which has stripped it of all its respectability. But I would suggest one query: That as the constitution of the state guarantees to him his office for five years, whether he can be legislated out of office—his being a judge of the Sessions being rather appendant to the office, than the office itself? Against the proposition to deprive the Aldermen of being judges in the Common Pleas, and the Criminal Courts, many good reasons can be offered. It is said the Aldermen legislate, and should not sit in judgment upon their own laws. Now the Aldermen do not legislate. We have but one legislature in the state, and it sits at Albany; and the law adjudicated upon in the Sessions, in relation to the fire limits, (referred to in the Convention) is a state law. No corporation ordinance is ever adjudicated upon in the Sessions, or out of it, by the Aldermen. If this is true, the main argument fails. But there are arguments in favor of the system; and first, it is in conformity to our criminal code as applicable to all parts of the state. No person can be tried and executed in the state, excepting by a court composed of a judge of the Supreme Court or Circuit, and three of the judges of the Common Pleas. Now, these Judges in the incorporated cities are, a first Judge and the Aldermen, and if the Oyer and Terminer is to be composed without them, we shall see a person tried for his life at Brooklyn, by a bench composed of the Circuit or Supreme Court Judge, and the Judges of the Common Pleas, while on this side of the river the court would be differently composed, and probably with but one judge. If it is improper for the city magistrates, the Aldermen, to sit upon the bench of the Criminal Courts, then it is also improper for the county magistrates, the Judges of the County Courts, to compose part of such tribunals. But it is said that the Aldermen are not required to sit on the Sessions. They there divide a very enormous and almost unlimited power, making up the sentences whether the same relate to the amount of a fine or imprisonment, which varies for the same offence from a day in Bridewell to three years in the Penitentiary. In other courts the Judge has but to apply the law to the verdict, but in this court the law vests, I may say, everything in the *Court;* they render the verdict void by a fine of six cents or one day's imprisonment, or they extend the punishment to an imprisonment of three years and a heavy fine. The crimes and misdemeanors here tried are so various, and such different shades, that it leaves much of the duty of a jury to be performed by the court. And many a Judge, learned in the law, might preside in that court totally unfit to perform the duties of apportioning and graduating the punishment for a list of crimes, for mere vagrancy up to forgery and burglary. But again, the Aldermen hold a minor court—Special Sessions, established in all the counties of the state. This court tries vagrants, and persons guilty of petty offences, without a jury; is it proposed also to break up this court? It would not be acceptable to the people if held by one Judge without a jury; introduce a jury, you get rid of all the advantage of a speedy disposal of these cases, and the consequent clearing of the city prison, which is now the peculiar advantage of the court. Seven hundred persons were last year committed as vagrants. No tribunal is more proper to judge of the cases than the Special Sessions as now constituted. Again, the Aldermen, in their character of Judges of the General Sessions, appoint (by the constitution) the Clerks of Oyer and Terminer and General Sessions. And the Aldermen as Judges of the Common Pleas, appoint the District Attorney. Now, the constitution never intended the appointments to be made by a court with a single Judge, but by the Aldermen, the *elected representatives* of the people. The Convention appear to be disposed to frame a government on the plan of an original or first compact, or an organization, of a civilized community, for the first time brought together, and who have no *valuable institutions* of their own. The plan will have all the advantages which novelty can afford to a city government. But if it should ever be matured into a law (of which however at present there appears but little probability, (our poor *Burgomasters and Schepens* will not know whether they stand on their feet or their heads, when they have in their good city of New Amsterdam, one Board, composed of the Mayor and his *veto*—another of the Aldermen—another of the Assistants—and another of "*City Commissioners.*" I make these remarks now, Mr. Editor, and do not wait, as your correspondent of last evening suggests ought to be the case, for the completion, or finishing stroke of the Convention. I make them in the hope that the Convention will not only pause, but *retrograde;* for, if not, they may possibly have amused themselves, but their works will never benefit the community.

Constitute two boards which a vote of the people will approve; the checks and delays of proceedings follow of necessity. The jealousy between the two houses create in the departments all the influence and power which it is proper they should possess. But the attempt of the Convention to break up our system from the foundation, not leaving one stone upon another, will be worse than useless; for it would be riveting on the city the evil of a single body for many years yet to come.

THIRD WARD.

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PRESIDENT HARRISON'S INAUGURAL.

"But if there is danger to public liberty from the acknowledged defects of the Constitution, in the want of limit to the continuance of executive power in the same hands, there is, I apprehend, not much less from the misconstruction of that instrument, as it regards the powers actually given. I cannot conceive that, by a fair construction, any or either of its provisions would be found to constitute the President a part of the legislative power. It cannot be claimed from the power to recommend, since, although enjoined as a duty upon him, it is a privilege which he holds in common with every other citizen. And although there may be something more of confidence in the propriety of the measures recommended in the one case than in the other, in the obligations of ultimate decision there can be no difference. In the language of the Constitution, 'all the legislative powers' which it grants 'are vested in the Congress of the United States.' It would be a solecism in language to say that any portion of these is not included in the whole.

It may be said, indeed, that the Constitution has given to the Executive the power to annul the acts of the legislative body, by refusing to them his assent. So a similar power has necessarily resulted from that instrument to the Judiciary, and yet the Judiciary forms no part of the Legislature. There is, it is true, this difference between these grants of power; the Executive can put his negative upon the acts of the Legislature for

other cause than that of want of conformity to the Constitution, while the Judiciary can only declare void those which violate that instrument. But the decision of the Judiciary is final in such a case, whereas in every instance where the veto of the Executive is applied, it may be overcome by a vote of two-thirds of both houses of Congress. The negative upon the acts of the Legislative, by the Executive authority, and that in the hands of one individual, would seem to be an incongruity in our system. Like some others of a similar character, however, it appears to be highly expedient, and if used only with the forbearance, and in the spirit which was intended by its authors, it may be productive of great good, and be found one of the best safeguards to the Union.

I consider the veto power, therefore, given by the Constitution to the executive of the United States, solely as a conservative power. To be used only, 1st, to protect the Constitution from violation; 2dly, the people from the effects of hasty legislation, where their will has been probably disregarded or not well understood; and, 3dly, to prevent the effects of combinations violative of the rights of minorities."

To the Commissioners of Estimate and Assessment for opening 29th street. } In the matter of opening 29th street in the 16th Ward of the city of New York.

Gentlemen,

We object to your award for damage and benefit on our property, situate on the 8th avenue and including 29th street, because—

1st, The proceedings have been so long delayed, that a valuation at the present depressed prices of real estate is unjust and inequitable, inasmuch as there are no established data upon which any reasonable calculation can be grounded, and especially where the improvement is not required.

2d, That we are deprived of a piece of ground fronting 60 feet in the public avenue, by 300 in depth, fairly worth, in ordinary times $1000, and are charged $121 in addition, to accommodate with an opening to the 8th avenue, a piece of ground 100 feet in breadth in the rear of our property, inasmuch as the eastern 400 feet of the block can seek its outlet to the 7th avenue.

3d, Because public *necessity* does not require the opening of 29th street.

4th, Because public *convenience* does not require the opening of said street.

5th, Because the persons interested in the property assessed have not applied or petitioned for the opening of 29th street.

6th, Because the opening of 29th street has not been legally authorized by the Mayor, Aldermen, and Commonalty in Common Council convened, as your objectors are informed and believe.

7th, Because the opening of 29th street and the proceedings had in relation thereto by the Board of Aldermen and Board of Assistant Aldermen, possessing the legislative powers of the Corporation of the city of New York, your objectors have been informed, are illegal and not such as is required by the law of the state of New York and the amended charter of the city of New York.

8th, Because the Board of Aldermen and Board of Assistant Aldermen, composing the Common Council of the city of New York, have, as your objectors are informed and believe, proceeded in this matter without having first published the report of the Committees of the respective Boards, which recommended the improvement as required by law and the charter of the city, and without complying with its provisions by calling the ayes and noes in either Board where the report was adopted, recommending, or when the resolution was passed, authorizing the improvement; and that the same was not published in the newspapers employed by the Corporation under the authority of the Common Council.

9th, Because the application by the counsel of the Mayor, Aldermen, and Commonalty of the city of New York to the Supreme Court for the appointment of commissioners, was ex parte, in consequence of the informality of the proceedings of the Board of Aldermen and Board of Assistant Aldermen, as your objectors are informed and believe.

10th, Because the Corporation of the city of New York have no power by the charter of said city to assess private property for public improvements, and that the only power now exercised by the Common Council of the said city is conferred by statute and regulated by statute.

11th, Because the fees of the Commissioners of estimate and assessment are, as your objectors are informed and believe, greater than are allowed by law, and that parts of days have been charged as whole days by some of the said Commissioners.

12th, Because the proceedings of the Common Council in this matter have been dilatory and expensive; the first proceedings had been completed, as your objectors are informed and believe, in the month of February, 1836, more than four years ago.

Signed, } ABEL T. ANDERSON, ISAAC A. JOHNSON.

City and county of New York, ss Abel T. Anderson and Isaac A. Johnson being duly sworn, do depose and say, that in their opinion the foregoing objections are true in substance and matter of fact.

Sworn, this 27th day of May 1840, before me, } Signed } Abel T. Anderson, Isaac A. Johnson.

WATSON VAN BENTHUYSEN,
Commissioner of Deeds.

ASSESSMENT ABUSES.

On the Street Commissioners' sale book of 1838, is to be seen the following statement of sale of thirty-six lots for assessments. We will venture to say, that had this piece of land been assessed as one piece of ground, the amount of assessment would have diminished one half; and had it been sold as one piece of land, the cost of sale, &c., would have been reduced thirty-five thirty-sixths of the amount of costs and fees, and interest on cost and fees.

We procured from the Legislature, at the last session, an alteration in the law as respects advertising and selling lots for unpaid assessments, which remedies the mischief as to advertising and selling, but not as to assessing. See No. 1 of this Gazette, p5. 7 col. 2 sec. 3. This act was passed by a unanimous vote of the Senate and Assembly.

One piece of land, held in one body, and belonging to the same owners, was assessed in Thirty-first street. The assessment was confirmed in 1837, January 9th.

36 lots were assessed	$4 50½ cts. each,	162 18	
4 do. do.	2 44	9 76	
			$171 94
			25 93
			$197 87
The costs made in selling these lots were			
$2 for 1st advertisement, *each lot*,	80		
$3 for 2d do.	120		
$3 for each certificate or rect to each purchaser, -	120		
$4 for each lease, -	160		
	$480		
20 per cent. per annum interest on this, cost for 1 year 11 months and 28 days,	191 50		
	671 50		
13 per cent. extra interest on the assessment of interest due at the time of sale,	87 29		
	$758 79	758 79	
			$956 66

THE CONFISCATED DISTRICT.

The citizens of the city of New York have generally supposed that in all cases where streets have been opened, widened, or extended, they have been done in consequence of the urgent request and petition of those citizens interested. This, however, is not the fact. We will, for the information of the public, state the manner in which this business was done in a large section of the island.

At a special meeting of the board of Assistant Aldermen, April 6th, 1835, Mr. Holden offered the following:

"Resolved, That it be referred to the street committee to inquire into the expediency of opening all the avenues and streets (not already opened) up to and including Forty-second street.

"Referred to the street committee."

On September 12, 1836, Alderman Ingraham presented the following resolution, which was referred to the committee on Roads and Canals.

"Resolved, That the streets from Forty-second street to and including Fifty-seventh street, be opened in the usual manner, and that the necessary legal measures be taken therefor."

The above resolutions, notwithstanding they embraced a large tract of the land on this island, were offered by the above named members of the Common Council, and the resolutions were finally passed by both boards of the Common Council without any petition whatever. Since the passing of the above resolutions, the streets and avenues therein embraced, have not been actually opened, although it is pretended that they are open, and the supreme court have confirmed the reports made by commissioners of estimate and assessment, with two or three exceptions, and the corporation have, in most cases, collected the assessments or sold the lots. By the above stated extraordinary proceedings, the whole district of land is virtually confiscated. Thousands of lots of land owned by some of our oldest and most respectable citizens, have been thus taken from them under the color of law, and those who have been able to retain their land have done so by paying assessments to the full value of their land. It is impossible for any person not acquainted with this odious system in practice of opening, widening, and extending streets, to imagine to what extent citizens have been deprived of their property, or how insecure the title to real estate is under the tyrannical and assumed powers of the Common Council of the city of New York and officers who have acted in these matters.

The assessments for the opening of some of these streets and avenues were confirmed near four years ago by the Supreme Court, and these avenues and streets are not yet opened, and will not be for years and years to come. Where then is the benefit? There is no benefit, and the fees of the officers are the motive, and the whole motive, for the proceeding.

Uncertainty of Title to Real Estate in this City by reason of the loose manner of making Assessments.

The following communication is from one of our most respectable citizens, a large landholder, and a gentleman of great experience; whose opinions in these matters are deserving of great consideration. This gentleman actually made a journey into Virginia and South Carolina, with a view to find a section of the country where he could invest his capital in real estate where destructive assessments would not encumber; and would have sold his property, but a change of times produced so great a depression of price as to prevent it.

The practical system of assessing lots by fictitious numbers, is subject to two great evils, because the map is removed out of sight of the owners of property so that they cannot find what they are assessed, thereby making all title of property on this island precarious, for no purchaser is bound to take or demand possession until twenty years after purchase, and all testimony or other proof is dead or scattered, when they will recover the property, and the possessor bound to pay six years' back rent, even for a building put up on a lot so sold for assessments. There was an instance among others of a person who purchased property on Laurens street, who could not find any assessment until after the money was paid for the property, when he sued for the assessment by the number of his deed of the property, but lost the suit because the number in the deed did not correspond with the number of the assessment, notwithstanding the collector proved the lot to be the same identical lot mentioned in the deed.

COUNSEL FEES, COMMISSIONERS' FEES, SURVEYORS' FEES, ROOM HIRE, &c. &c. IN STREET ASSESSMENTS.

We have before us Document No. 83 of the Comptroller of the city of New York, and Document No. 71 of the Street Commissioners, printed by authority of the Board of Assistants, Oct. 12th, 1840, by which it appears that the amount paid for counsel fees and court charges in 1835, was $3,674 57 on *fifteen* streets, viz.: Pine, Horatio, Platt, Beaver, Amos, Fulton, Wooster, Gold, and Mill streets; also, 24, 27, 87, and 121st streets; and also avenue C, and a new street called Lexington avenue. The Commissioners' fees for mak-

ing the estimates and assessments, were $6,187 60; room hire, &c., $528 52; appraisers' fees, $235; surveyors' fees, $2,136 72.

In 1836 it appears by the same documents, that the amount paid counsel fees and court charges was $10,533 92 on *twelve* streets, viz.: Chapel, *Wooster*, Chatham, Liberty, New, William and Wall streets; also, 38, 84, and 116th streets; and also, second and ninth avenues. The commissioners' fees in these streets are stated at $7,762; appraisers' fees, $505 50; room hire, &c. $556; surveyors' fees, $3,792 52.

In 1837, as per same public documents, it appears that the amount paid counsel fees and court charges was $18,694 12 on *thirty-one* streets, &c. viz.: Centre, Grove, Maiden lane, Sheriff, Bethune, and Stone sts.; also, 22, 26, 28, 42, 45, 49, 50, 57, 59, 79, 81, 83, 86, 118, 119, 120, 122, 124, 125, 155; and also avenues A and B—2d and 5th; also, Burnt District, and closing Fitzroy-road. The commissioners' fees are set down at $16,911 66; room hire, &c. $2,517 70; appraisers' fees $280; surveyors' bill $9,579 05.

In 1838, a continuation of the same public documents, the amount paid counsel fees and court charges are stated at 18,553 58 on *thirty-two* streets, &c. viz.: Lawrence, *Pine*, *Stone*, and Cross streets; also, 11, 23, 24, 27, 31, 32, 41, 43, 44, 46, 47, 48, 53, 54, 56, 88, 89, 109, 110, 116, 117, and 123d streets, and also Centre Market, 5th avenue, Public Place at Art-street, 1st avenue, Murray Hill and 10th avenue. The commissioners' fees are set down at $21,375 37; room hire, &c. $3,257 45; appraisers fees $248; surveyors' fees, $11,096 95.

In 1839, it is also stated in the same public documents, that the amount paid counsel fees and court charges on *twenty-five* streets was $23,319 67, viz.: avenue A, 1st, 2d, 6th and 7th avenues, Art-street, Mount Morris square, Manhattan square; and also 12, 19, 25, 33, 35, 36, 38, 40, 50, 51, 55, 83, 84, 85, and 94th streets. Commissioners' fees $21,391; room hire, &c. $3,886 79; appraisers' fees $126; surveyors' fees $18,083 29; and to this year's proceedings are to be added John-street, confirmed Sept. 4, 1839, and Anthony and William streets, discontinued Sept. 3d, 1839. The counsel fees in John-street were $1,936 92; commissioners' fees $1,272; room hire, &c. $160; appraisers' bill $380; surveyors' bill $938. The commissioners' fees in Anthony and William streets $5,024; counsel fees and court charges in Anthony and William-streets $4,359; room hire, &c. $815; surveyors' fees $2,188 12; appraisers' bill $578.

Thus it will appear that the counsel fees and court charges since 1835, in 123 streets, avenues, and public places, amount to the great sum of $96,571 78; and in addition to this amount the counsel of the corporation have been paid immense sums besides during the same time for other *services*. The court charges and clerks' fees for six months, ending Dec. 31st, 1839, as we are informed by a highly respectable and very intelligent gentleman, who made an examination of the returns of the clerks of the supreme court at Albany and New York, to the state comptroller, amounted to the sum of six dollars and twenty-eight cents, paid by or charged to corporation counsel of New York. If this gentleman should have, by any possibility, made a mistake in examining the records, the two gentlemen holding the office of clerks of the supreme court at New York and Albany will be able to correct the statement, as will also the comptroller of the state, to whom we send the Municipal Gazette. Art-street costs are not included in the six dollars and twenty-eight cents. John-street, Anthony and William streets, 2d avenue, Mount Morris, 55, 46, 38, and 33d streets, were acted upon by the court during that six months, we are informed.

The commissioners' fees in these one hundred and twenty-eight proceedings, amount to $ 2,923 63; room hire, &c. $11,721 16; surveyors' fees $17,814 65; appraisers' fees $2,702 50.

The commissioners' fees for making the estimate and assessment for opening the seventh avenue, are four thousand nine hundred and twenty dollars. The awards amount to $28,141 41; the room hire is $410; the commissioners' fees are on the amount of the award a fraction short of *seventeen and a half per cent*, and the room hire amounts to over one and a quarter per cent.

The commissioners' fees for the John-street estimate and assessment, were $1,272; the awards amounted to about $186,411; the per centage of commissioners' fees on this street is about two-thirds of one per cent.

The room hire alone for the *commissioners to meet in*, in making the assessment for the seventh avenue, is about double the per centage of the whole commissioners' fees in John-street.

The counsel fees and court charges in seventh avenue are almost unmentionable; only $3,976 77 ! ! !

COMMON COUNCIL AND THE CHARTER.

BOARD OF ASSISTANT ALDERMEN.

December 9th, 1839.

The following resolution was offered by Mr. Graham:—

Whereas, It is provided among other things, by the SEVENTH SECTION *of the amended charter of the city of New York*, that "all resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of public monies, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the Board, under the authority of the Common Council, in all the newspapers employed by the Corporation, and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner."

And *Whereas* the essential interests of the city require a strict adherence to this salutary resolution, therefore

Resolved, (if the Board of Aldermen concur,) That the clerks of the respective Boards cause to be published in the papers employed by the Corporation, as soon as possible after the meeting at which such proceeding shall take place, all reports and resolutions which shall be presented, as well as all votes which shall be taken by ayes and noes, whereby the appropriation of public moneys is to be affected, or the citizens are to be taxed or *assessed*.

Mr. West moved that the resolution be laid upon the table, and the question being taken thereon, the motion was lost by the following vote:

Affirmative—Messrs. Potter, West, Vandervoort, Spader, Pollock—5. *Negative*—Balis, Deming, Anderson, Howe, and Graham—5.

The question recurring on the adoption of the resolution, the ayes and noes were called, and the members voted as follows:

Affirmative—Messrs. Balis, Deming, Anderson, Howe and Graham—5. *Negative*—Messrs. Potter, West, Vandervoort, Spader, and Pollock—5.

Five voting in affirmative and five in the negative, the resolution was lost.

Vol. 15. Pro. Board Ass., page 60.

Thus it will be seen that the Board, by a deliberate vote, decided that they would not comply with the Law or the Charter! ! !

Chancellor Kent, in his Notes on the City Amended Charter, remarks: "As a further check to improvident legislation, no moneys are to be drawn from the city Treasury, but upon previous *specific* appropriations; and the Common Council are prohibited to borrow mone s on the credit of the Corporation, except in anticipation of the Revenue of the year, unless authorized by a special act of the Legislature.

"The checks against improvident expenditure, or injudicious investments of the city Fund, consist specially in the mode in which Ordinances *are to be passed*."

LAND SHAKES—ASSESSMENTS.

There is not a city in any quarter of the Globe where the complaints have been so loud and so just against the odious system of taxation as in this city. We know of no other city where this odious and ruinous system has been adopted and practised, with the exception of some of the cities in this State to a limited extent, which copied after this city. The great fire which laid waste in the short space of twenty-four hours more than six hundred buildings in the business part of our city, together with an immense amount of merchandise, was not as disastrous as this abominable system of assessments, which has existed here for years, which not only destroys the owner's title to houses, but also the very ground on which they stand. Whole estates have been entirely swallowed up by these assessments, and the proprietors utterly ruined by the imposition of arbitrary and illegal assessments. And shall such a system be longer suffered to continue? Shall houses and lands be rendered worthless by such odious taxation? The complaints have been made for years, and we have been put off first by one plea, and then another. The time has now come when these whole proceedings will be sifted. We are perfectly familiar with all the assessment proceedings, and also all the details; and we have the boldness to put them before the public. There has been a course of proceedings pursued in all these assessments—matters which must be made known to everybody. We have no unkind feeling toward individuals in this whole affair from the beginning to the present time, but of the whole wretched, wicked, ruinous system—we have an utter abhorrence. We shall plainly and boldly state facts which have come to our knowledge; proceedings which are matters of record, and decisions which have been given by courts in every reported case; and place these, side by side.

There is a limit to forbearance, as well as to everything else in time, and that limit is now reached. Public opinion will no longer sustain the proceedings which have been carried on to such a destructive extent, the last few years in this assessment system.

We well know that we have to encounter the opposition of interested persons; this we expect, but we do not heed it, and will not. If the members of the Common Council support, tolerate, and patronize this system, let it come out; if they are imposed upon by other officers, then let it appear. It was but a few weeks since, that two committees of the Common Council convened to investigate assessment abuses; but their proceedings may now be reckoned among the things that never have been. Now we ask, are such proceedings creditable to these honorable committees? Will they possess themselves of facts and not report these facts?

When the members of the Common Council and officers of the Corporation are called upon to give testimony in these matters in our courts, as they will be, they will find that they will have to tell the whole story. These assessment abuses have nothing to do with party politics; or rather, they have had everything to do with politics, and both parties are alike to blame. The ayes and noes have been called in some of these questions, and the names of members stand recorded, as witnesses against them. It is true that some of them voted ignorantly, or rather that they were not aware of the merits of the question; but there are others who have not this excuse. We wish for their sakes they could plead ignorance. The abuses, the most of them, in these matters, are confined to a few public men. Such men as these who claim a Corporation to be a sovereignty.

(*From the Evening Post, of the 16th inst.*)

OFFICIAL.

BOARD OF ALDERMEN—March 16, 1841.

Present—Elijah F. Purdy, Esq, President. Aldermen Woodhull, Benson, Pentz, Jones, Ferris, Rich, Chamberlain, Campbell, Hatfield, Jarvis, Smith, Nichols, Graham, Cooper, and Nash.

The minutes of the last meeting were read and approved.

A communication from the acting Mayor, transmitting a letter from the Water Commissioners, with a copy of a memorial presented to the Legislature in relation to the non-payment of drafts made upon the Corporation for work done south of Murray Hill—referred to the Committee on the Croton Aqueduct.

An invitation from Robert H. Morris and others, officers of a convention for making arrangements for the reception of Martin Van Buren, ex-President, to join said convention in the reception—accepted.

PETITIONS.

Of James Phalen, for leave to run an iron railing by the side of house corner of University Place and 13th street—referred to the Alderman and Assistant of 15th Ward, with power.

Of owners of property in Avenue D, 3d, and 4th streets, in favor of a drain in said streets to the East River—referred to the Committee on Streets.

Of E. T. Williams, and others, to have the northeasterly sidewalk in 17th street paved from the 4th avenue to Irving place—referred to the Committee on Streets.

Of John C. Houston, for payment of bill for services rendered—referred to the Committee on Finance.

Of G. Hiltman, for payment of a bill accruing due on account of Registry Law—referred to Special Committee, Ald. Nash, chairman.

Of the Mechanics' Institute, for remission of tax—referred to Committee on Assessments.

Remonstrance of James Timpson, and 363 others, against the petition to remove the rails of the Harlem Rail Road Company—referred to Special Committee, of which Ald. Chamberlain is chairman.

Of C. Vanderbilt, and a large number of others, to have Peck Slip set apart for the use of the Eastern Steamboats—referred to the Committee on Wharves, &c.

Of John Gatfield, and others, against removing the rails of the Harlem Rail Road—referred to the Special Committee, of which Ald. Chamberlain is chairman.

Of 507 merchants and firms, in the vicinity of Peck Slip to set apart that Slip for the use of the Eastern Steamboats—referred to the Committee on Wharves, &c.

Of James Kent, and 500 others, that the petition to remove the rails of the Harlem Rail Road Company, south of 14th street, may not be granted.

Of Martin Silber, to be relieved from a personal tax—referred to the Committee on Assessments.

Of Randolph Martin, and others, for removal of dumping board between Reade and Chamber streets—referred to the Committee on Cleaning Streets.

Of sundry persons, residents of the 3d and 5th Wards, to have the manure removed from the foot of Reade and Duane streets, &c.—referred to Committee on Cleaning Streets.

Of the Collector of the 12th Ward, for extension of time to collect the taxes of said Ward—referred to Committee on Finance.

Of W. W. Coit, for exclusive use of pier No. 4, North River—referred to the Committee on Wharves, &c.

Of G. Montgomery, for transfer of Market stand—referred to the Committee on Markets.

Of S. Tobias, and sixty-six others, for the removal of Harlem Rail Road track south of 14th street—referred to special committee, Alderman Chamberlain, chairman.

Of D. Burtis and J. Conklin, for relief from tax on bulkhead—referred to Committee on Assessments.

Of four hundred firemen, asking the Common Council to take into consideration the propriety of compelling all firemen to do active duty—referred to Committee on Fire and Water.

REPORTS.

Of the Committee on Assessments, in favor of the several petitions of James B. Taylor, the New York and Harlem Rail Road Company, John A. Gilmore.

Of the Committee on Assessments against the petitions of Wm. Sherwood, J. A. Horsington, James Meinell, jr., Samuel Barnett, jr., the New York Benevolent Society, Charles C. Miller, Jacob Mack, Edward J. Hale, and Adolph Backerman, severally, for correction of tax—were adopted.

Of the Finance Committee, in favor of commuting Water grant on petition of Brown & Bell—adopted.

Of the Committee on Roads and Canals, in favor of regulating the 1st Avenue between 123d and 125th streets, against regulating 122d street from 3d Avenue to Harlem River—adopted.

Of the Committee on Wharves, &c., in favor of extending the pier at the foot of Gansevoort street—adopted.

FROM THE BOARD OF ASSISTANTS.

A preamble and resolution to add the Joint Committee on Public Buildings on Blackwell's Island to the Committee on Charity and Alms House, on the consideration of the question on the Lunatic Asylum—referred to the Committee on Charity and Alms House.

A report of the Finance Committee, on petition of J. W. Schoff, a water privilege—referred to Committee on Finance.

An ordinance to give printed volumes of proceedings of the Common Council to the Apprentices' Library—referred to Committee on Arts and Science.

A report of the Committee on Wharve, &c., on the subject of extending pier No. 3, East River, and middle pier, Coenties slip—concurred in.

Resolution adopted, as a substitute for the one passed this Board in regard to the lease of Castle Garden—referred to Committee on Finance.

FROM DEPARTMENTS.

A communication from the Comptroller, enclosing a copy of Winterseen & Myers' contract with the Water Commissioners for 500 tons of water pipes—referred to the Croton Aqueduct Committee.

A communication was presented by the Commissioners of the Alms House, recommending the purchase of land foot of 61st street—referred to Committee on Charity and Alms House.

A communication was received from the Commissioners of the Alms House relative to the addition to the Lunatic Asylum, which was, together with preamble and resolution of Alderman Smith to suspend farther proceedings in the matter—referred to the Committee on Charity and Alms House.

A communication relative to low grounds in 11th and 16th Wards, from the City Inspector—referred to Committee on Ordinances.

Ordinance from same department for filling lots between Avenues D and C, and 9th and 10th streets—referred to Committee on Ordinances.

THE COMMITTEE OF THE WHOLE.

The board went into committee of the whole on the market question, Alderman Graham in the chair. After which the board resumed, and the chairman reported the action of the committee, and asked to be discharged. Whereupon the report was ordered to be engrossed, and was made the special order for the next meeting, and the committee were discharged.

RESOLUTIONS.

By Ald. Cooper, Resolved, If the Board of Assistants concur, That a joint committee be appointed to tender to our fellow citizen Martin Van Buren, Ex-President of the United States, upon his arrival in this city, on the 23d inst. the use of the Governor's room—adopted, and Ald. Cooper, Woodhull, Chamberlain, Benson, and Ferris, appointed committee.

By Ald. Smith, Resolved, That the slip at the foot of Delancey street be cleaned out and the water therein deepened—referred to the Committee on Wharves, &c

By Ald. Benson, In order that the Board may be possessed of and adopt the course alluded to by the Comptroller, in page 102 of his annual report, it is

Resolved, That the Comptroller report to this Board at its next regular meeting, or as soon thereafter as may be, all and which of "the salaries paid to the higher officers of the city government may be materially reduced without injustice to the incumbents," and also the names of such of them as "the incentive and reward which they deserve for the faithful discharge of their respective duties must certainly be far beyond the mere degree of pecuniary compensation they are to receive"—referred to Committee on Application for Office.

By Ald. Pentz, Resolved, That the Committee on Wharves, Piers and Slips, be and are hereby requested to inquire into and report upon the expediency of repairing Pier 29, East River—adopted.

By Ald. Hatfield, Resolved, That the Superintendent of Streets be directed to settle the demands standing against the farmers and boatmen for manure sold under former Superintendents, by compromise or such measures as may be deemed necessary—adopted.

By Ald. Graham, Resolved, That the Committee on Laws and Applications to the Legislature, be instructed to inquire into and report upon the expediency of applying to the Legislature for the return of the auction duties raised in the city and county of New York, or some portion thereof, in conformity with the suggestion of the Comptroller on the 30th page of his report for the present year; and that if they deem such application expedient they report the form of a memorial for that purpose—adopted.

By Ald. Rich, Resolved, That the Committee on Charity and Alms House, be directed to suspend the operation of the resolution for extending the Lunatic Asylum on Blackwell's Island, until they report upon the communication of the Commissioners of the Alms House, and the resolution on the subject referred to them that evening—adopted.

By Ald. Nash, Resolved, if the Board of Assistants concur, That a joint committee of three from each Board be appointed to inquire into and make report as to the number and condition of the militia and volunteer force of the city and county; the arms and artillery which are in the city and fit for use; the condition of our fortifications, and what is required to place them in a proper state of defence. Also a plan for the defence of our city and harbor—adopted, and Aldermen Nash, Jones, and Nichols, appointed committee.

The Board then adjourned until Monday evening next, at 5 o'clock.

SAM'L. J. WILLIS, Clerk.

OFFICIAL.

BOARD OF ALDERMEN, March 22d, 1841.

Present—Elijah F. Purdy, Esq., President. Aldermen Benson, Pentz, Jones, Ferris, Rich, Chamberlain, Campbell, Hatfield, Jarvis, Smith, Nichols, Cooper and Nash.

The minutes of the last meeting were read and approved.

A communication was received from his Honor, the acting Mayor, stating his approval of papers passed the Common Council, which was ordered on file.

Also, a communication from his Honor, the acting Mayor, enclosing a presentment of the Grand Jury against certain evils—of which, so much as related to Madame Restell and Costello, was referred to the committee on Police, &c.—and so much as related to incumbrances in Chatham Square, to the Street committee.

PETITIONS.

Of Robert S. Place, administrator, for an extension of lease—referred to the Committee on Finance.

Of John F. Delaplaine, and four hundred and fifty-nine others, that the rails of the Harlem Railroad may not be taken up—referred to the Special Committee, of which Alderman Chamberlain is chairman.

Of John March, for assistance—referred to Committee on cleaning streets.

Of. Dr. Landesman, for payment of bill—referred to the Committee on Police.

Of sundry persons, against building a sewer in 4th street, near the East River—referred to the Committee on Streets.

Of John March, for compensation for services rendered—referred to the Committee on Police, &c.

Of Isaac Woolsey and others, to have the piers, &c. foot of Harrison, Franklin and North Moore streets, for use of market boats—referred to the Committee on Wharves, &c.

Of James Lozier, and four bundred and seventeen others, residents of Centre street, that the Harlem Railroad rails may not be removed—referred to the Special Committee, of which Alderman Chamberlain is chairman.

Of A. L. Phillips, Joseph C. Luther, H. D. Krack, A. B. Janin, the Trustees of Canon street Baptist Church, severally for correction of tax, were referred to the Committee on Assessments.

Of Holbrook, Nelson & Co. and others, to have ice and snow removed from Pine street—referred to Committee on cleaning streets.

Of Wm. H. Townsend and 362 others, that the rails of the Harlem Railroad may not be removed—referred to the Special Committee, of which Alderman Chamberlain is chairman.

Of sundry persons, against setting apart Peck slip for the exclusive use of steamboats—referred to the Committee on Wharves, &c.

Of Slate, Gardiner & Howell and others, remonstrance against locating steamboats at Peck slip—referred to Committee on wharves, &c.

REPORTS.

Of the committee on wharves, &c. in favor of granting the use of the southerly side of Pier No. 4, Hudson W. W. Coit, for steamboat running to Norwich—lost.

Of the committee on wharves, piers and slips, in favor of the petition of Charles Donnelly, for payment for loss of a horse off one of the public docks—adopted.

Of the market committee, in favor of transferring stands 37 Washington and 31 Fulton markets—adopted.

Of the committee on Assessments, against the petition of Charlotte Kelso, for relief—adopted.

Of the finance committee, against the petition of T. S. Brown, for alteration of lease—adopted.

Of the committee on the Croton Aqueduct, monthly report—ordered on file.

Of the finance committee, on the petition of R. B. Fosdick, for execution of new deed—adopted.

Of the law committee, relative to the Harlem River Canal Co.—accepted.

Of the finance committee, against petitions of Collectors of 12th and 16th Wards, for extension of time to collect taxes—adopted.

Of the committee on Wharves, &c. against the petition of G. DeForest, for permission to drive piles in one of the slips in the Hudson River—committee discharged.

Of the committee on wharves, &c., in favor of granting the use of the bulkhead between Chamber and Warren streets to the tow boats Union and Washington—adopted.

Of the committee on wharves, &c. and laws, recommending that a remonstrance be presented to the Legislature against the passage of a bill relative to altering the exterior line of the East River, on the Brooklyn side—adopted with amendments.

Of the finance committee, in favor of refunding amount of estate of J. Crickard, deceased, paid into the city treasury—adopted.

Of the finance committee, on the law relating to foreign paupers introduced into the Legislature—adopted.

Of the finance committee, in relation to leasing Castle Garden—laid on the table and ordered to be printed.

Of the committee on wharves, in favor of leasing pier foot of Warren street for one year—laid on the table.

FROM THE BOARD OF ASSISTANTS.

A report of the committee on lands and places relative to improving Stuyvesant Square—referred to the committee on lands and places.

A report of the committee on wharves, on building bulkheads across Governeur and Walnut slips, on the line of South street—referred to committee on wharves, &c.

A report of the committee on wharves, &c., in favor of building pier at the foot of Hammersly street—referred to the committee on wharves, &c.

A report of the street committee on the petition of G. W. Bruen, for the use of surplus waters in certain sewers—referred to committee on streets.

A notice from the clerk of non-concurrence in resolution of this board relative to Lunatic Asylum—ordered on file.

FROM DEPARTMENTS.

A communication from the Chief Engineer, enclosing charges preferred by E. Penny, Jr., Foreman of Engine No. 33, against Assistant Engineer Rollins—referred to the committee on fire and water.

A communication from the Commissioners of the Alms House, in relation to the question as to the building the Lunatic Asylum—referred to committee on charity and Alms House.

The Board then adjourned.

SAMUEL J. WILLIS, Clerk.

WIND.

The theory of storms and wind appears to attract considerable attention, and while the public mind seems directed to the subject, intrude a few remarks. We have visited the tops of several mountains for the purpose of making observations and examinations of the rock formation, vegetation, temperature, &c., and do not recollect in all our different excursions ever to have seen a tree that had been prostrated by the wind on the top of any mountain or a very high hill; and from repeated inquiries of persons who resided on the high lands, have been informed that the wind does not blow with such violence on the higher hills, as in the lands the surfaces of which are made up of plain hills and valleys.

HEAT, SOUND, AND LIGHT.

Heat, unaccompanied by moisture, will not produce animal decomposition or putrefaction. Animal flesh in the arctic regions will remain unchanged as long as the frost endures—in the dry and hot regions of South America, animal carcases left exposed upon the earth's surface will not putrefy or decompose, but on the contrary become dry and hard. Meat which is boiled in vessels over a dull slow fire, is apt to become tainted in cooking. The reason is, that the water heats up slowly, and remains a great length of time at a putrefying heat, whereas, if the water is allowed to become at once boiling hot, this difficulty will be entirely obviated.

The inhabitants of cold countries attach the idea of comfort to warmth; and those of hot countries reverse the idea. In this country in former years, churches were not heated by fires or stoves to any extent; in those times clergymen were healthy, and long-lived. Now, when fires are used in churches, clergymen are short-lived and unhealthy. It may be readily imagined that a meeting house heated by stoves and filled with people, must have an atmosphere filled with moisture produced by such numbers of persons breathing into it—and this atmosphere is inspired and respired by unhealthy, as well as healthy lungs; and heated by the fire in the stoves to a temperature which makes it unwholesome A person speaking for a length of time in an atmosphere of this description, must labor harder than to speak in a cold dry atmosphere and it most generally is the case, the speaker is not aware of the difficulty. A full house is addressed by a public speaker with more animation and with greater effort, than a thin and small assembly; consequently, the speaker is not sensible of the labor he performs, nor of the strength which he puts forth. The windows of a large apartment in which one person sleeps a night in cold weather, become frosted by the breath. How much more then will a church filled with persons breathing, affect the atmosphere? Sound in such an atmosphere is lessened to a very great extent.

The human voice can be heard more distinctly in a cold than in a warm atmosphere. Capt. Parry, when he visited the arctic regions, made several experiments upon the force of sound—and he states that in latitude 76, in clear and in still weather, he could hear his men in common conversation one mile distant. A clergyman in speaking into an atmosphere heated and moistened by human breath, and heated by stoves at the same time, labors with increased difficulty and disadvantage. The great abundance of cloth with which pulpits are surrounded of late years, deadens sound by absorbing it. Sound i sin some respects like heat and light, it travels in straight horizontal lines; but in others, it is different; it follows surfaces unless it meets with resistance, in which case it is reverberated. We have made experiments upon the tops of high mountains, by discharging fire-arms; so the discharges produced but one sound, there was no echo, no reverberation. We have also noticed the practice of the boatmen in early times navigating the Ohio and Mississippi rivers during dark nights, when they could not discover the shores—they make a sound upon the boat and watch the echo, and determine the distance from the shore by the time required for the echo to return, as the echo returns from the nearest shore first. We have also made experiments of sound in the mammoth cave; here the atmosphere is of an uniform temperature of 60 degrees the whole year. The atmosphere is perfectly dry, and the sides of the cave solid rock; but sound is not as powerful in the cave as we have found it in the dense forests in high, northern latitudes, in clear cold weather in the night time.

Light, candles, and lamps, are used without any regard to the position in which the blaze is placed to afford or to throw the greatest number of rays upon the object which is desired to be illuminated. The best illustration we can give is the lamps on corner of Centre and Pearl streets, contrasted with those on the corner of Chatham and Pearl streets. The former are about three feet nearer the surface of the pavement than the latter; consequently a greater number of rays of light are thrown upon the pavement in a body. A page printed with large letters could not be read as distinctly by the light of the lamp, if placed on the surface of the pavement at Chatham street, as small letters could be on the surface of the pavement at the corner of Centre and Pearl streets. The angle of reflection ought to be equal to the angle of incidence. Where lamps are placed high up from the pavement, the rays of light are spread, many of these are thown off into space and never return. High candlesticks and lamps are unphilosophical, so also are broad candlesticks. The bottom of the candlestick is illuminated and not the object which is required to be more visible. Place on the table a printed page, raise the candle, the light of which illuminates the page, gradually from the surface of the table and the letters will become more indistinct, and you may continue to raise it until the letters will cease to be visible. A farmer going to his barn in the night with a lantern, if he wishes to see his path distinctly, carries his lantern near to the ground. Raise from the surface of the table a wide bottom candlestick, and the shadow of the bottom will increase in size as the candlestick is raised in height above its surface.

The lamp posts in the streets of New York are three feet higher than they should be: one half the number of lamps that are now used would afford abundance of light to the surface of the pavement, if the lamp was brought three feet nearer its surface. We have referred to this subject before in the city papers, and will refer to it again in the Gazette.

Communication from the Water Commissioners.

Samuel Stevens and others, the present Water Commissioners, made to the Common Council last evening a communication, enclosing the copy of a memorial which they had presented to the Legislature. This memorial sets forth that the whole line of the aqueduct in Westchester county, thirty-two miles in length, is completed, with the exception of forty yards in length, and that the remaining portions of the work, excepting the high bridge and receiving and distributing reservoir, will be completed during the ensuing summer.—*Evening Post, 16th inst.*

ANCIENT STREETS.

The names of most of the streets in the old settled parts of the city, have been changed. Wall street was formerly called Cingall street, or the Wall. William street was called Smith street. Fulton street, on the west side of Broadway, was called Partition street, and on the east side, Fair street. John street was laid out in 1696, and extended from Broad to what is now called William street, beyond that it was called Golden Hill street. This street was extended to Pearl street by an act of the Legislature passed 1793. Anthony street was formerly called Catharine street. Broadway was called the Broad Wagon Way. Greenwich street was made out of the River for a great distance up. Broad street was called The Herre Graffe, or The Broad

Street. The mode of paving streets in the early settlement of this city, was to make the street descending from either side to the centre. Maiden Lane was called the Green, and afterwards the Madjos Path.

CITY EXPENDITURES.

COMPTROLLER'S REPORT.

We give below a synopsis of the various reports of the several Comptrollers, from 1830 to 1840, both inclusive. This we consider the most proper plan to adopt as to both political parties. Our city concerns should have no connection with politics. We begin with

CLEANING STREETS.

Year.	Expenditures.	Receipts.
1830,	$25,976 73	$19,033 45
1831,	28,992 20	27,540 07
1832,	57,917 60	28,929 36
1833,	76,124 59	30,299 50
1834,	90,918 86	31,497 98
1835,	114,755 33	36,788 93
1836,	179,485 72	41,833 68
1837,	166,241 08	47,700 83
1838,	145,956 51	47,207 02
1839,	145,500 00	48,613 43
1840,	149,930 65	38,711 72

ALMS HOUSE.

Year.	Expenditures.	Receipts.
1830,	$125,021 66	
1831,	134,819 24	
1832,	139,484 45	
1833,	124,852 96	
1834,	131,417 90	12,206 13
1835,	161,017 08	13,324 01
1836,	207,596 83	21,075 95
1837,	279,999 12	14,291 50
1838,	250,000 00	13,143 89
1839,	275,000 00	11,661 81
1840,	245,493 08	10,375 40

LAMPS.

Year.	Expenditures.	Receipts.
1830,	$14,381 11	$320 67
1831,	60,236 18	371 58
1832,	61,052 09	
1833,	72,408 05	677 53
1834,	80,091 88	400 00
1835,	75,897 70	307 07
1836,	88,276 02	
1837,	113,372 86	
1838,	116,103 83	
1839,	113,686 77	31 97
1840,	120,675 91	

WATCH.

1830,	$86,592 29
1831,	89,995 94
1832,	90,257 35
1833,	105,692 36
1834,	114,381 03
1835,	138,332 60
1836,	158,988 53
1837,	240,383 66
1838,	236,723 28
1839,	233,527 76
1840,	233,950 23

(To be continued.)

STATE LEGISLATURE.

IN SENATE.

March 11.—Mr. Verplanck presented the resolutions of the General Assembly of the Presbyterian Church for the erection of a Board of Missions.

A number of petitions, of a new class, are now daily being received, the object of which is, that the law exempting clergymen from taxation be repealed.

Mr. Taylor reported a bill establishing a *Registry Law* for all the cities in the State. The bill was made the special order of the day for Thursday next. Mr. Verplanck presented the report of the Croton Water Works Commissioners.

March 14.—A petition was received from the American Tract Society, asking for an act of incorporation. Mr. H. A. Livingston reported in favor of the Assembly bill incorporating the St. Nicholas Society in the city of New York. Mr. Root reported an amended resolution providing for furnishing the New York Lyceum and Mercantile Association with the Legislative Documents of 1840 and 1841. After a slight debate, the resolution was laid on the table.

STREET OPENINGS.

It is not generally known that nine tenths of the streets and avenues for which assessments have been made and collected, and are yet collecting, remain in the same plight and condition as before the assessments were made, and will remain in the same state for years to come. Are such proceedings to be countenanced or tolerated? The officers of the Corporation have, in their petitions to the Supreme Court, represented that public convenience required these said streets and avenues should be opened, &c. Is such the fact?—does public convenience require such proceedings? We answer, No. The present state of the whole proceedings is a downright decision upon that point. This is a fair and complete illustration of the doctrine of *discretion.*

Appointments by the President and Senate.

EDWARD CURTIS, Collector of the Port of New York,
THOMAS LORD, Naval Officer,
WILLIAM TAGGARD, Surveyor,
ROBERT C. WETMORE, Navy Agent.

CONGRESS.

THE NEW SENATE.

Maine,		*South Carolina,*	
Ruel Williams,	1815	Wm. C. Preston*	1843
George Evans,*	1847	John C. Calhoun,	1847
Vermont,		*Georgia,*	
Samuel Prentiss,*	1843	Alfred Cuthbert,	1843
Samuel S. Phelps.*	1845	John McP. Berrien,*	1847
Massachusetts,		*Alabama,*	
Isaac C. Bates,*	1847	Clement C. Clay,	1843
Rufus Choate,*	1845	Wm. R. King,	1847
New Hampshire,		*Mississippi,*	
Franklin Pierce,	1843	John Henderson,*	1845
Levi Woodbury,	1847	Robert J. Walker,	1847
Connecticut,		*Louisiana,*	
Perry Smith,	1843	Alexander Mouton,	1843
J. W. Huntington,*	1845	Alexander Barrow,*	1847
Rhode Island,		*Arkansas,*	
Nathan F. Dixon,*	1845	Ambrose H. Sevier,	1843
James F. Simmons,*	1847	Wm. S. Fulton,	1847
New York,		*Missouri,*	
Silas Wright,	1843	Lewis F. Linn.	1843
Nh. P. Tallmadge,*	1845	Thomas H. Benton,	1847
New Jersey,		*Kentucky,*	
Samuel L. Southard,*	1845	Henry Clay,*	1843
Jacob W. Miller,*	1847	James T. Morehead,*	1847
Pennsylvania,		*Ohio,*	
James Buchanan,	1813	William Allen,	1843
Daniel Sturgeon,	1845	Benjamin Tappan,	1845
Delaware,		*Indiana,*	
Richard H. Bayard,*	1845	Oliver H. Smith,*	1843
Thomas Clayton,*	1847	Albert S. White,*	1845
Maryland,		*Illinois,*	
Wm. D. Merrick,*	1845	Richard M. Young,	1843
John Leeds Kerr,*	1813	Samuel McRoberts,	1847
Virginia,		*Tennessee,*	
Wm. C. Rives,*	1845	A. O. P. Nicholson,	1847
Wm. S. Archer,*	1847	(Vacancy.)	
North Carolina,		*Michigan,*	
Wm. A. Graham,*	1843	Augustus S. Porter,*	1845
Willie P. Mangum,*	1847	Wm. Woodbridge,*	1847

* 29 supporters of Gen. Harrison's Administration. 22 opposed; one vacancy.

BILL TO BE PASSED BY THE LEGISLATURE.

Our next number will contain the residue of the proposed new Law in relation to opening streets and avenues, regulating and paving streets, building sewers and sinking wells, filling low grounds, and also regulating the sales of lots hereafter to take place for unpaid assessments.

EXTRA SESSIONS.

The following extra sessions of Congress have been called since the organization of our government:—John Adams was inaugurated on the 4th of March, 1797. He convened Congress May 16, 1797. His first annual address was delivered Nov. 23, 1797.—Thomas Jefferson was inaugurated the 4th of March, 1801. He ordered a called session October 17, 1803. James Madison was inaugurated the 4th of March, 1809. He convened Congress May 23, 1809, also on the 25th of May, 1813. Martin Van Buren was inaugurated the 4th of March, 1837, and convened Congress the 4th of September, 1837.

NOTICES OF CORPORATION OFFICERS.

From the Journal of Commerce.

CORPORATION NOTICE.—Public notice is hereby given that a petition has been presented to the Board of Aldermen to pave 9th street, and to flag the side walks in 9th street, 6 feet in width, between avenue C and D.

Persons interested having objections are requested to present them in writing to the Street Commissioner's office, on or by the 16th day of March, 1841.

JOHN EWEN, Street Commissioner.

Street Commissioner's Office, March 5th, 1841.

CORPORATION NOTICE.—Public notice is hereby given that, the following petitions have been presented in the Board of Aldermen, viz:

To build a drain in 15th street, commencing 168 feet westerly from the 3d avenue to run into the 3d avenue.

Sewer—Also to build a Sewer in 24th street, between the 4th and Lexington avenues.

Also to grade and regulate the 5th avenue, between 21st and 28th streets.

Also, to pave the southerly side walks in 28th street, between the 3d and 4th avenues.

Persons interested having objections, are requested to present them in writing to the Street Commissioner's office, on or by the 19th day of March, 1841.

JOHN EWEN, Street Commissioner.

Street Commissioners' Office, March, 1841.

CITY TAXES.—The Collectors of the different Wards are required by law to return their tax books to the Comptroller on the 1st day of April that they may be transferred to the Collectors of Arrears, when all taxes remaining unpaid will be subject to the addition of fourteen per cent interest.

Collectors of Taxes with their places of residence.

1st	Ward,	Oliver Cobb, No. 6 Coenties slip.
2d	"	E. T. Backouse, 15 Fulton st.
3d	"	Garret Forbes, 261 Greenwich st.
4th	"	John V. Coon, 398 Pearl st.
5th	"	E. P. Horton, 110 Reade st.
6th	"	John Layden, 55 Elm st.
7th	"	John Murphy, 596 Water st.
8th	"	H. T. Kiersted, 520 Broadway.
9th	"	Martin Blanch, 106 Charles st.
10th	"	Darius Ferry, 93 Allen st.
11th	"	Moses Fargo, 1 Manhattan st.
12th	"	Patrick Doherty, 8th avenue and 40th st.
13th	"	John F. Russell, 34 Norfolk st.
14th	"	Nelson Sammis, 241 centre st.
15th	"	Joseph Britton, 40 Amity st.
16th	"	John Stewart, cor. 3d avenue and 26th st.
17th		Cornelius Van Benschoten, 64 Stanton st.

For the convenience of the tax payers of the 12th and 16th Wards, the Collectors of these Wards will be at the Comptroller's office on Saturday, 27th instant, from 10 to 3 o'clock.

CORPORATION NOTICE.—Agents and Proprietors of Steamboats desirous to secure Stations for the ensuing year, will make application in writing at the Comptroller's office, on or before the 25th instant, stating what Berths they desire, and the rent they will give, that their proposals may receive the early action of the Committee on Wharves and Piers, as at the general letting of the Docks and Slips, no authority will be given to the lessees to underlet for the use of steamboats.

ALFRED A. SMITH, Comptroller.

Comptroller's Office, 19th March, 1841.

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No. 112 Fulton, Corner of Dutch Street.

THE NEW YORK MUNICIPAL GAZETTE.

No. 4.] NEW YORK, SATURDAY, APRIL 3, 1841. [Vol. I.

PUBLISHED WEEKLY, ON SATURDAYS,
BY THE
ANTI-ASSESSMENT COMMITTEE.
Edited by E. Merrim.
Office, No. 6½ Wall-street, (up stairs.)

ASSESSMENTS.

The proceedings throughout, in the imposition and confirmation of Assessments, has become so odious and oppressive, that an exposure of the abuses of the whole system has become absolutely necessary to put an immediate and effectual stop to the mischief. The anti-assessment committee deem it a duty that they owe to the public, to give the necessary information as early as possible; and to make it general, they therefore say that this Gazette is sent to the persons to whom we have directed our numbers free of charge, although in doing so they incur a heavy expense.

The Gazette will contain all the Corporation Ordinances now in force, together with the notes of the reviser, W. S. Johnson, Esq., on revising these ordinances in 1838 and 1839, and such information as we deem useful to the tax-paying citizens.

We believe, in this matter of endeavoring to remedy the abuses by exposing the mischiefs, we have ninety-nine hundredths of the community with us.

It will be our purpose to avoid all personal censures and abuse. Our purpose is to convince, and by that means obtain the much-needed abandonment of a most ruinous, odious, and abominable system.

CONFIRMATION OF ASSESSMENTS.

The Common Council confirm assessments for hundreds of thousands of dollars, in fact for millions, without reading the papers, or examining or opening of the bundle containing the assessment lists — these are passed through the respective Boards, in a bundle with a red tape tied around them, and the tape is confirmed with the rest.

This is a judicial proceeding, gone through with in a business-like manner, and the assessment thus confirmed is claimed to be a lein upon the lands of the owner whose name happens to be written opposite some fictitious map number, and on a line with a certain specified number of dollars and cents, in figures.

If the agrieved party happens by chance to find that his property is assessed, the Great Sovereign Corporation of the empire city come up by their Counsel, (who enjoys a most princely salary,) and place themselves in a most unenviable attitude—they plead STATUTE LIMITATIONS, and the power who have the deciding of the matter, possessing DISCRETION, decide that lapse of time is a sufficient bar to all examination into the matter—it is thus things are.

The truth is, these things will not bear investigation. However, the power is with the people, and these matters will be investigated—and most thoroughly, too.

There is a way to obtain justice, and remedy the evil. It is said that "there is no wrong without a remedy." If there is no remedy in dollars and cents, there is in exposing the mischief, —and the doers of the mischief—and this is a most sure and certain means of producing relief.

MEMORIAL TO THE LEGISLATURE,

For an amendment to the Assessment Laws.

In this Gazette, No. 1, page 9, is a copy of the Memorial to the Legislature for an amendment to the Assessment Laws of the city of N. York, with a list of the names of the petitioners. We here give the additional names of the memorialists. We venture to say it is the most substantial list of names ever put to a petition in this city of equal number. Among these Petitioners are the names of four of the ex Mayors of the city of New York, the Recorder of the city of New York, many of the ex Aldermen and Assistants, George B. Smith, Esq., the former able and intelligent Street Commissioner, Dow D. Williamson, the former Comptroller, John Jacob Astor, Peter Lorillard, Stephen Whitney, James Boorman, Peter G. Stuyvesant, the Collector of the Port, and a great number of other highly respectable citizens of the same class, without distinction of party. The members of the Common Council, we believe, are many of them in favor of the change, as also the present acting Mayor.

ADDITIONAL NAMES OF PETITIONERS.

J. Philips Phenix,	Saul Alley,
John Jacob Astor,	W. W. Fox,
James Boorman,	Stephen Whitney,
Philip Hone,	Jonathan Goodhue,
George B. Smith,	Peteliah Perrit,
Fred. A. Talmadge,	Henry Hendricks,
Edward Curtis,	Samuel F. Mott,
C. A. Clinton,	R. Cheseborough,
John A. Stevens,	Jona. Lawrence,
John H. Howland.	Jacob Brower,
U. Hendricks,	George Ireland,
John B. Lawrence,	J. L. Bowne,
C. H. Russell,	Samuel Roome.
John Ridley,	William Colgate,
John O. Fay,	Thomas L. Chester,
G. Ribbet,	G. C. Thorburn,
Nathaniel Paulding,	L. M. Hoffman & Co.
C. Bartlett,	Alphonse Loubat,
Benjamin Drake,	Thomas Lippincott,
Gerardus Clark,	John L. Norton,
John Brower,	R. Ten Eyck,
Richard Lawrence,	Lawrence Ackerman,
Geo. C. Thomas,	John Horsepool,
Henry Parish,	J. Grosvenor,
Stephen Potter,	John De Lamater,
F. Marquand,	W. M. McCutcheon,
George Sutton,	A. De Peyster,
S. B. Reeve & Co.,	R. & D. S. Dyson,
Wm. Winterton,	J. Foulke & Sons,
R. Hoe & Co.,	Joseph Kernocken,
J. L. Norton, Jun.,	H. M. Bowitt,
Horace Waldo,	M. M. Hendricks,
Peter A. Jay,	J. F. Delaplaine,
W. Torrey,	B. F. Wheelwright.
Thomas L. Clark,	Henry Mendell,
Peter G. Stuyvesant,	Henry W. Dolson,
John Peshine,	Adoniram Chandler,
James P. Giffing,	Jefferson Berrien,
Samuel Coleman,	Wm. Wagstaff,
William Dubois,	S. M. Levongsten,
Arthur Bronson,	Isaac Adriance,
Jacob R. Leroy,	Gideon Tucker.

TAXES.

The Taxes of this city have been enormously increased within the last few years. We give below a table compiled from the proceedings of the Legislature.

1801	75,000	1811	120,000	1821	250,000	1831	450,000
1802	75,000	1812	160,000	1822	250,000	1832	550,000
1803	75,000	1813	130,000	1823	300,000	1833	850,000
1804	75,000	1814	160,000	1824	300,000	1834	700,000
1805	100,000	1815	180,000	1825	300,000	1835	800,000
1806	120,000	1816	160,000	1826	350,000	1836	950,000
1807	120,000	1817	180,000	1827	400,000	1837	1,260,000
1808	130,000	1818	250,000	1828	450,000	1838	1,300,000
1809	130,000	1819	250,000	1829	450,000	1839	1,200,000
1810	120,000	1820	250,000	1830	400,000	1840	1,100,000
	$1,020,000		$1,840,000		$3,500,000		$9,160,000

In 1840 there was an act of the Legislature to fund $400,000 of the floating debt, which, added to the $1,100,000 taxes makes $1,500,000.

The taxes for the firs *ten* years are altogether less in amount than the taxes of the *present year* —and the tax of the second ten years less than the *last two years*—and the tax of the third ten years less than the *last three years*.

THE CHARTER
OF THE
CITY OF NEW YORK.

GEORGE the Second, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To all whom these present letters shall come, *greeting:*

Whereas, on the twenty-second day of April, in the year of our Lord one thousand six hundred eighty and six, Thomas Dongan, then lieutenant-governor and vice-admiral of New York and its dependencies, under our predecessor, James (the second) then king of England, &c., did make and execute a certain grant, or instrument in writing under the seal of the province of New York, in these words following:

Here follows Governor Dongan's Charter. *See No.* 3, *page* 35, *of this Gazette.*

By virtue, or under pretext whereof, the said citizens and inhabitants, from the date thereof, hitherto have held, or claimed to hold, and still do hold, or claim to hold and enjoy, all and singular the rights, privileges, franchises, pre-eminences, advantages, jurisdictions, courts, powers, profits, immunities, lands, tenements, hereditaments, and other the premises therein particularly mentioned and thereby intended to be granted. *And whereas* the citizens and inhabitants of the said city of New York, besides the several public buildings, accommodations, conveniencies, and other things in the before recited grant or writing mentioned to have been by them erected, built, and appropriated, have, since the making thereof, built and appropriated, at their own proper costs and charges, several public buildings, accommodations, and conveniencies, for the said city, *that is to say*, the present City Hall and gaols, rooms and places for the sitting of courts of justice, and chambers adjoining, with the ground and appurtenances thereunto belonging, five market houses, the present crane and bridge, with the common sewer leading through the great dock, and a magazine or powder house near the fresh water, and several other public buildings and conveniencies in the said city; and have built the new ferry houses on the island of Nassau, for the reception of travellers, with a barn, stables and pen, or pound for cattle. And whereas our late Royal predecessor, Queen Anne, by her letters patent, under the broad seal of the province of New York made, bearing date the nineteenth day of April, in the seventh year of her reign, did grant, ratify, and confirm, unto the then Mayor, Aldermen, and Commonalty of the city of New York, and to their successors and assigns, in these words following, *to wit:*

Here follows the Charter of Governor Cornbury. *See No.* 3, *page* 39, *of this Gazette.*

By virtue, or under pretext thereof, the said inhabitants and citizens of the city of New York have held and enjoyed, or have claimed to hold and enjoy, and still do hold, or claim to hold, the ferry, vacant land, perquisites, profits, privileges, powers, and other the premises, in the before recited letters patent mentioned and intended to be thereby granted. *And whereas*, besides all the aforesaid particulars in the said grant or instrument, made in the aforesaid year of our Lord One Thousand Six Hundred Eighty and Six, and in the before recited letters patent of Queen Anne, mentioned or intended to be thereby granted, the citizens and inhabitans of the said city of New York have anciently held, or claimed to hold, use, and enjoy, divers and sundry other rights, privileges, franchises, pre-eminences, advantages, jurisdictions, emoluments, powers, profits, immunities, lands, tenements, and other hereditaments, as well by prescription, as by divers grants, and confirmations of and from divers Governors, Lieutenant-governors, and Commanders-in-chief, of the said province, by the name of *Mayor, Aldermen and Commonalty of the city of* New York, and by divers other names, stiles, and titles, and otherwise.

And whereas, divers questions, doubts, opinions, ambiguities, controversies, and debates have arisen and been made as well upon and concerning the validity and force of the said recited grant or writing, dated in the year of our Lord, one thousand six hundred and eighty-six, and the before recited letters patent of Queen Anne, as upon all and every the other grants and confirmations of divers Governors, Lieutenant-governors, and Commanders-in-chief, made to our city of New York, as aforesaid, by reason of the variety of names, stiles, titles, and incorporations aforesaid, and by reason that the before recited grant or instrument, dated in the year of our Lord, one thousand six hundred and eighty-six, and the other grants and confirmations of divers governors, lieutenant-governors, and commanders-in-chief, were made in the governors' own names respectively, when they should have been made in the respective names, stiles and titles of former kings and queens, our royal predecessors, under whom they were governors, lieutenant-governors, or commanders-in-chief respectively, and by reason, as some suggest and say, that the said city, or inhabitants or citizens thereof, never were well, regularly, or legally incorporated, and for want thereof, none of all the said grants, confirmations, instruments, or letters patent, hereinbefore mentioned, could take effect or operate; and for divers other defects in all, some or one of the aforesaid grants, confirmations and writings; and also upon the validity and force of the prescription aforesaid. *And whereas*, our well beloved subjects, the Mayor, Aldermen, and Comonalty of our said city of New York, by their humble petition presented to our trusty and well-beloved John Montgomerie, Esq., our captain-general, and governor-in-chief of our provinces of New York and New Jersey, and territories depending thereon in America, and vice-admiral of the same, &c., in council, reciting among other things, that the city of New York is an ancient city, and the citizens thereof have anciently held and used, and still do hold and use divers and sundry rights, liberties, privileges, franchises, free customs, pre-eminences, advantages, jurisdictions, emoluments, immunities, lands, tenements, public buildings, and hereditaments, as well by the name of the *Mayor, Aldermen, and Commonalty, of the city of* New York, as otherwise, to the advancement of the said city in its number of buildings and inhabitants, whereby the said city is become a considerable seaport, and exceedingly necessary and useful to our kingdom of Great Britain, in supplying our governments in the West Indies with bread, flour, and other provisions; wherefore they prayed, among other things, for our confirmation and grant to the said city, and corporation, by the name, stile, and title, of *The Mayor, Aldermen, and Commonalty of the city of* New York, of all their lands, tenements, public buildings, and hereditaments, wharves, docks, bridges, slips, ferries, cranes, grants, charters, rights, liberties, privileges, franchises, free customs, pre-eminences, advantages, jurisdictions, emoluments, and immunities, now and heretofore by them held and enjoyed; and that they might have the soil four hundred foot beyond low water mark, on Hudson's river, from a certain creek or kill called Bestaver's Killitie, southard to the fort, and from thence, the same number of feet beyond low water mark, round the fort, and along the East river, as far as to the north side of a certain hill called Corlaer's Hook; and also for a grant of such other powers, liberties, franchises, rights, free customs, jurisdictions, privileges, immunities, and things, as may be needful for the good rule and government of the said city. *And we*, considering that the strength and increase of our good subjects, in that our frontier province of New York, does, in a great measure, depend upon the welfare and prosperity of our said city, wherein the trade and navigation thereof are chiefly and principally carried on, promoted, and encouraged; and we affecting the good and happy estate of our said city, and the steady loyalty and integrity of the inhabitants and citizens thereof, are very desirous and willing to give encouragement to the said city, inhabitants, and citizens, and to remove, utterly abolish, and wholly take away all and all manner of causes, occasions, and matters, whereupon such questions, doubts, opinions, ambiguities, controversies, or debates, as aforesaid, or any other questions or doubts may or can arise; and in order thereunto, we have thought fit, them, the said inhabitants and citizens of the said city of New York, (by whatsoever name or names they have been or were incorporated, or whether they have been or were heretofore incorporated or not,) into one body politic and corporate, by the name of *The Mayor, Aldermen, and Commonalty of the city of* New York, by our letters, to make, constitute, confirm, renew, and of new to create. *And we* being also farther willing and fully intending and desiring, that the said inhabitants and citizens of our said city, by the name aforesaid, should have perpetual succession, and should hold, possess, and enjoy, all and singular, the rights, privileges, liberties, franchises, pre-eminences, advantages, jurisdictions, courts, powers, offices, authorities, ferries, fees, fines, perquisites, profits, immunities, rents, possessions, lands, tenements, and other hereditaments, not only which in the before recited grants, confirmations, writings, and letters patent, are mentioned, or intended to be thereby granted, but also, which they have held, or claimed to hold, by prescription or otherwise, with the alterations and enlargements thereof, and additions thereto, in such manner and form as hereinafter is mentioned and contained, notwithstanding the before mentioned, or any other question, doubts, opinions, ambiguities, debates, faults, or imperfections.

1. *Wherefore know ye*, That we of our especial grace, certain knowledge, and meer motion, have willed, ordained, constituted, confirmed, given, and granted, and by these presents, for us, our heirs, and successors do will, ordain, constitute, confirm, give and grant, that our said city of New York, be, and from henceforth forever hereafter shall be and remain a free city of itself; and that the Mayor, Aldermen, and Commonalty of the said city, and their successors, from henceforth and forever hereafter, shall be and remain one body corporate and politic, *in re facto, and nomine*, by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, and them and their successors by the name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, one body corporate, *in re facto, and nomine*, really and fully, we do for us, our heirs and successors, erect, make, ordain, constitute, confirm, declare, and create, by these presents, and that, by that name, they shall and may have perpetual succession; and also, that they and their successors, by the said name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, be, and forever hereafter shall be, persons able in law, and capable to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts and places before us, our heirs, and successors, and before all and any the judges, justices, officers, and ministers of us, our heirs and successors, and elsewhere in all and all manner of actions, suits, complaints, pleas, causes, matters, and demands, whatsoever, and of what kind or nature soever, in as full and ample manner and form, as any of our other liege subjects of our said province, being persons able and capable in law, can or may sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, by any lawful ways and means whatsoever. *And also*, That they and their successors, by the same name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, be and shall be, forever hereafter, persons capable and able in law, to purchase, take, hold, receive, enjoy, and have, any messuages, houses, buildings, lands, tenements, rents, possessions and other he-

reditaments, and real estate, within or without our said province, in fee and forever, or, for time of life, or lives or years, or in any other manner; and also goods, chattels, and all other things, of what kind or quality soever. *And also*, That they and their successors by the same name of, *The Mayor, Aldermen, and Commonalty of the city of* New York, shall and may give, grant, demise, assign, and sell, or otherwise dispose of all or any the messuages, houses, buildings, lands, tenements, rents, possessions, and other hereditaments, and real estate, and all their goods, chattels, and other things aforesaid, as to them shall seem meet, at their own will and pleasure.

And also, That the said Mayor, Aldermen, and Commonalty of the city of *New York*, for the time being, and their successors, shall and may forever hereafter, have and use a common seal for sealing all and singular, deeds, grants, conveyances, contracts, bonds, articles of agreements, assignments, powers, authorities, and all and singular their affairs and things, touching or concerning the said corporation: And, by virtue of these our letters, it shall and may be lawful to and for the said Mayor, Aldermen, and Commonalty of the city of *New York*, and their successors, as they shall see cause, to break, change, and new-make the same, or any other common seal, when, and as often as to them it shall seem convenient.

2. *And we do further*, of our special grace, certain knowledge, and meer motion, for us, our heirs and successors, give, grant, order, and appoint, that the said city of *New York*, and the compass, precincts, circuit, bounds, liberties, and jurisdictions, of the same, do reach, extend, and stretch forth, and shall and may reach, extend and stretch forth, as well in length as in breadth and circuit, in and through the limits and boundaries following, *to wit:* To begin at the river, creek, or run of water, called *Spyt den Duyvel*, over which King's Bridge is built, where the said river or creek empties itself into the North River, on Westchester side thereof, at low water mark, and so to run along the said river, creek, or run, on Westchester side, at low water mark, unto the East River, or Sound, and from thence to cross over to Nassau-Island, to low water mark there, including Great Barn Island, Little Barn Island, and Manning's Island, and from thence all along Nassau Island shore at low water mark, unto the south side of the Red-Hook; and from thence to run a line across the North River, so as to include Nutten Island, Bedlow's Island, Bucking Island, and the Oyster Island, to low water mark on the west side of the North River, or so far as the limits of our said province extended there, and so to run up along the west side of the said river, at low water mark, or along the limits of our said province, until it comes directly opposite to the first mentioned river or creek, and thence to the place where the said boundaries first began. And, also that the said city, within the limits and jurisdictions thereof as aforesaid, be, and forever hereafter shall be, and remain divided into seven wards, to wit: the West Ward, the South Ward, the Dock Ward, the East Ward, the North Ward, Montgomerie Ward, and the Out Ward; each and every of which wards shall contain and comprehend, and reach and extend through the several limits and bounds following, to wit:

The West Ward to begin at the middle of the East end of the street that goes from the Parade to the North River, between the lot of ground now in fence, belonging to Charles Sleigh, and the house and ground late of Thomas Elde; and from thence to run a direct line over the middle of the west end of Beaver street, and so along to the middle of Beaver street, till it comes directly opposite to the middle of the south end of New street, and to run all along the middle of New street, to the north end thereof; and from thence to run to the rear of the dwelling-house, now in the possession of Domine Du Bois, and from thence to run all along the rear of the houses that front the Broad Way, up to the north part of the rear of Spring Garden House; and from thence, to run up a line, as the Broadway runs, to the end thereof, including the said Broadway; and John Harris, his house, and to include all other houses, hereafter to be built fronting the said Broadway, and from the north end of the Broad Way to continue and run a line, as the said street runs, until it comes directly opposite to Bestaver's Killitie, or rivulet, and from thence to run to the said Bestaver's Killitie, and so to continue the said line four hundred foot, beyond low water mark into the North River, and so down the said North River, always keeping four hundred foot beyond low water mark, until it comes directly opposite to the middle of the west end of the first-mentioned street; and so to run to and through the middle of the said street, to the place where the said West Ward first began.

The South Ward to begin at the middle of Wall street, where the line of the West Ward runs across the same, and from thence down the middle of Wall street, until it comes directly opposite to the middle of the north end of Broad street; and from thence down the middle of Broad street to the long bridge; and from thence to the eastward of, and to include the said long bridge, and the market house at the south end of the said street; and from thence to continue and run a south-east line, across the East River to low water mark, on Nassau Island shore; and from thence to run along the said shore at low water mark, to the south side of Red Hook, and from thence to run a line across the North River, so as to include Nutten Island, Bedlow's Island, Bucking Island, and the Oyster Island, to low water mark, on the west side of the North River; and so to run up along the west side of the said river, at low water mark, until it comes directly opposite to Bestaver's Killitie, or rivulet; and from thence to run to the north-westerly corner of the West Ward, at four hundred foot beyond low water mark; and from thence along the bounds of the said West Ward, till it comes to the south-westerly end thereof; and from thence still along the bounds of the West Ward, through the street by the parade, and through Beaver street, and New street, to the place where the said South Ward began.

The Dock Ward to begin at the middle of Wall street, directly opposite to the middle of the North end of Broad street, and from thence down through the middle of Wall street until it comes to the middle of Smith street, to a place called Marten Clock's Corner, including the small street between the house late of the said Marten Clock and the Slip, and so to continue and run a line as the said small street runs, into the East River, four hundred foot below low water mark, thence running westerly, keeping four hundred foot below low water mark, till it comes to the bounds of the South Ward, and from thence along the bounds of the South Ward, up the middle of Broad street, to the place where the said Dock Ward began.

The East Ward to begin at the north-easterly corner of the Dock Ward, in the middle of Smith street, and so run from thence up through the middle of the said street, till it comes directly opposite to the middle of the north-easterly end of Golden Hill street; and from thence to run down through the middle of the said street to the middle of the south-easterly end thereof; and from thence to run through the middle of Rodman's Slip to the East River; and from thence to continue and run a line as the said slip runs, into the East River, four hundred foot below low water mark; thence running westerly, keeping four hundred foot below low water mark, till it comes to the south-easterly end of the Dock Ward, and so along the bounds of the Dock Ward, up through the middle of Smith street, to the place where the East Ward began.

The North Ward, to begin where the East Ward begins, in the middle of Smith street, and so to run from thence through the middle of the said street so far as it runs, and so to continue a line from the end of the said street, as the street runs, to the south side of the creek that runs from fresh water into the East River; and from thence running a north course till it comes to the bounds of the West Ward; and from thence running along the bounds of the said West Ward towards Spring Garden, and all along the rear of the houses fronting the Broad Way, and so still along the bounds of the said West Ward, to the middle of Wall street, where the West Ward runs across the same; and from thence down the middle of Wall street along the bounds of the South Ward, and the Dock Ward, to the place where the said North Ward began, including in the same ward, the Powder-House, the City Hall, and the Presbyterian Meeting House.

Montgomerie Ward to begin at the south-easterly corner of the East Ward, opposite to Rodman's Slip, four hundred foot below low water mark, in the East River, and from thence to run along the bounds of the East Ward, to and through the middle of Rodman's Slip, and all through the middle of Golden Hill street, till it meets with the boundaries of the North Ward and the middle of Smith street, and so along the bounds of the North Ward, through the middle of Smith street to the rivulet that runs from fresh water into the East River; from thence along the said rivulet so far as it goes, till it empties itself in the said East River; and from thence to run a south-east line, four hundred foot beyond low water mark, into the said East River, and from thence running westerly, keeping four hundred foot beyond low water mark, to the place where the said Montgomerie Ward began.

The Out Ward to begin at the north-westerly corner of the South Ward, at low water mark, on the west side of the North River, over against Bestaver's Killitie or rivulet, and from thence to run up along the west side of the said river, at low water mark, until it comes directly opposite to the river, creek, or run of water, called *Spyt den Duyvel*, over which King's Bridge is built; and from thence to run to the said creek or river to the Westchester side thereof, at low water mark, and so to run along the said river, creek or run on West Chester side at low water mark into the East River, or Sound, and from thence to cross over to Nassau Island, to low water mark there, including Great Barn Island, Little Barn Island, and Manning's Island, and from thence along Nassau Island shore, at low water mark, to the bounds of the South Ward; and from thence along the bounds of the South Ward, the Dock Ward, the East Ward, and Montgomerie Ward, to the place where the said Montgomerie Ward and the North Ward meet, at the rivulet that runs from fresh water, and so to run a north course as the said North Ward runs, till it comes to the bounds of the West Ward; and from thence along the bounds of the West Ward to the north-westerly corner thereof, at four hundred foot beyond low water mark, near Bestaver's Killitie, or rivulet; and from thence along the bounds of the South Ward to the place where the said Out Ward began.

3. *And we do further*, of our special grace, certain knowledge, and meer motion, for us, our heirs, and successors, will, ordain, give, and grant, that there be, and forever hereafter shall and may be one *Mayor*, one Recorder, seven Aldermen, seven Assistants, one Sheriff, one Coroner, one Common Clerk, one Chamberlain, one High Constable, sixteen Assessors, seven Collectors, sixteen Constables, and one Marshall, appointed, nominated, elected, chosen, and sworn, in and for the said city of *New York*, and the precincts, and limits thereof; out of the freeholders or freemen, inhabitants of the said city, in manner and form as hereinafter is particularly mentioned: And for the better execution of our will, gift, and grant in this behalf, we have assigned, named, constituted, and made, and by these presents, for us, our heirs, and successors, do assign, name, constitute, and make, our well beloved *Robert Lurthing*, esq. to be the present Mayor of the same city, to do and execute all things, which unto the office of Mayor of the said city, doth or may belong, or in any wise appertain. *And we do moreover*, for us, our heirs, and successors, give, grant, ratify, and confirm unto the said Mayor of our said city of New York, and to his successors, and to the Mayor of the said city, for the time being, and to each of them, forever, full power and authority to depute and appoint one of the Aldermen of the said city, for the time being, to be approved of by the Governor, or Commander-in-Chief of the said province, for the time being, in the place of the Mayor of the said city, for the time being; and as his deputy, in all matters and respects, to act and do all things, which to the office of the Mayor of the said city, within the limits, liberties, and precincts thereof, do, or ought to belong during the sickness, or in the absence of the said Mayor, for the time being.

4. *And we do hereby Will and Grant*, That every such deputy or person so to be appointed and approved of, after having taken such oath, as hereinafter is directed, for every such deputy to take, shall have as full power and authority to act and do, in the sickness or absence of the Mayor of the said city, for the time being, all and singular, those things which to the office of Mayor of the said city belongs, or shall belong, or appertain, to all intents and purposes, as the Mayor of the said city, for the time being, by virtue of these presents, or otherwise, hath, shall, or ought to have. *And we do further*, for us, our heirs, and successors, will, ordain, and grant, that, in case it should happen that the present Mayor of the said city, or any of his successors, or any of the Mayors of the said city, for the time being, should happen to die before any other fit person shall be appointed and sworn Mayor of the said city, in their respective rooms and places, then, and in every such case, upon the death of such Mayor, such Alderman for the time being (who shall have been so appointed and approved of, as aforesaid, to act in the place of, or as deputy to, such Mayor) shall be, and he is hereby appointed and declared Mayor of the said city, and to continue and be continued in, and to execute the same office of Mayor of the said city, from the death of such Mayor so dying, until another fit person shall be appointed and sworn Mayor of the said city

in such manner as in and by these presents is hereafter directed for the respective Mayors of the said city, to, be appointed and sworn, and so as often as such case shall happen.

5. *And further we have assigned*, ordained, named, and constituted, and by these presents do, for us, our heirs, and successors, assign, ordain, name, and constitute, our trusty and well beloved *Francis Harrison*, Esq., (one of our Council of our said province of *New York*,) to be the present Recorder of our said city, to do and execute all things, which unto the office of Recorder of the said city doth or may belong, or in any manner appertain, and to continue, and be continued in, and to execute the said office, until another fit person shall be appointed and sworn in the office. *AND* We do hereby appoint, That the Governor or Commander-in-Chief for the said province, for the time being, at any time or times, when, and as often as they or each of them think fit, may displace and remove the present Recorder, or any other Recorder, hereafter to be appointed.

6. *And we do, for* us, our heirs, and successors, assign, name, constitute, and appoint, John Cruger, Harmanus Van Gelder, Frederick Phillipse, Gerardus Stuyvansant, Anthony Rutgers, John Rosevelt, and Johannes Hardenbrook, Esqrs., citizens and inhabitants of the said city of *New York*, to be the present Aldermen of the said city; and Egbert Van Borssom, Samuel Kip, John Chambers, John Moore, Isaac De Peyster, Petrus Rutgers, and Gerardus Beekman, gents., to be the present Assistants of the said city, to wit: The said John Cruger, to be Alderman, and John Moore, to be Assistant, for the Dock Ward of the said city; Harmanus Van Gelder, to be Alderman, and John Chambers, to be Assistant, for the West Ward of the said city; Col. Frederick Phillipse, to be Alderman, and Isaac De Peyster, to be Assistant, for the South Ward of the said city; Gerardus Stuyvesant, to be Alderman, and Samuel Kip, to be Assistant, for the Out Ward of the said city; Anthony Rutgers, Esq., to be Alderman, and Egbert Van Borssom, to be Assistant, for the North Ward of the said city; John Rosevelt, to be Alderman, and Petrus Rutgers, to be Assistant, for the East Ward of the said city; Johannes Hardenbrook, to be Alderman, and Gerardus Beekman, to be Assistant, for Montgomery Ward of the said city.

7. *And we do*, also, hereby nominate and appoint Cornelius De Peyster, to be the present Chamberlain and Treasurer of the city aforesaid; Colonel Henry Beekman to be the present Sheriff of the said city; Richard Nichols, gent., to be the present Coroner of the said city; Edmund Peers, to be the present High Constable, and Robert Crannel, to be present Marshal of the said city.

8. *And also*, We do hereby nominate and appoint John Le Montes, David Abeel, Assessors, Nicholas Van Taerling, Collector, and John Scott, Constable, for the South Ward of the said city; John Thurman and John Bogart, Assessors, and John Pearse, Collector, for the West Ward of the said city; Gerardus Duyckinck and Simeon Soumain, Assessors, George Brinckerhoof, Collector, and Christopher Nicholson, Constable, of the Dock Ward of the said city; John Brown and Nathaniel Marston, Assessors, Peter Noxen, Collector, and Timothy Bontecou, Constable, of the North Ward of the said city; John Pintard and Peter Van Dyck, Assessors, Ebenezer Grant, Collector, and John Abrahamson, Constable, of the East Ward, of the said city; Jacobus Kip, Assessor, and Cornelius Cousine, Collector, for the Bowery Division of the Out Ward; and Barent Waldren, Assessor, Derick Bensing, Collector, and Arent Bussing, Constable, for the Harlem Division of the said Out Ward.

9. *And we do* hereby appoint, order, and direct, that within forty days after the date hereof, the freemen of the said city being inhabitants in, and the freeholders of each respective ward in the said city, may and shall assemble themselves and meet together, at such time and place, in each of the said wards, as each respective Alderman, for each respective ward, shall appoint, and then and there, by plurality of their voices or votes, to elect and choose out of the inhabitants of each respective ward, being freeholders there, or freemen of the said city, the several officers following, to wit, one other Constable for the South Ward; one other Constable for the West Ward; one other Constable for the Dock Ward; one other Constable for the East Ward; two Assessors, one Collector, and two Constables, for Montgomerie Ward; and two other Assessors, and three other Constables, for the Out Ward, to wit: one other Assessor, and two Constables, for the Bowery Division, and one other Assessor, and one other Constable, for the Harlem Division of the said Out Ward. *And we do* hereby will and ordain, that each and every of the before named Mayor, Aldermen, Assistants, Chamberlain, Coroner, High Constable, and Marshal, and all and every the before named Assessors, Constables, and every other Assessor and Constable, hereafter to be chosen for any ward, or division of a ward, in the said city, before next *Michaelmas* day, on their being respectively sworn into their respective offices, as hereafter is directed, shall continue in their said respective offices, until the fourteenth day of October, next ensuing the date hereof, and from thence until other fit persons be respectively chosen and sworn in their respective rooms and places in manner and form, as is hereinafter directed. *And* we do also further ordain, order, and declare, for us, our heirs, and successors, that as well, the before named Sheriff, as every other person and persons hereafter to be appointed for or to the office of Sheriff of the said city, before he or they be permitted to exercise the said office, shall each of them give and enter into bond, to us, our heirs, and successors, with two or more sufficient sureties, in a penalty not less than one thousand pounds, conditioned for the faithful and due execution of his said office, in such manner as the Governor or Commander-in-Chief of the said province of New York, for the time being, shall think fit and appoint: And the before named Sheriff on his giving such security, and having taken such an oath as hereafter is directed, shall continue in his said office, until the fourteenth day of October, next ensuing, and from thence until another fit person is appointed and sworn into the said office, and has given such security as aforesaid.

10. *And we do hereby further*, for us, our heirs, and successors, appoint, and ordain, that the Governor, or Commander-in-chief of the said province of New-York, for the time being, by and with the advice of the council of us, our heirs, and successors, for the said province, for the time being, from time to time, shall have full power and authority, on the feast day of *St. Michael*, the Arch-Angel, in every year, forever hereafter, to name and appoint, and can, shall and may name and appoint, a discreet and fit person of the freeholders, freemen, or inhabitants of the said city, to be Mayor of the said city; and one other fit and able person, one of the freeholders or freemen, being an inhabitant of the said city, to be sheriff of the said city; and one other such person, to be Coroner of the said city, all for the ensuing year. *And also*, that on the said feast day of *St. Michael*, the Arch-Angel, in every year, forever hereafter, the freemen of the said city, being inhabitants, and the freeholders of each respective ward in the said city, shall and may assemble themselves and meet together, at such time of the day, and such public place in each of the said wards, as each respective Alderman, for each respective ward, for the time being, shall appoint; and then and there, by plurality of their voices and votes, to elect and choose out of the inhabitants of each respective ward, being freeholders thereof, or freemen of the said city, (except the Out Ward) for the ensuing year, one Alderman, and one Assistant, two Assessors, one Collector, and two Constables; and for the said Out Ward, four Assessors, two Collectors, and four Constables, to wit: two Assessors, one Collector, and two Constables, for each division of the said ward. *And also*, That the Mayor of the said city, for the time being, and four or more Aldermen, and four or more of the Assistants of the said city, for the time being, on the feast day of *St. Michael* the Arch-Angel, in every year forever hereafter, shall and may in common council, name and appoint one fit person, being a freeholder, or freeman, and an inhabitant of the said city, to be treasurer or chamberlain of the said city, for the year ensuing; and also that on the same day in every year, forever hereafter, the Mayor of the said city, for the time being, shall name and appoint one other of the said inhabitants, being a freeholder or freeman of the said city, to be High Constable of the said city, for the year ensuing; every of which persons, so to be named for Mayor, Coroner, High Constable, or Chamberlain, or so to be elected for Alderman, Assistant, Assessor, or Constable, on the feast day of *St. Michael*, shall on the fourteenth day of October then next ensuing their nomination, or election respectively, take the respective oaths hereinafter appointed for them respectively to take, in such manner and form as hereinafter is directed, and shall continue in their said respective offices, from their being so respectively sworn, until other fit persons be respectively named or elected, and sworn in their respective rooms and places. *And also*, That every person so to be named for Sheriff, on the said feast day of *St. Michael*, shall on the fourteenth day of October, then next ensuing his nomination, take such oath as is hereafter appointed for each Sheriff to take, and shall give such security as is hereinbefore appointed for each Sheriff to give, and shall remain in the said office, from the time of his being so sworn and giving such security, until another fit person shall be appointed and sworn into the said office, and shall have given such security as aforesaid. *And we do further*, for us, our heirs and successors, appoint and ordain, that if it should happen that either the Mayor, Sheriff, or Coroner, of the said city, for the time being, at any time (before other fit persons be so as aforesaid respectively named and sworn, in their respective rooms) should happen to die, then, and so often as it shall so happen, it shall and may be lawful for the Governor and Commander-in-chief of the said province, for the time being, by and with the advice of the said council for the said province, for the time being, in some convenient time thereafter, to name and appoint some fit and discreet person, being an inhabitant, freeholder, or freeman of the said city, to be Mayor of the said city in the room of such Mayor so dying; and one other fit and able person, as aforesaid, to be Sheriff of the said city, in the room of such Sheriff so dying; and one other fit person as aforesaid, to be Coroner of the said city, in the room of such Coroner so dying; and that every such person, so to be named Mayor, after having taken such oath, as is hereby appointed for each Mayor to take, shall remain in, and execute the said office of Mayor for the said city, until the fourteenth day of October then next ensuing, and until another fit person be named and sworn into the said office of Mayor of the said city; and every such person so to be named Sheriff, after having sworn and given such security, as is hereby appointed for each Sheriff to do, shall have, exercise, and remain in the said office of Sheriff of the said city, until the fourteenth day of October, then next, and until another fit person be named and sworn in the said office of Sheriff, and shall have given such security as hereinbefore is appointed for each Sheriff to give, and every person, so to be named Coroner, after having taken such oath as appointed hereby for each Coroner to take, shall exercise and remain in the said office of Coroner of the said city, until the fourteenth day of October, then next, and until another fit person be named and sworn into the office of Coroner of the said city.

11. *And we do moreover*, for us, our heirs, and successors, will, and by these presents grant to the said Mayor, Aldermen, and Commonalty of the city of New York, and to their successors forever, that if it should happen any of the present named Aldermen, or Assistants, Assessors, Collectors, or Constables, or any one of the Aldermen, Assistants, Assessors, Collectors, or Constables, hereafter to be elected and sworn, or to be sworn in their respective offices aforesaid, shall happen to die, or remove out of the said city, within the time they are, or shall be respectively named or elected for, or before other fit persons be respectively named or elected, and sworn in their respective rooms, it shall and may be lawful for the freemen, being inhabitants in, and the freeholders of each respective ward, for which such Alderman, Assistant, Assessor, Collector, or Constable, so dying or removing, had been named or chosen for, to assemble and meet together, at such time and place, in the said respective ward, as shall be appointed by the Mayor of the said city, for the time being, or his deputy, and then and there, by plurality of voices or votes of the freemen, being inhabitants in, and the freeholders of such ward, to elect one of the inhabitants of, and being a freeholder in such ward, or freeman of the said city, to serve as Alderman, Assistant, Assessor, Collector, or Constable for the said ward, in the room of such Alderman, Assistant, Assessor, Collector or Constable, so dying or removing; and so, as often as such cases shall happen. And in case the present named, or any future Chamberlain, or any High Constable of the said city, hereafter to be appointed, so sworn, or to be sworn in their respective offices aforesaid, should happen to die, or remove out of the said city, within the time they were or shall be respectively appointed for, it shall be lawful for the Mayor of the said city, for the time being, or his deputy, and four or more Aldermen, and four or more Assistants, for the said city, for the time being, in Common Council, to appoint another fit person to be Chamberlain in the room of such Chamberlain so dying or removing; and for the Mayor of the said city, for the time being, to appoint another fit person to be High Constable in the room of such High Constable so dying

or removing, and so as often as such cases shall happen. And all and every such person and persons so to be newly chosen or appointed Alderman, Assistant, Assessor, Collector, Constable, Chamberlain, or High Constable, shall serve in their respective offices, until other fit persons be respectively chosen, or appointed, and sworn, in their respective rooms, each of them (except the Collector) first taking such oaths as hereafter is appointed for each of them respectively to take.

12. *And we do further*, for us, our heirs, and successors, ordain, grant, and confirm, unto the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors, forever, that if any one of the inhabitants of the said city of New York, being a freeholder or freeman, as aforesaid, shall hereafter be elected or chosen to the office of Alderman, Assistant, Assessor, Collector, or Constable, for any ward in the said city, or shall be appointed to be High Constable of the said city, and have notice of his said election, shall refuse, deny, delay, or neglect, to take upon him or them to execute such office, to which he or they shall be so chosen or elected for, that then and so often as it shall happen, it shall and may be lawful for the Mayor, or his Deputy, or Recorder, and any four or more of the Aldermen, and any four or more of the Assistants of the said city, for the time being, in Common Council, to tax, assess, and impose, upon every such person or persons, so refusing, denying, delaying, or neglecting, such reasonable and moderate fine and fines, sum and sums of money, as they the said Mayor, or his Deputy, or Recorder, and any four or more Aldermen, and any four or more Assistants, in Common Council, shall think fit, so as such fine, for each refusal, denial, delay or neglect, shall not exceed the sum of fifteen pounds current money of New York; all which said fines shall and may be levied, by distress and sale of the goods and chattels of such delinquent and delinquents, by warrant under the seal of the said city, signed by the Mayor thereof, for the time being, rendering the surplusage to the owner or owners thereof, (if any be) the necessary charges of making and selling such distresses being first deducted, or, by action of debt, in any court of record, to be prosecuted or any other lawful method to be obtained; and shall be recovered and received by, and to the use of the said Mayor, Aldermen and Commonalty of the city of New York, and their successors forever, without any account thereof to be given to us, our heirs, or successors, or to any of the officers, or ministers of us, our heirs, or successors: And upon every such refusal, or neglect, other fit persons to be elected and chosen, in the room and rooms of such persons so neglecting, or refusing, in such manner, as is before directed or appointed, for electing and choosing of Aldermen, Assistants, Assessors, Collectors and Constables, and for appointing a High Constable, upon the death or removal of any of them respectively; and so as often as such cases shall happen.

And we do hereby, for us, our heirs, and successors, grant, appoint, and ordain, that if it shall happen, that the day or days appointed for the naming, appointing, electing or choosing, or for administering any oath or oaths to any of the officers or ministers of the said corporation, shall happen to fall on a Sunday, then, and in such case, such naming, appointing, electing, or choosing, so to be made, shall be made, and such oath, or oaths, so to be ministered, shall be administered on the next day, and so as often as such case shall happen.

14. *And further we do*, of our especial grace, certain knowledge, and meer motion, for us, our heirs, and successors, give, grant, ratify and confirm, unto the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors, forever, that the Mayor or Recorder, with four or more Aldermen, and four or more Assistants of the said city, for the time being, be, and shall be forever hereafter, called the Common Council of the city of New York: And that the said Common Council of the said city, for the time being, or the major part of them, have and may, and shall have full power, authority, and license, to frame, constitute, ordain, make, and establish, from time to time, all such laws, statutes, rights, ordinances, and constitutions, which to them, or the greater part of them, shall seem to be good, useful, or necessary, for the good rule and government of the body corporate aforesaid; and of all officers, ministers, artificers, citizens, inhabitants and residents of the said city, within the limits thereof, and for declaring how and after what manner and order, the Mayor, Recorder, Aldermen, and Assistants of the said city, for the time being, and all, and every of their officers and ministers, and all officers and ministers, and all artificers, inhabitants, and residents of the same city, and their factors, servants, and apprentices, in their offices, functions, and business, within the said city and the liberties thereof, for the time being, and from time to time, shall use, carry and behave themselves; and for the farther public good, common profit, trade, and better government and rule of the said city, and for the better preserving, governing, disposing, letting, and setting of the lands, tenements, possessions, and hereditaments, goods and chattels, to the aforesaid Mayor, Aldermen, and Commonalty of the said city of New York belonging, or to them and their successors hereafter to belong, and all other things and causes whatsoever touching or concerning the said city, or the state, right, and interest, of the same, (provided that such laws be not contradictory or repugnant to the laws or statutes of that part of our kingdom of Great Britain called England, or of our said province) which laws, statutes, ordinances, and constitutions, so to be made as aforesaid, may be and remain in force for twelve months from the day of the date thereof, and no longer, unless they shall be allowed of, and confirmed by the Governor and Council of the said province, for the time being; and that the said Common Council of the said city, for the time being, or the greater part of them, as often as they shall make, ordain, and establish such laws, statutes, rights, ordinances, and constitutions, in form aforesaid, may make, ordain, limit, and provide, such and the like pains, punishments, penalties, either by fines and amerciaments, or by disfranchising and amoving from the liberties, privileges, immunities, and freedom of the said city, or by either of them, towards and against all and every person that shall offend against such laws, statutes, rights, orders, and constitutions, or any or either of them, or by the said Common Council, or the major part of them, shall be thought necessary and requisite to make, ordain, limit and provide, for the observation and preservation of the same laws, rights, statutes, ordinances, and constitutions; and the same fines and amerciaments shall and may, from time to time, levy, receive, have, and recover, either by distress and sale of the goods and chattels of such delinquent and delinquents, by warrant under the hand and seal of the Mayor or Recorder, or any one of the Aldermen for the time being, rendering the surplusage to the owner or owners thereof (if any be) the necessary charges of making and selling such distress, being first deducted; or by action of debt, in any court of record to be prosecuted, or in any other lawful method to be obtained, and to the use of the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors forever, without any account thereof to be given to us, our heirs and successors, or to any of the officers or ministers of us, or our heirs, or successors: all and singular, which laws, statutes, rights, ordinances, and constitutions, so as aforesaid to be made, we do, for us, our heirs, and successors, will to be observed, under the pains, penalties, and forfeitures, in the same contained. *And we do further*, of our especial grace, certain knowledge, and meer motion, for us, our heirs, and successors, give, grant, ratify, and confirm, unto the said Mayor, Aldermen and Commonalty of the city of New York, and their successors forever, that the Common Council of the said city, for the time being, or the major part of them, shall have the sole power of determining and deciding all elections of all and every their officers and ministers, hereafter to be chosen and elected in, or for the said corporation, or any part thereof.

15. *And we do hereby*, for us, our heirs, and successors, ordain, declare, give, and grant, unto the said Mayor, Aldermen, and Commonalty, and their successors, that the Common Council of the said city shall be summoned, called, and held, from time to time, so often, and at such times and places, as the Mayor, or in case of his sickness or absence, the Recorder of the said city, for the time being, shall think fit to appoint or direct; and that it shall and may be lawful to and for the said Common Council of the said city, or the major part of them, to assess and lay such reasonable fines and amerciaments in and upon every officer and member of the body corporate aforesaid, for the time being, who after having had due notice, or being duly summoned to appear or attend at any such Common Council, to be held for the said city, shall neglect so to do, or make default therein, or shall not appear or attend according to such notice or summons, in that behalf, or show a reasonable cause, by the said Common Council, or the major part of them, at their discretion to be allowed, and so often as such case shall happen, so that no such fine or amerciament for any one default of appearance or attendance of any such officer or member of the body corporate aforesaid, shall exceed the sum of twenty shillings, in the manner and form aforesaid, to be levied, and by, to, and for the use of the Mayor, Aldermen, and Commonalty, of the said city, and their successors, to be recovered and received, without any account thereof to be given to us, our heirs, or successors, or any of our or their officers or ministers. *And we do further*, for us, our heirs, and successors, give, grant, and confirm, unto the Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors forever, that the Common Council of the said city, for the time being, or the major part of them, (but no other person or persons whomsoever, without the consent, grant, or license, of the said Common Council of the said city, for the time being, or the major part of them,) from time to time, and at all times hereafter, shall and may have the sole, full, and whole, power and authority of settling, appointing, establishing, ordering, and directing, and shall and may settle, appoint, establish, order, and direct, such and so many ferries, round Manhattan's Island, alias New York Island, for the carrying and transporting people, horses, cattle, goods, and chattels, from the said Island of Manhattan to Nassau Island, and from thence back to Manhattan's; and, also, from the said Island Manhattan's to any of the opposite shores all round the same Island, in such and so many places as the said Common Council, or the major part of them, shall think fit, who have hereby, likewise, full power to let, set, or otherwise dispose of, all or any of such ferries, to any person or persons whomsoever; and the rents, issues, profits, ferriages, fees, and other advantages arising and accruing from all and every such ferries; we do hereby fully and freely for us, our heirs, and successors, give and grant unto the Mayor, Aldermen, and Commonalty, of the city of New York aforesaid, and to their successors forever, to have, take, hold, and enjoy the same, to their own use, without being accountable to us, our heirs, or successors, for the same or any part thereof.

16. *And we do further*, for us, our heirs, and successors, give, grant, ratify, and confirm, unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors forever, that the Common Council of the said city, for the time being, or the major part of them, have, and from time to time, and at all times hereafter forever, shall have full power, license, and authority, not only to establish, appoint, order, and direct, the making and laying out of all other streets, lanes, alleys, highways, water-courses, and bridges, not already made or laid out, but also the altering, amending, and repairing all such streets, lanes, alleys, highways, water-courses, and bridges, heretofore made or laid out, or hereafter to be made or laid out, in and throughout the said city of New-York, and the Island of Manhattan's, in such manner as the said Common Council, for the time being, or the major part of them, shall think or judge to be necessary and convenient for all inhabitants and travellers there.

17. *And further*, we do hereby, of our especial grace, certain knowledge, and meer motion, for us, our heirs, and successors, give, grant, ratify, and confirm unto the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors, that they and their successors, shall and may have, hold, and keep, markets, at five several places (in the said city of New York, on every day in the week throughout the year, except Sunday) as follows, to wit: One market at Coenties Dock; one other market at the Old Slip, at Burgher's Path; one other market at Countesses Slip: one other market at the lower end of Wall street; and one other market by the Long Bridge. And, also, we do for us, our heirs, and successors, grant unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors forever, that they and their successors shall and may have, hold, and keep such and so many other markets, at such and so many other times and places in the said city of New York, as shall from time to time be ordered, established, erected, and appointed, by the Common Council of the city aforesaid, for the time being, or the greater number of them.

18. *And we do further*, for us, our heirs, and successors, give and grant unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors, that they and their successors, may and shall have the assize and essay of bread, wine, beer, ale, and all other victuals and things whatsoever, set to sale in the said city and the liberties, and limits thereof; and the amending and correcting of the same assize; and all amerciaments, fines and forfeitures to be laid and forfeited, concerning the same, or any part, thereof, without any account thereof to be given to us,

our heirs, or successors; and to perform, do, and act, by themselves or their deputies all and every thing, needful or necessary in, about, or concerning the same.

19. *And we do hereby further*, for us, our heirs and successors, grant and give unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors forever, the office of gauger of and in the said city, to gauge all and singular the wine, rum, brandy, molasses, beer, ale, cider, and other merchandizes and vessels gaugeable or to be gauged within the said city; except such liquors as are to pay duty by virtue of any Act of Assembly, until after they have been gauged by the public officer appointed for that purpose: And the office of measurer of and in the said city, to measure salt, wheat, oats, and other grain, and all other merchandise measurable or to be measured in the said city; and also the offices of surveyor and packer of bread, flour, beef, pork, and other provisions, and all other merchandises, and commodities to be surveyed, or packed in the said city; and also the office of cartage, carriage, and portage, of all goods, wares, merchandises, and other things to be carted or carried in or through the said city or any part thereof; And also the office of garbling of all manner of spices, and other merchandise and things to be garbled in the city aforesaid: To have and to hold the several offices aforesaid, and every of them, and the disposition, ordinances and corrections of the same, and to exercise the same by themselves or their deputies: and to take and receive to themselves all fees, profits and perquisites, to the said offices and every of them, due or to be due, and all the fines, amerciaments and forfeitures to be laid and forfeited concerning the same, or any part thereof, to them the said Mayor, Aldermen, and Commonalty, and their successors, to their own proper use forever, without any account, or any other thing, to us or our heirs, or successors, to be given or made.

20. *And further*, That the Mayor of the said city, or his Deputy, for the time being, and any four or more of the Aldermen, for the time being, shall from time to time, and at all times forever hereafter, have full power and authority, under the common seal of the said city, to make free citizens of the said city and liberties thereof; and that every person so to be made a free citizen shall pay on his being made free, for the use of the said Mayor, Aldermen, and Commonalty of the city aforesaid, and their successors forever, a sum not exceeding five pounds, New York money; and we do, for us, our heirs, and successors, give and grant unto the said Mayor, Aldermen, and Commonalty, and their successors forever, full power to ask, take, demand and receive the same, to their own use and behoof, without any account thereof to be given to us, our heirs, or successors, or any other person or persons whatsoever.

21. *And we do hereby*, for us, our heirs, or successors, constitute, appoint and ordain, that no person whatsoever, not being a free citizen of the said city as aforesaid, shall, at any time hereafter, use any art, trade, mystery, or occupation, within the said city, liberties, and precincts thereof, or shall by himself, themselves, or others, sell, or expose to sale, any manner of goods, wares, merchandises or commodities, by retail, in any house, shop, place, or standing within the said city, or the liberties or precincts thereof, save in the times of public fairs, and that every such person so using any art, trade, mystery, occupation, or so retailing, contrary to the intent and meaning of these our present letters, and shall persist therein after warning to him or them thereof given, or left by the appointment of the Mayor of the said city, for the time being, or dis deputy, at the place or places where such person or persons shall so use any art, trade, mystery, or occupation, or expose to sale, by retail as aforesaid, any goods, wares, merchandises, or commodities, as aforesaid, shall forfeit the sum of five pounds, New York money, to and for the use of the said Mayor, Aldermen and Commonalty of the city of New York, and their successors, for every time that he or she shall so use any trade, mystery or occupation, or expose to sale, by retail, as aforesaid, any goods, wares, merchandises, or commodities, after such warning given or left as aforesaid:—all and every of which same forfeitures shall and may be levied by distress and sale of the goods and chattels of such delinquent and delinquents, by warrant under the seal of the said city, signed by the Mayor thereof, for the time being, or his deputy, rendering the surplusage to the owner or owners thereof (if any be) the necessary charges of making and selling, such distress being first deducted; or by any other lawful method to be obtained; and shall be recovered and received by and to the only use of the Mayor, Aldermen, and Commonalty of the city of New York, and their successors forever, without any account thereof to be given to us, our heirs, or successors, or to any of the officers or ministers of us, our heirs, or successors:—*Provided always*, and we do hereby, for us, our heirs and successors, direct, appoint and order, that no person or persons shall be made free as aforesaid, but such as are or shall be natural born subjects of us, our heirs, or successors, or shall be naturalized or made denizens. *And we do further*, for us, our heirs and successors, ordain and appoint, direct, will, and grant that all and every person and persons, now living, who at any time heretofore, have been admitted free citizens, or into the freedom of the said city of New York, shall be and remain free thereof, and free citizens, and have and enjoy the said freedom, and all the rights and privileges of freemen and free citizens of the said city of New York to all intents and purposes whatsoever.

22. And, for the better preservation of good rule and order in the said city, we do, for us, our heirs and successors, will, ordain, grant, unto the Mayor, Aldermen and Commonalty, of the said city, and their successors, that the Common Council of the said city, for the time being, or the major part of them, shall have full power and authority to license or appoint by warrant, under the common seal of the said city, or otherwise, one or more surveyors of flour, bread, beef, pork, and other provisions, measurers of grain, salt, and all other commodities, gaugers of wine, beer, ale, cider, rum, brandy, and all other saleable and exciseable liquors, garbles, beadles, bell-men, watch-men, bridewell keepers, or keepers of a house or houses of correction, and of alms houses, cryers, and bell ringers, and to displace all or any of them and put others in their room, and to add or diminish the number of them, or any of them, as often as the said Common Council of the said city, or the major part of them, shall think fit.

23. *And further*, we do for us, our heirs and successors, grant unto the said Mayor, Aldermen and Commonalty, and their successors forever, full power and authority to erect and build, or appropriate any other buildings already built, for one or more bridewell or bridewells, house or houses of correction, and work-house or work-houses, together with full power and authority to the said Mayor, Recorder and Aldermen, or any one of them, to take up and arrest, or order to be taken up and arrested, all and any rogues, vagabonds, stragglers, and idle and suspicious persons; and as they the said Mayor, Recorder or Aldermen, or any one of them, shall see cause, to order all or any such rogues, vagabonds, stragglers, and idle and suspicious persons, either to the said work-house, there to remain, and work such work, and so long, not exceeding forty days, or else to bridewell or the house of correction, there to receive such punishment, not extending to the loss of life or limb, as the said Mayor, Recorder and Aldermen, or any one of them, shall think fit. *And also*, that they the said Mayor, Aldermen and Commonalty, and their successors forever, may, and shall have power to build, erect, or appropriate, any of their buildings already built for an alms-house, for relief of the poor; together also with as full and ample power to them, and their successors, to order, direct, and act in and about the said houses of correction, work-houses, and alms-houses, and the persons to be put in and ordered there, as to any city or corporation, in any place of that part of our realm of Great Britain, called England, and the officers or ministers thereof, doth or may belong. *And also*, that they the said Mayor, Aldermen and Commonalty, and their successors forever hereafter, may have one or more gaol or gaols, in such fit place or places, within the said city and limits and jurisdiction thereof, as by the Common Council of the said city, for the time being, or the major part of them, shall be appointed, to imprison and safe keep, all and every person and persons for any treasons, murders, felonies, trespasses, evil doings, and all other matters and causes whatsoever, to be arrested or attached, or to be committed to the gaol or gaols aforesaid, in safe custody, there to remain, until they be delivered by due course of law. And that the Common Council of the city aforesaid, for the time being, or the major part of them, shall, and may have power, from time to time, to choose, constitute and place, one or more fit person or persons, in the office or offices of keeper or keepers of the gaol or gaols aforesaid, to hold the same during the good pleasure of the Common Council of the said city, for the time being, or the major part of them, as aforesaid requiring, and, hereby, for us, our heirs, and successors, impowering and commanding the keeper and keepers of the gaol or gaols aforesaid, for the time being, that all and singular, traitors, murderers, felons, malefactors, disturbers of the peace, and other delinquents, and all others, for any crime or offence, or other reasonable cause or matters, to the gaol or gaols aforesaid, ordered or committed, or to be committed or ordered, from time to time, shall receive, take, keep, and cause to be kept in the same gaol or gaols, until they shall be thence delivered by due course of law.

24. *And we do further*, for us, our heirs, and successors, will, ordain, and grant, that the Mayor of the said city, for the time being, shall forever hereafter, be clerk of the market, of us, our heirs, and successors, within the city aforesaid, and the limits, liberties and precincts thereof; and that the Mayor of the said city, for the time being, by himself or his deputy, may and shall have power and authority to do and execute, and shall and may do and execute forever, within the limits, liberties and precincts of the said city, all and whatsoever to the office of clerk of the market there doth, shall, or may belong, without any hindrance or impediment of us, our heirs, or successors, or any the officers of us, our heirs or successors; and that no other clerk of the market shall intermeddle there. *And also*, that the Mayor of the said city, for the time being, and his successors, during the time of his and their mayoralties, and no other, be and shall be, the bailiff and conservator of the water of the north and east rivers, and shall and may do, exercise and execute, the said office of bailiff and conservator of the waters of the north and east rivers, or water bailiff, by him or themselves, or by his or their sufficient deputy or deputies, in, upon, or about, the same water of the north and east rivers (*that is to say*) in and through all the limits, bounds, and jurisdiction of the said city of New York, upon all and every the banks, shores and wharves of the same water of the north and east rivers, within the limits and bounds aforesaid; and to have, receive, collect and enjoy, all and singular, wages, rewards, fees, and profits, to the same offices of clerk of the market, and water bailiff, or any of them, due or to be due, or belonging to his or their own use, without any account thereof, to us, our heirs, or successors, to be made. *And also*, that the Mayor of the said city, for the time being, shall have full power and authority to license or appoint, by warrant, under his hand and seal, or otherwise, one or more marshal or marshals of the said city, porters, carriers, cartmen, carmen, packers, cullers, common cryers, scavengers, and to displace all or any of them, and to put others in their rooms; and to add to, or diminish the number of them, or any of them, when and as often as the Mayor of the said city, for the time being, shall think fit.

25. *And we do further*, for us, our heirs and successors, grant, ratify and confirm, unto the said Mayor, Aldermen and Commonalty, of the city of N. York, and their successors forever, that the Mayor of the said city for the time being, and no other whatsoever, shall have power to give and grant licenses annually, under the public seal of the said city, to all such persons as he shall think fit to license them, and every of them to keep a tavern inn, ordinary, or victualling-houses, to sell wine, brandy, rum, strong waters, cider, beer, ale, or any other sort of exciseable or strong liquors, within the city of New York, or the liberties and precincts thereof, by retail or the small measure, and that it shall be lawful to and for the said Mayor of the said city, for the time being, to ask, demand, and receive, for every such license, by him to be given and granted, as aforesaid, such sum or sums of money, as he and the person to whom such license shall be given and granted, shall agree for, not exceeding the sum of thirty shillings for each license; all which moneys, as by the said Mayor shall be so received, shall be used and applied to the public use of the said Mayor, Aldermen and Commonalty of the said city of New York, and their successors forever, without any account thereof to be rendered, made or done, to us, our heirs or successors, or any other persons whatsoever; every and each of which license shall continue and be in force for any time, not exceeding one year from the granting thereof, but no longer. *And we do hereby*, for us, our heirs and successors, constitute, direct, order and appoint, that no person or persons whatsoever, without such license being in force, shall at any time hereafter keep any tavern, inn, public ordinaries, or victualling-houses, or sell wine, brandy, rum, strong waters, cider, beer, ale, or any other sorts of exciseable or strong liquors, within the city of New York, or the liberties or precincts thereof, by retail or small measure, under the penalty of five pounds, current money of New York, for every time that any person shall act contrary hereto in any respect, to be forfeited and paid by every person, for every time he or she shall offend or act contrary hereto in any respect, to and for the use of the said Mayor, Aldermen,

and Commonalty of the city of New York, for the time being; all and every of which penalties shall and may be levied by distress and sale of the goods and chattels of such delinquent and delinquents, by warrant under the seal of the said city, signed by the Mayor thereof, for the time being, or his deputy, rendering the surplusage to the owner or owners thereof, if any be, (the necessary charges of making and selling such distress being first deducted,) or by any other lawful method to be obtained; and shall be recovered and received by and to the only use of the Mayor, Aldermen and Commonalty of the city of New York, and their successors forever, without any account thereof to be given to us, our heirs, or successors, or to any of the ministers or officers of us, our heirs or successors.

26. *And further, we*, of our especial grace, certain knowledge, and meer motion, have given, granted, ratified, and confirmed, and by these presents do, for us, our heirs, and successors, give, grant, ratify, and confirm unto the said Mayor, Aldermen, and Commonalty of the city of New York, and to their successors forever, that the Mayor, deputy Mayor, Recorder, and Aldermen, of the said city, for the time being, be, and shall be at all times forever hereafter, and hereby are assigned to be justices, and each of them a justice of us, our heirs and successors, the peace of us, our heirs and successors, within the city aforesaid, and the limits, jurisdiction, and extent thereof, and within the county of New York, to keep: and that they, the said Mayor, deputy Mayor, Recorder and Aldermen, of the said city for the time being, or any four or more of them, (whereof we will the Mayor, or deputy Mayor, or Recorder of the said city, for the time being, to be one,) shall and may forever hereafter hold and keep four courts of general sessions of the peace, in and for the said city and county of New York, to begin at certain times in the year, *to wit:* one of them to begin on the first Tuesday in November; another on the first Tuesday in February; another on the first Tuesday in May; and the other on the first Tuesday in August, in every yaer; each of which sessions of the peace, shall and may last, continue, and be held any time, not exceeding four days. *And also*, that they, the said Mayor, deputy Mayor, Recorder and Aldermen of the said city, for the time being, or any four or more of them, (whereof we will the Mayor, or deputy Mayor, or Recorder of the said city, for the time being, to be one,) shall and may forever hereafter, have full power and authority to enquire of and hear and determine, within the city and county aforesaid, all and all manner of felonies, imprisonments, riots, routs, oppressions, extortions, forestallings, regratings, trespasses, offences, and all and singular other evil deeds and offences whatsoever, within the city and county aforesaid, from time to time perpetrated, done, arising, or happening, which to the office of justices of the peace, are incumbent, or do in any manner belong, or which thereafter shall happen to belong, or be incumbent on them, or which in any manner before justices of the peace ought or may be inquired into, heard and determined, together with the correction and punishment thereof, and to do and execute all other things, within the city and county aforesaid, and the liberties and precincts thereof, as fully, freely, and entirely, and in as ample manner and form as justices of the peace of us, our heirs and successors, any where within that part of our Kingdom of Great Britain, called England, by the laws, statutes, or customs of England, or by any other legal method whatsoever, heretofore had or exercised, or hereafter to be had or exercised, could, might, or can do, and in as ample manner and form, as if the same had been in these our letters particularly, and by special words expressed, contained and mentioned. And that the said justices of the peace, of us, our heirs and successors in the city and county aforesaid, may have and exercise jurisdiction in all causes, matters and things whatsoever, which to justices of the peace of our said city and county, in any manner do, or ought to belong. *And further*, that the Mayor, Recorder and Aldermen, of the said city, for the time being, and every of them from time to time, and at all times for ever hereafter, shall be justices assigned of *Oyer and Terminer*, and of the gaol delivery of all and every the gaols now being, and hereafter to be in the said city and county, and either of them, and shall be named in every commission thereof to be made. *And we do hereby*, for us, our heirs and successors, grant, order, and appoint that the Sheriff and other ministers and officers of the said city, for the time being, shall and may, and they are, and each of them is hereby commanded, authorised, and fully empowered to execute and return all and every the precepts and commands of the Mayor, Recorder and Aldermen, of the said city, for the time being, and either, or any of them, from time to time, at all times, as fully and effectfully as any sheriff, minister, or officer, of any county or city, any where in that part of our kingdom of Great Britain, called England, the mandates or commands of any justice of the peace, justice of *Oyer and Terminer*, of gaol delivery of, or in any county there, hath used to make return or execute, in any manner whatsoever.

27. *And we do further*, of our special grace, certain knowledge, and meer motion, will, and by these presents, for us, our heirs and successors, give, grant, ratify, and confirm, unto the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors forever, that they, and their successors forever, hereafter, shall, can, and may have and hold, in the name of us, our heirs and successors, one court of record, within the city of New York, and the liberties and precincts thereof, upon every Tuesday in every year, before the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city, for the time being, and any three or more of the Aldermen, for the time being, or any four or more of them (whereof we will the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city, for the time being, to be one). And, that the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city, for the time being, and three or more of the Aldermen, and any four or more of them, (whereof we will the said Mayor, or his deputy, or the Recorder, to be one,) shall and may hold, plea, and have cognizance of all and all manner of plaints, actions and pleas, of any lands and tenements, within the said city of New York and the limits and precincts thereof; and also of all actions of trespass with force and arms, and without replevin, ejectment, trover and conversion, trespass upon the case, debt, detinue, covenant, deceits, contracts, contempts, penalties, forfeitures, and all other actions and pleas, as well real as personal, and mixt, arising and accruing within the said city and limits thereof; together with full power and authority to hear and determine all and every the same, and such actions and pleas aforesaid, and judgments thereon, to render, and executions thereof to award and make, and to act and do every thing therein in such manner and form, and by such, and the like methods, process and proceedings, as fully and amply as in our other courts of record, in such or the like cases is used, or can or may be acted and done, according to the laws of that part of our kingdom of Great Britain, called England, and of our said province of New York.

28. *And we do hereby*, for us, our heirs and successors, grant, order, and appoint, that the sheriff and the coroner, and other ministers, and officers of the said city, for the time being, shall and may, and they are, and each of them is hereby commanded, authorised, and fully empowered, to execute and return all and every the precepts and process of the said court to them respectively directed, or to be directed from time to time, and at all times, as fully and effectually as any sheriff, coroner, minister or officer, of or in any city or place within that part of our kingdom of Great Britain, called England, the precepts and processes of any court of record there, hath used, or can or may execute and return, in any manner howsoever; *Provided always*, that the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city, for the time being, and any three or more of the Aldermen of the said city, or any four or more of them (whereof the Mayor or his deputy, or the Recorder, we will to be one) may and by these presents have and shall have full power to adjourn the said court for any time not exceeding twenty-eight days.

29. *And we do further* will, and by these presents, for us, our heirs and successors, give, grant, ratify, and confirm, unto the said Mayor, Aldermen, and Commonalty, of the city of New York, and their successors, that they and their successors, from henceforth forever hereafter, shall and may have within the city aforesaid, a fit and discreet man to be, and who shall be, and be called, the Common Clerk of the city aforesaid, to act and do all those things within the city aforesaid, and the limits and jurisdiction thereof, which to any Common Clerk of or in any city, borough, or town incorporated, any where in that part of our kingdom of Great Britain called England, by virtue of his office, can or ought to do. And also, that forever hereafter, the Common Clerk of the city aforesaid, for the time being, shall also be clerk of the court of record, to be held before the Mayor, or his deputy, or the Recorder, or any three or more of the Aldermen of the said city as aforesaid; and also clerk of our peace, and of the peace of our heirs and successors, and of the sessions of the peace, for and in the city and county of New York, from time to time to be held, and all and singular those things which to the offices of such clerk of the Peace, and of the sessions of the peace, do and shall appertain, to do, act, and execute; and also, shall and may require, demand, take, accept, hold, keep and enjoy, all fees, perquisites and profits, which may to any such common clerk, clerk of the peace, and of the sessions of the peace, do or ought to belong. *And we hereby*, give, grant, ratify, and confirm, for us, our heirs and successors, unto our beloved William Sharpas, Gen. (one of the inhabitants of the city aforesaid) to be the present common clerk of the city of New York aforesaid; and also clerk of the peace, and of the sessions of the peace, for, and in the city and county of New York, to continue in the offices aforesaid, during his life, and to act and execute the same offices and places by himself or his deputy *And we do further*, for us, our heirs and successors, appoint, will, and direct, that the Governor or Commander-in-Chief of the said Province of New York, for the time being, from time to time, and at all times, after the death of the said William Sharpas, when and so often as the office and place of Common Clerk of the said city shall happen to be vacant, shall and may appoint an honest and discreet man, being one of the inhabitants, and a freeman or freeholder of the said city, to be Common Clerk of the said city, during his good behaviour; and so as often as such case shall happen. *And we do further*, for us, our heirs and successors, will and grant, that so often as the said office shall be vacant, the Common Council of the said city, for the time being, shall and may appoint one other honest and discreet citizen, being an inhabitant and freeman, or freeholder of the said city, to be Common Clerk of the said city, and Clerk of the said Court of Record, in and for the said city; and Clerk of the Peace, and of the Sessions of the Peace in and for the said city and county of New York, to act and execute the said offices, and who shall and may execute, do, and receive, all and whatsoever to the said offices, and every of them, belongs, or shall belong or appertain, till in his room, another honest and discreet person, being an inhabitant and freeman, or freeholder of the said city, shall be appointed into and for the said offices, by the Governor or Commander in Chief of the said province for the time being; and shall have taken such an oath as is hereby directed for every such person so to be appointed, to give and take; and so from time to time, and so often as the case may or shall so happen.

30. *And further*, we do hereby constitute, name, and appoint, James Alexander, Joseph Murray, John Chambers, William Smith, George Lurting, William Jamison, Richard Nicolls and Abraham Lodge, gentlemen, to be the present attornies, and each of them to be an attorney of and in the said court of record, for and during the good behaviour of each of them respectively: And we do hereby, for us, our heirs and successors, grant and ordain, that no other attorney or attornies, person or persons whomsoever, (besides the aforenamed attornies, during the time that they shall all remain attornies of the said court) shall be permitted or suffered to practice as an attorney of or in the said court; but all and every other attorney and attornies, person and persons (besides the before named attornies, during the time aforesaid) from being an attorney or attornies of or in the said court, and from all practice as such, shall be, and are and each of them is excluded and debarred. *And we do hereby*, for us, our heirs and successors, give and grant unto the said Mayor, Aldermen and Commonalty of the city of New York, and their successors for ever, that the Mayor of the said city, for the time being, or his deputy, or the Recorder, and any three or more of the Aldermen of the said city for the time being, or any four or more of them, (whereof we will the Mayor or his deputy, or the Recorder of the said city, for the time being, to be one) shall and may (by and with the consent and approbation of our Governor and Commander-in-Chief for the time being) have full power and authority, all or any of the before named attornies of the said court, and all or any other of the persons, hereafter to be appointed or admitted attornies of or in the said court, for their or his evil behaviour, in their or his said duty or place of attornies, or an attorney [illegible]

before named, or hereafter to be admitted, to recommend one other person to the Governor or Commander in Chief of the said province of New York for the time being, for his approbation, in the room of such attorney so dying or being removed; each of which persons, so to be recommended, and approved of, as aforesaid, shall and may be admitted and sworn an attorney of, and in the said court; and so often as the case shall happen. *And we do further*, for us, our heirs and successors, grant and appoint, that no other attorney or person whatsoever, shall, after the death or amoval of any of the before named attornies, be admitted or suffered to practise as an attorney of or in the said court, but what shall be recommended and approved of as aforesaid. *And further*, we do, for us, our heirs and successors, grant, will, and ordain, that the number of attornies of the said court, shall not at any one time after the death or removal of any two or more of the before named attornies, for ever hereafter exceed the number of six:—*Provided*, that nothing herein shall be construed to extend to hinder us, our heirs or successors, from prosecuting or defending, all or any suits, causes, actions, or prosecutions, in the said Mayor's Court, by our attorney or solicitor general for our said province, or the attorney or solicitor general of us, our heirs or successors, for the said province, for the time being; nor to hinder the attorney or solicitor general of us, our heirs or successors, for the said province, for the time being, to practice in the said court as council in any civil cause.

31. *And we do further* of our especial grace, certain knowledge, and meer motion, for us, our heirs, and successors, grant, appoint, and direct, that the Mayor, Recorder, and Aldermen, of the said city, for the time being, and each of them, from time to time, and at all times, forever hereafter, shall have, by these presents, full power and authority to have and take *cognizance* of, and to hear, try, and finally determine, with or without a jury, all pleas, suits, controversies, and trespasses, wherein the value does not exceed the sum of forty shillings, in such manner as they or either of them shall think or judge to be agreeable and according to equity and good conscience; and for the more due proceeding herein, it shall and may be lawful for them or either of them, to administer an oath to the plaintiff or defendant, and also to such witnesses, as shall be produced by each party, if they the said Mayor, Recorder, and Aldermen, or either of them think fit; and in case either of the parties, plaintiff or defendant, shall not perform such order, judgment, or decree, as the said Mayor, Recorder, or Aldermen, for the time being, or any of them, shall make or set down, then it shall and may be lawful for them or any of them, to commit such party or parties to any prison of or in the said city there to remain until he, she, or they, perform such order, and every marshal of the said city for the time being, is hereby commanded and authorized to execute all and any the summonses, precepts, and commands, of them the said Mayor, Recorder, and Aldermen, or any one of them, made, issued, or given in, about, or concerning, such suits, pleas, controversies, and trespasses, or any of them, as shall be to him directed: and every keeper of the gaol for the city of New York, for the time being, is hereby commanded and authorised to receive, and safe keep, in his gaol or custody, all such parties so committed or to be committed to the prison he shall be then the keeper of, until he, she, or they, shall perform such order accordingly.

32. *And we do*, for ourselves, our heirs, and successors, by these our present letters, require and strictly charge and command, and fully empower, the sheriff, common clerk, chamberlain, marshal, gaol keepers, high constable, petty constables, and all other subordinate officers, of and in the said city, now chosen, elected, constituted, or appointed, or that hereafter may be chosen, elected, constituted, or appointed, and every of them respectively, jointly, and severally, as cause shall require, to be obeisant and obedient to, and attend upon the said Mayor, Recorder, and Aldermen, of the said city, and every or any of them, at all times hereafter, according to the duty or obligation of their respective offices and places; and to execute all and every, the commands, precepts, warrants, and processes, to them respectively directed and issued, and given out, and to be issued and given out, by them the said Mayor, Recorder, and Aldermen, or any one of them.

33. *And we do further* hereby will, declare, and ordain, that before the Mayor, deputy Mayor, Recorder, Aldermen, Assistants, Assessors, Sheriff, Coroner, Common Clerk, Chamberlain, High Constable, and Petty Constables, of the said city, such of them as are hereby appointed and named, and all and every such as hereafter are to be appointed, elected, or chosen, shall, before they be respectively permitted to execute their respective offices, or places aforesaid, respectively be sworn as follow, *to wit:* The hereby named Mayor of the said city, and every other person, hereafter to be appointed to, or for that office, to take the proper oath as such, and well and truly to execute the office of Mayor, and all other offices and places, hereby appointed for each Mayor to execute and act in, and the usual oath of a justice of peace, before the Governor or Commander in Chief of the said province of New York, for the time being, in presence of three or more of the Aldermen of the said city of New York, for the time being; or, in case of the absence of the Governor or Commander in Chief, for the time being, then before the oldest counsellor of the said province, for the time being, in the presence of three or more of the Aldermen of the said city for the time being. *And we do hereby*, for us, our heirs and successors, give and grant full power and authority to the Governor or Commander in Chief of the said province for the time being, in the presence of three or more of the Aldermen of the city aforesaid, for the time being, or in case of the absence of the said Governor or Commander in Chief, then to the oldest counsellor of the said province for the time being, in the presence of any three or more of the Aldermen of the said city, for the time being, to administer such oaths accordingly, without any other warrant, commission, or power from us, our heirs, or successors; and so from time to time, as often as the case shall or may require or happen. *And* the above named Recorder of the said city of New York, and every other person hereafter to be appointed to or for that office, to take the proper oath, as such officer ought to take, and an oath, well and truly to execute the office of Recorder, and the proper oath of a justice of peace, before the Mayor of the said city, for the time being, or his deputy; to which same Mayor, for the time being, or his deputy, we do, for us, our heirs, and successors, give full power and authority by these presents, to administer such oaths accordingly, in manner aforesaid, without any other warrant, commission, or power from us, our heirs, and successors; and every deputy Mayor or every Alderman hereafter to be appointed to act as deputy Mayor, for the time being, to take the proper oath as such, an oath, well and truly to execute the office of a deputy Mayor, during the time for which he shall be appointed deputy, if the same Mayor, his constituent, shall so long live: And if the said Mayor shall happen to die within such time, that *thereupon*, and from thenceforth, such deputy Mayor shall well and truly execute the office of Mayor of the said city, until another fit person be appointed and sworn Mayor of the said city, in the manner in these present letters mentioned; and shall also take the proper oath of a justice of the peace, before the Mayor or Recorder, and any three or more of the Aldermen of the said city for the time being. *And we do hereby*, for us, our heirs, and successors, give full power and authority to the Mayor, or Recorder of the said city, and to any three or more of the Aldermen of the said city, for the time being, to administer such oaths, as aforesaid, without any other warrant, commission, or power from us, our heirs, or successors. *And also*, every Alderman hereby appointed, and every person hereafter to be elected to or for the office or place of Alderman of or in the said city, to take an oath, well and truly to execute the office or place of Alderman and the proper oath of a justice of peace, before the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city, for the time being; And also every Assistant, Assessor, Sheriff, Coroner, Common Clerk, Chamberlain, High Constable, and Petty Constable, hereby named, and every person hereafter to be elected or appointed to or for the office or place of an Assistant, Assessor, Coroner, Common Clerk, or Chamberlain, or shall be appointed or elected to or for the office or place of High Constable or Petty Constable of or in the said city, each of them respectively to take the proper oath for his respective office, or place, and well and truly to execute the respective offices or places he is or shall have been respectively elected or named for before the said Mayor of the said city for the time being, or his deputy, or the Recorder of the said city for the time being. *And we do hereby* give full power and authority to the Mayor of the said city, for the time being, or his deputy, or the Recorder of the said city for the time being, to administer such respective oaths to each of the respective persons aforesaid, accordingly, without any other warrant, power, or authority, from us, our heirs, or successors.

34. *And further*, of our especial grace, certain knowledge, and mere motion, we have granted and by these presents do, for ourselves, our heirs, and successors, grant and confirm unto the aforesaid Mayor, Aldermen, and Commonalty of the city of New York aforesaid, and to their successors, that neither they, nor any of them, nor any free citizen of the said city, during the time of their being inhabitants there, shall against their or any of their wills, out of the city aforesaid, be put or empanelled upon or in any assizes, juries, or inquisitions whatsoever, (although it toucheth or doth or shall touch us, our heirs or successors, and although we, or our successors, be, or should, or shall be parties) out of the said city, neither shall they or any one of them be made, elected, or chosen Assessor, Taxer, or Collector of any taxes, duties, imposts, or subsidies, whatsoever, or of any part or parcel of them, or of any of them, out of the said city; nor shall be ordained, elected, assigned or appointed constable, bailiff, or any other officer or minister, without or beyond the city aforesaid, and the liberties and precincts thereof; nor shall be called upon, compelled, or forced, against their or any of their wills, to do, receive, occupy, or discharge, any of the duties or functions above mentioned, or any other office, duty, or function, whatsoever, without the city, liberties, and precincts aforesaid. And although the aforesaid Mayor, Recorder, and Aldermen, Freemen, or free citizens, of the city aforesaid, or any of them, shall, while they are or remain inhabitants of the said city against their, or any of their wills, be put impanelled, or returned upon any assizes, juries, or inquisitions whatsoever, out of the said city and limits thereof; or shall to any of the offices above mentioned, or any other office or function whatsoever, out of the said city, be elected or chosen; and though they, or any of them, being summoned, impanelled, or returned, elected, or chosen, as aforesaid, shall refuse or neglect to come and appear before our justices, or other justices, commissioners, or officers, of us, our heirs, or successors, (before whom such assizes, juries or inquests shall happen to be summoned or returned) or in or upon the same assizes, juries, or inquests, shall refuse or neglect to be sworn or tried, or any of the offices, duties, or functions, aforesaid, shall refuse to do, receive, occupy, or discharge, yet the person or persons so refusing any contempts, fines, amerciaments, penalties, forfeitures or loss whatsoever, by reason of such refusal or neglect, to or towards us, our heirs, or successors, shall not, nor either of them, shall in any wise incur, but therefrom and thereof, as well as before us, our heirs, and successors, as all other the justices, commissioners, and other officers whatsoever of us, our heirs, or successors, shall remain quiet, and forever discharged.

35. *And further*, we do for us, our heirs, and successors, by these present letters give, grant, ratify, and confirm, unto all and every the respective inhabitants and freeholders of the said city of New York, and their several and respective heirs and assigns forever, all and every the several and respective messuages, tenements, lands, and hereditaments, situate, lying and being in the said city, and Manhattan's Island aforesaid, to them severally and respectively granted, conveyed or confirmed, or mentioned or intended to be granted, conveyed, or confirmed, by any of the late Governors, Lieutenant-Governors, or Commanders-in-Chief, of the said province, or by any of the former Mayors, or deputy Mayors, and Aldermen and Commonalty of the said city of New-York, by that or any other name, stile, or title, or by others claiming under any such grant or conveyance, to have and to hold to them respectively, and to their respective heirs and assigns forever; saving and reserving the several rents and quit-rents, reserved and due, and to be due and payable from each of the several persons, to whom by virtue of any former grants to them (or those from or under whom they respectively hold) the same messuages, tenements, lands, or hereditaments were made or given.

36. *And further*, of our special grace, certain knowledge, and meer motion, we do, for us, our heirs, and successors, give, grant, ratify, and confirm to the said Mayor, Aldermen, and Commonalty of our said city of New York, and to their successors forever, full, special and free liberty, license, power and authority, to take, receive, have, hold and enjoy, to them and their successors forever, in fee simple, any manors, messuages, lands, tenements, hereditaments, rents, and other possessions and real estate, within or without the same city, as well of and from us, our heirs and successors, as of and from all and every other person and persons whomsoever; so as the manors, messuages, lands, tenements, hereditaments, rents and other possessions and real estate, which the Mayor, Aldermen, and Commonalty of the city of New York, shall and

may have in their possession and seizen, at any one time, exceed not in the whole, the clear yearly rent or value of three thousand pounds per annum, money of our realm of Great Britain, beyond and above all charges and reprises, without any hindrance of us, our heirs, or successors, or the justices, escheators, sheriffs, coroners, bailiffs, or other the ministers of us, our heirs or successors; and this without any other letters patent, liberty, license, or power from us, our heirs, or successors; the statute of *Mortmain*, or any other act, law or statute, or any other cause, thing, or matter, whatsoever, to the contrary thereof in any wise notwithstanding; and the same manors, messuages, lands, tenements, hereditaments, rents, and other possessions, or any part thereof, to demise, grant, lease, and set over, assign and dispose, at their own will and pleasure, and to make, seal, and accomplish, any deed, or deeds, lease, or leases, evidences, or writings, for or concerning the same or any part thereof.

37. *And we do*, by these presents, of our especial grace, certain knowledge, and meer motion, give, grant, ratify, and confirm, unto the said Mayor, Aldermen and Commonalty, of the city of New York, and their successors forever, all those the now City Hall and gaols, rooms or places, for the courts of justice and chambers adjoining, with the ground and appurtenances thereto belonging, the five market houses, the great dock, the now crane and wharf, with the common sewer leading through the great dock and bridge, and also the Magazine, or Powder-house, near the fresh water, all in the city of New York, and the ferry and ferries on both sides of the East river, and all other ferries now and hereafter to be erected and established all round the Island of Manhattan's; and the management and rue, of, and all fees, ferriages, and perquisites to the same or any part thereof belonging, or to belong; and also the ferry houses on Nassau Island, with the barns, stal bles, penn, or pounds, and lot of ground thereto belonging; and also all the ground, soil or land, between high water and low water mark, on the said Island of Nassau, from the east side of the place called Wallabout to the west side of Red Hook; and also to make laws and rules, for the governing and well ordering of all the ferries now erected or established or hereafter to be erected or established round the said Island Manhattan's; and all the waste, vacant, unpatented, and unappropriated land lying and being within the said city of New York, and on Manhattan's Island aforesaid, extending to low water mark; together with the right, benefit, and advantage, of all docks, wharfs, cranes, and slips, or small docks within this city, with the wharfage, cranage, and dockage, and all issues, rents, profits, and advantages arising, or to arise or accrue by or from all or any of them; and all rivers, rivulets, creeks, coves, ponds, waters, water-courses, fishing, fowling, hunting and hawking, mines and minerals, and other royalties and privileges within the city of New York, and Manhattan's Island; and also all and singular other the rights, privileges, liberties, franchises, pre-eminences, advantages, jurisdictions, courts, powers, offices, authorities, markets, ferries, ferriages, fees, fines, amerciaments, perquisites, profits, immunities, lands, tenements, rents, possessions, and hereditaments, and other real estate, not only which in the before recited grant or writing made or mentioned to be made, in the year of our Lord one thousand six hundred and eighty-six, and in the before recited letters patent of Queen Anne, mentioned or intended to be thereby, or by either of them granted or conveyed, but also, which the Mayor, Aldermen and Commonalty, of the city of New York, or their predecessors, inhabitants, or citizens of the said city of New York, or any part thereof, by whatsoever other name, style or title they or any of them, have been known or called, have held, or claimed to hold by prescription or otherwise, (silver or gold mines excepted) and also, except our Fort George, in our city of New York, and the ground, full boundaries, and extent thereof, or thereto belonging, and also that piece of ground near the English Church, called the Governor's Garden, and the land called the King's Farm, with the swamp next to the same: and saving the several rents, reserved by virtue of former grants, and saving to all other persons, bodies politic and corporate, their respective titles, to any of the said lands or tenements; and saving to the inhabitants, or those that have plantations by the water side, between Wallabout and Red Hook, the right of transporting themselves, and their own goods only, in their own boats, from and to their respective dwellings or plantations, without any ferriage, *to have and to hold* all and singular the premises aforesaid, and every part and parcel thereof (except and saving, as is herein excepted and saved) unto the said Mayor, Aldermen and Commonalty of the city of New York, and their successors forever to their only proper use and behoof forever.

38. *And* also, we do further, of our special grace, certain knowledge, and meer motion, give, grant, ratify and confirm unto the said Mayor, Aldermen and Commonalty, of the city of New York, and to their successors forever, all that space of ground and soil of Hudson's river now lying and being under the water of the same river, to begin at a certain place, near high water mark, at the south end of a piece of upland, which lies between the said river, and a piece of meadow ground or marsh, being the first piece of meadow ground or marsh near Hudson's River, to the southward of Greenwich, and from whence the above named run of water called Bestaver's Killitie, or rivulet, runs into Hudson's River, from which place of beginning to extend or run to the south side of the street which runs from the parade before our fort in New York to Hudson's River, south, eighteen degrees, thirty minutes west, on a straight line, the distance being one hundred and twenty-five chains, from which line to run a perpendicular breadth of, and to comprehend four hundred feet from low water mark, into Hudson's River, the same containing eighty-two acres, and one half acre, or thereabout. And also, all that space of ground and soil of the East River, from the north side of Corlaer's-Hook to Whitehall, beginning at two large stones, set on the south side of a small creek in a marsh on the north side of Corlaer's-Hook; from whence to the easternmost point of Corlaer's-Hook, the distance on a straight line, running south, fifteen degrees thirty minutes east, is forty chains and two rods; from thence to Whitehall, on a straight line, running south, seventy-eight degrees thirty minutes west, the distance is one hundred and fifty-two chains, from which two lines, to run a perpendicular breadth of, and to comprehend four hundred feet from low water mark into the East River, the same containing one hundred and twenty-seven acres, or thereabouts; together with all and singular the benefits, liberties, privileges, ways, water-courses, easements, wharfs, keys, profits, hereditaments, and appurtenances to the same, or any part thereof belonging or appertaining, or to belong or to appertain, or that can in any wise be had, made, used, or enjoyed thereon, or therewith used, with full power and authority at any time or times hereafter to fill, make up, wharf, and lay out, all and every part thereof; and the same to build upon and make use of in such manner as they, the said Mayor, Aldermen, and Commonalty, and their successors, shall think fit; and also all our estate, right, title, interest, benefit, claim and demand whatsoever, of, in, or to the same, and the reversion and reversions, remainder and remainders, and the yearly and other rents, issues and profits, thereof; *To have and to hold*, all and singular the premises aforesaid, unto them the said Mayor, Aldermen, and Commonalty, and their successors, to their own proper use and behoof for ever, and to no other use, intent, or purpose, whatsoever. *Provided always*, that nothing in these presents, shall be construed to empower or entitle the said Mayor, Aldermen, and Commonalty, of the city of New York, or their successors, to wharf out before any persons who have prior grants, from us, or some or one of our predecessors, of keys or wharfs beyond low water mark, without the actual agreement or consent of such persons, their heirs, or assigns, owners of such keys or wharfs. *And also*, that of the wharves to be built or run out, there shall be left towards the East and North rivers, forty feet broad, as well for the greater conveniency of trade, as at any time or times hereafter, for us, our heirs, and successors, to plant batteries thereon, in case of any neccssities; to do which, we do, for us, our heirs, and successors, hereby reserve power; any thing herein contained to the contrary, in any wise notwithstanding; they, the said Mayor, Aldermen, and Commonalty, and their successors, rendering, yielding, and praying, for all and every the rights, privileges, franchises, pre-eminences, advantages, jurisdictions, courts, powers, offices, authorities, fines, amerciaments, perquisites, fees, ferriages, profits, immunities, lands, tenements, rents, possessions, hereditaments, and other real estate, and all other the premises, in and by these letters, before and hereafter granted, or meant, mentioned, or intended to be hereby granted unto us, our heirs, and successors, or unto our or their receiver-general for the said province of New York, for the time being, at the custom-house, in the said city of New York, yearly and every year, on the feast day of St. Michael, the Arch-Angel, the annual rent of thirty shillings, proclamation money, besides and over and above the yearly quit-rent of one Beaver-skin, or the value thereof, in current money of our said province, in and by the aforesaid recited grant, made in the year one thousand six hundred and eighty-six, reserved to be paid on the twenty-fifth day of March, yearly forever; and also the yearly quit-rent of five shillings, current money of New York, in and by the before recited letters patent of Queen Anne, reserved to be paid at or upon the feast day of St. John the Baptist, yearly forever.

39. *And we do further*, of our especial grace, certain knowledge, and meer motion, for us, our heirs, and successors, by these presents, give and grant unto the aforesaid Mayor, Aldermen, and Commonalty of the said city of New York, and their successors forever, that they and their successors, all and singular the rights, privileges, franchises, pre-eminences, advantages, authorities, jurisdictions, liberties, offices, courts, powers, immunities, ferries, ferriages, profits, and perquisites, hereinbefore mentioned, or intended to be hereby granted or confirmed, shall and may forever hereafter, have, hold, enjoy, and use, without the hindrance or impediment of us, our heirs, or successors, or of any of the justices, sheriffs, escheators, coroners, bailiffs, or other officers, or ministers, whatsoever, of us, our heirs, or successors, albeit the same or some, or any one of them, have not been used, or may have been abused, misused, or discontinued, forfeited, or lost, being unwilling, and hereby forbidding, that the said Mayor, Aldermen, and Commonalty, or their successors, or any of them, by reason of the premises aforesaid, or any part thereof, by us, our heirs, or by the justices, sheriffs, escheators, bailiffs, or other officers or ministers of us, our heirs, or successors, be hindered, molested, vexed, or aggrieved, or in any wise disturbed; being willing, and by these presents, for ourselves, our heirs, and successors, commanding as well all the judges, and justices of us, our heirs, and successors, as the attorney and solicitor-general of us, our heirs, and successors, for the said province, for the time being; and also all other officers and ministers whatsoever of us, our heirs, and successors, for the time being, that neither they, nor any of them, do prosecute or continue, or cause to be prosecuted or continued, any information, or any writ, or summons of *Quo Warranto*, or any other writ or writs, prosecution, suit, or processes, whatsoever, against the aforesaid Mayor, Aldermen, and Commonalty of the city of New York, or their successors for the time being, or against any of them, for any causes, things, offences, claims, usurpations, or omissions, or any of them, by them, the said Mayor, Aldermen, and Commonalty, or any of them, or by the predecessors, or any of them, or by any other Mayor, Aldermen, and Commonalty of the city of New York, or any of them, done, attempted, claimed, used, had, usurped, or committed, or omitted at any time before the making of these letters. And we being willing also that the said now Mayor, Aldermen, and Commonalty of the city of New York, and their successors, shall not, nor shall any, or either of them, be molested, or impeached, by or before any judge or judges, justice or justices, sheriffs, officers, or other ministers aforesaid, in or for any use, claim, abuse, usurpation, of any the aforesaid, or of any other liberties, franchises, or jurisdictions, within the city aforesaid, and the liberties and precincts thereof, before the day of the making of these letters, had used, claimed, abused, or usurped, nor to or for them, or any of them, or for any other thing whatsoever, shall be compelled to answer; and also of our more abundant especial grace, certain knowledge, and meer motion, we have given, pardoned, remitted, released, and quit-claimed, and by these presents do, for ourselves, our heirs and successors, give, pardon, remit, release, and quit-claim to the aforesaid Mayor, Aldermen, and Commonalty of the city of New York aforesaid, and to their successors forever, by whatsoever name the same Mayor, Aldermen, and Commonalty may be called, named, or styled, or lately heretofore were called, styled, named, or titled, all and all manner and actions whatsoever, informations and suits of *Quo Warranto* and other informations, suits, and prosecutions; and also, all and singular usages, nonusages, abuses, forfeitures, usurpations, intrusions, omissions, and also, all unjust claims of any rights, privileges, liberties, franchises, jurisdictions, courts, powers, offices, fees, fines, amerciaments, ferries, ferriages, perquisites, rents, possessions, lands, tenements, or hereditaments, whatsoever, by the aforesaid Mayor, Aldermen, and Commonalty of the city aforesaid, or by any of their predecessors, or by any other Mayor, Aldermen and Commonalty of the city of New York, by whatsoever name or names, or incorporation, or by pretext of any incorporation, before the day of the making of these presents, perpetrated, made or claimed;

and, also, all and all manner of fines, amerciaments, penalties, sums of money, and other forfeitures whatsoever, by reason of such usurpation, intrusion, usage, non-usage, omission, abuse, or unjust claim, and that they, the said Mayor, Aldermen, and Commonalty of the city of New York, and their successors, and every of them be, and shall be, and hereby are, thereof fully acquitted and discharged towards us, our heirs and successors forever; being unwilling that they, or any of them, should, by reason of the premises aforesaid, or any part thereof, by us, our heirs and successors, or by any of our justices, sheriffs, ministers, or officers, whatsoever, be troubled, molested, or in any wise vexed.

40. *And further*, We do, of our especial grace, certain knowledge, and meer motion, will, declare and signify, and by these presents, for us, our heirs and successors, do grant unto, and covenant with the said Mayor, Aldermen and Commonalty of the city of New York, and their successors, not only that they and their successors forever hereafter may, and shall, have, hold, use, possess and enjoy all the rights, privileges, liberties, franchises, jurisdictions, courts, powers, offices, authorities, markets, ferries, fees, fines, amerciaments, perquisites, profits, immunities; and also all the rents, possessions, lands, tenements and hereditaments, and all other the premises in these presents mentioned, and intended to be hereby granted and confirmed; but also, that these our letters, being entered upon record, as is hereinafter appointed, and the record or enrollment thereof, and either of them, and all and everything therein contained, from time to time, and at all times hereafter, be, and shall be, firm, valid, good, sufficient, and effectual in law towards and against us, our heirs, and successors, according to the true intention thereof; and in and through all things shall be construed, taken, and expounded most benignly, and in favor, and for the most and greatest advantage, profit, and benefit of the said Mayor, Aldermen and Commonalty of the city of New York, and their successors, as well in all courts as elsewhere, without any confirmation, licenses, tolerations, procured or to be procured, of us, our heirs or successors, notwithstanding that any writ or writs of *ad quod damnum*, hath or have not issued, or is or are not returned, before the making of these presents, and notwithstanding the not reciting, misreciting, or not rightly or certainly reciting, or ill or wrong reciting the said rights, privileges, liberties, franchises, jurisdictions, courts, powers, offices, authorities, markets, ferries, fees, amerciaments, perquisites, profits, immunities, rents, possessions, lands, tenements, hereditaments, and any other the premises, in or by these presents granted, or mentioned, or intended to be hereby granted, or any part or parcel thereof, and notwithstanding the not finding, or ill or not right or certain finding of any office or offices, inquisition or inquisitions of the premises, hereby granted or mentioned, or intended to be hereby granted, or any part or parcel thereof, by which our title in and to the said premises, or any part thereof, might, could, should, or ought to have been found, before the making of these presents; and notwithstanding any defect in not reciting or ill reciting of any lease, grant, or grants of the premises, or any part thereof, being upon record, or not upon record, or otherwise, howsoever; and notwithstanding the ill naming, misnaming, or not right or certain naming any place or precincts, wherein the premises, or any part thereof, are or is; and notwithstanding any defect in not mentioning, or not fully, rightly, or certainly mentioning the name or names of all or any the rights, privileges, liberties, franchises, jurisdictions, courts, powers, offices, authorities, markets, ferries, fees, amerciaments, perquisites, profits, immunities, rents, possessions, lands, tenements, hereditaments, or other the premises, hereby granted, or intended to be granted, or any part or parcel thereof; or of the yearly, or other rent of, or reserved in, and upon the premises, or any part thereof; and notwithstanding any defect, for the want of a computation or declaration, or for the omission of the true value of the premises, in these presents mentioned or intended to be hereby granted, or any part thereof, and notwithstanding any defect in not mentioning our true right, estate, or title of or to the same premises, or any part or parcel of them; and notwithstanding, the not mentioning, or not fully, rightly, or certainly, mentioning the nature, kinds, species, or quantities of the premises, or any of them, or any part or parcel of them; and notwithstanding any act, statute, or ordinance of parliament, or any act of assembly; and notwithstanding any other defects, faults or imperfections, or any other cause or thing whatsoever. And further, that if any fault, mistake, or imperfection, in time to come, shall be found in these presents, or any doubt, scruple or question, be, or shall be made, or shall happen to arise, concerning the premises, or any part thereof, that we, our heirs, and successors, shall and will vouchsafe to make any other grant or assurance, under the great seal of us, our heirs or successors, of the said province of New York, to the Mayor, Aldermen and Commonalty of the city of New York for the time being, and their successors, at their own proper charges, for the better giving, granting and confirming, and for their safe and better enjoying the premises aforesaid, and every part thereof, when it shall be desired by the same Mayor, Aldermen and Commonalty of the city of New York, or their successors. Also, we will, and by these presents grant unto the said Mayor, Aldermen and Commonalty, that they shall and may have these presents, made and sealed under the great seal of our said province of New York, without rendering, paying or making any fine or fee, great or little to us, or to our use, for the same, although no express mention is made of the true yearly or other value, or of the certainty of the premises, or any part thereof, or of the gifts or grants, heretofore by us, or our ancestors, or by any Governor, Lieutenant-governor, or Commander-in-chief of the said province of New York, to the Mayor, Aldermen and Commonalty of the said city of New York, or to the citizens or inhabitants of New York aforesaid, by that or any other name, style or title, or any other statute, act, ordinance, proclamation, provision or restriction, made, published, ordained or provided to the contrary, or any other cause or matter whatsoever, in any wise notwithstanding.

In Testimony whereof, we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed, and the same to be entered of record in our secretary's office of our said province, in one of the books of patents there remaining. *Witness* our trusty and well-beloved *John Montgomerie*, Esq., our Captain General and Governor in Chief of our said province of New York, and the province of New Jersey, and territories depending thereon in America, and Vice-Admiral of the same, &c. at our Fort George in New York, the fifteenth day of January, in the fourth year of our reign.

May it please your Excellency,

I have perused this Charter, and find nothing therein prejudicial to the interest of his Majesty.

To his Excellency, R. BRADLEY,
The Governor of the province of
New York, &c. *Attorney General.*
15th January, 1730.

The foregoing Charter of Governor Montgomerie does not appear to have been confirmed by the King, and it is therefore subject to all the objections which it recites as being made to the Charters of Governor Dongan and Cornbury.

Governor Montgomerie died shortly after the time this Charter bears date.

In 1732 the Colonial Legislature passed an Act to confirm the Charter granted by Governor Montgomerie, but this Act does not appear to have been confirmed by the King, as was customary in all public Acts which were approved. This Act was repealed by the Revised Statutes in 1830.

An Act for confirming unto the city of New York, its rights and privileges.

Passed the 14th of October, 1732.

I. *Be it declared and enacted by the Governor, the Council, and the General Assembly of the colony of New York, and it is hereby enacted by the authority of the same*, That the Mayor, Aldermen and Commonalty of the city of New York, shall and may, forever hereafter, remain, continue, and be a body corporate and politic, *in re facto et nomine* by the name of the Mayor, Aldermen and Commonalty of the city of New York; and by that name to sue, plead, and be impleaded, and to answer and to be answered, without any seizure or forejudger, for, or upon any pretence of any forfeiture or misdemeanor at any time heretofore done, committed or suffered.

II. *And be it enacted by the authority aforesaid.* That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen and Commonalty of the city of New York, be, and are hereby declared to be, and shall be good, valid, perfect, authentic and effectual in the law, and shall stand, be taken, reputed, deemed and adjudged good, perfect, sure, available, authentic and effectual in the law, against the King's Majesty, his heirs and successors, and all and every person and persons whomsoever, according to the tenor and effect of the said letters patent, grants, charters and gifts.

III. *And be it enacted by the authority aforesaid*, That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen and Commonalty of the city of New York, be, and are to all intents and purposes, hereby ratified and confirmed.

IV. *And be it enacted by the authority aforesaid*, That the Mayor, Aldermen and Commonalty of the city of New York, and their successors, shall and may forever hereafter, peaceably have, hold, use and enjoy, all and every the rights, gifts, charters, grants, powers, liberties, privileges, franchises, customs, usages, constitutions, immunities markets, duties, tolls, lands, tenements, estates and hereditaments, which have heretofore been given or granted unto the Mayor, Aldermen and Commonalty of the city of New York, by any letters patent, grant, charter or gift, sealed under the seal of the colony of New York.

V. *And be it enacted by the authority aforesaid*, That this present act shall be accepted, taken, and reputed, to be a general and public act of Assembly; of which all and every the judges, and justices of this colony, in all courts, and all other persons, shall take notice on all occasions whatsoever, as if it were a public act of assembly, relating to the whole colony; any thing herein contained to the contrary thereof in any wise notwithstanding.

The following act was passed at the instance of the officers of the Corporation of the city of New York, was published eighteen times at full length in all of the city newspapers, and was then submitted to the people at the next ensuing election, and only six hundred and seventy-seven votes were given in favor of the act, and it was consequently rejected.

ATTEMPTED REORGANIZATION OF THE COMMON COUNCIL, IN 1824.

An act to alter the organization of the Common Council of the City of New York.

Passed April 3, 1824.

Whereas the mayor, aldermen and commonalty of the city of New York, in common council convened, have by their petition under their common seal, prayed for the passage of the following law: Therefore,

I. *Be it enacted by the people of the State of New York, represented in Senate and Assembly*, That the common council of the city of New York shall hereafter consist of two separate boards, to be denominated the board of aldermen and the board of assistants, who together shall constitute the common council of the said city, and be known by the name of the mayor, aldermen and commonalty of the city of New York.

II. *And be it further enacted*, That the said board of aldermen shall consist of one member from each ward, residing in such ward, to be chosen from among the freeholders of the said city; and that in each ward of the said city, the persons residing therein, qualified by the charter of the said city to vote for charter officers, and every person residing therein qualified to vote for members of assembly of this state, shall at the days appointed by law for the election of members of assembly, next ensuing the ratification of this act, as hereinafter provided for, assemble themselves, and meet together in their respective wards, and elect by ballot an alderman for the said ward; and at every succeeding election for members of assembly, and on the same days with such election, the said persons so qualified to vote as aforesaid, residing in any ward of which the office of alderman shall be vacant, (by death, resignation, expiration of the term of office, or other cause) shall elect by ballot, from among the freeholders as aforesaid, a proper person to supply such vacancy; and that the said persons so chosen, shall be the aldermen of the said city, with all the powers of aldermen,

under and by virtue of any authority whatsoever; who together shall constitute the board of aldermen, of the said common council, (a majority of whom shall make a quorum for the transaction of business,) and shall be members of the said common council for two years from the last Monday of December next ensuing their election, as herein provided, when they shall be sworn into and commence the duties of their offices, and shall continue in their offices until other fit persons be elected and sworn in their places; which board of aldermen, as soon as they shall meet after the first election under this act, shall cause themselves to be divided by lot into two classes, to be numbered one and two; the seats of the first class shall be vacated at the end of the first year, and of the second class at the end of the second year, in order that one half may be chosen every year; and that in every case, where by reason of any vacancy occasioned by death, resignation, or otherwise, of any such aldermen, a person shall be chosen in his stead, he shall belong to the class to which his predecessor belonged, and shall only serve for his unexpired term.

III. *And be it further enacted*, That the qualified electors of the said city, shall in like manner annually elect two persons for each ward of the said city, who shall be the assistants of the said city, with all the powers appertaining to the office of assistants, under and by virtue of any authority whatsoever, and shall constitute the board of assistants of the said common council, (a majority of whom shall make a quorum for the transaction of business,) and shall be members of the common council for the said city for the year from the last Monday of December next ensuing their election, when they shall be sworn into and commence the duties of their office, and shall continue in office until other fit persons be elected and sworn in their places; and that the said board of assistants shall appoint one of their own members as president.

IV. *And be it further enacted*, That the whole power of the corporation of the said city, known by the name of the mayor, aldermen and commonalty of the city of New York, whencesoever derived, and now possessed by the said corporation, shall be vested in the said boards of aldermen and assistants, and their successors, forever, by the aforesaid name of the mayor, aldermen and commonalty of the city of New York, who shall perform all legislative and other acts as separate and distinct bodies, with concurrent powers; shall possess a negative on each other's proceedings, and may propose amendments thereto, and shall exercise, possess and enjoy all and singular the legislative and other powers which the mayor, aldermen and commonalty of the city of New York, in common council convened, at present may or can lawfully and of right exercise, possess and enjoy; and that each board shall settle their own rules of proceedings, appoint their own clerk, and judge of the elections, returns and qualifications of their own members.

V. *And be it further enacted*, That the common council or corporation as organized under this act, shall to every intent and purpose whatsoever, (as the mayor, aldermen and commonalty of the city of New York, however organized) have, possess and enjoy all the rights, properties, gifts, charters, grants, powers, liberties, privileges, franchises, customs, usages, constitutions, immunities, markets, ferries, duties, tolls, lands, tenements, estates, and hereditaments, which have heretofore been given or granted unto the mayor, aldermen and commonalty of the city of New York, by any letters patent, grant, charter or gift, sealed under the seal of the colony of New York, or under and by virtue of any act or acts of the legislature of the state of New York, or of the United States; and that they shall also have, and be entitled unto, all and any gifts, grants or contracts, covenants, promises or agreements, deeds or writings, with or from any person or persons whomsoever, as the mayor, aldermen and commonalty of the city of New York, or as their successors, to every intent, and with all the powers and rights possessed by the said mayor, aldermen and commonalty of the city of New York; and that all and singular the acts, proceedings, ordinances, laws, regulations, and doings of the said mayor, aldermen and commonalty of the city of New York, as they may exist, according to law, shall remain unaffected by the provisions of this act, subject to such alterations as may be from time to time made by the common council, when newly organized under this act. *And further*, That the charter of the said city of New York, or any thing therein contained, or any act or acts of the legislature of the state, touching or concerning the same, or the said corporation or common council, or any of the powers of the mayor, aldermen and commonalty of the city of New York, or any of the charter officers of the said city, or the election of charter officers, shall not be deemed or construed as in any respect repealed, altered, affected, modified, or changed, any further than the same are repugnant to the provisions of this act, or than is necessary to carry the provisions of this act into effect; but that the same shall, to every intent and purpose, be deemed and taken to apply to the mayor, aldermen and commonalty of the city of New York, or corporation or common council, to be organized as provided for in and by this act.

VI. *And be it further enacted*, That in all cases of appointments to office, to be made by the said common council hereby organized, under and by virtue of any power or authority whatsoever, if the said two boards shall not agree, they shall meet together and vote by joint ballot, and a majority of such votes shall decide; and that in case of a disagreement between the said boards respecting any other act or acts, thing or things proposed to be done, they may hold a conference, but shall nevertheless meet and vote on the matter in difference as separate and distinct boards.

VII. *And be it further enacted*, That the mayor and recorder of the city of New York, for the time being, shall be members of the board of aldermen, and the mayor shall be president of said board, and in his absence the recorder shall preside, and in the absence of both, one of the said board shall be appointed chairman pro tempore: The mayor or recorder when presiding, shall, in all cases, have a casting vote, and no other.

VIII. *And be it further enacted*, That the said common council, in case of the sickness or absence of the mayor, shall have the power to elect a deputy mayor from among the aldermen; which deputy mayor shall for the remainder of the term of the year for the then mayor, during his inability to act, and until a successor is appointed, be president of the said board of aldermen, and have and exercise all and every the powers, duties and privileges of mayor of the said city, as may be possessed and exercised by the deputy mayor under the charter of the said city, or under or by virtue of any other power or authority.

IX. *And be it further enacted*, That the elections to be held for the charter officers named in this act, and for all the charter officers to be chosen in and for the said city, shall commence on the same day in every year with the election for members of assembly of this state; and shall be notified, held and conducted by the same inspectors, in the same manner, with the like powers, and during the same number of days; and that every person qualified by the charter of the said city to vote for charter officers, and every person qualified to vote in any of the wards of said city, for members of the assembly of this state by the constitution, shall be authorized to vote for such charter officers in the ward where he actually resides, and not elsewhere; and that no other person shall be authorized to vote at any such election.

X. *And be it further enacted*, That all the other charter officers (excepting the collectors) to be chosen in and for the said city, shall be sworn into, and commence the duties of their offices, on the same day with the before mentioned aldermen and assistants; and shall continue in their offices, from their being so sworn, until other fit persons be elected and sworn in their places; and that the collectors of the respective wards of the said city, shall be elected to serve in their respective offices for one year from the second Monday of May next after such election.

XI. *And be it further enacted*, That all and singular the provisions of this act, shall be null and void, to every intent and purpose, as if never herein enacted, unless the same shall be approved by a majority of the votes of the electors of the city of New York; and that the same shall be submitted together, to the decision of the electors of the said city, and if ratified as herein provided, shall go into effect from and including the first Monday of November, one thousand eight hundred and twenty-four, so far as respects the first election of charter officers under this act, and from and including the last Monday in December following, the same shall go into full force and entire effect.

XII. *And be it further enacted*, That the common council of the said city shall, within the usual time before such election, appoint inspectors of an election which shall be held in the several wards in the said city, on the last Monday of May next, and be continued from day to day for three days successively, including the first; at which election the citizens qualified as voters under this act, may vote by ballot for or against the provisions of this law; and on such of the said ballots as are for the provisions of this law; shall be written or printed the word "Yes," and on those which are against the same, "No." And that notice of such election shall be given by the inspectors, and the said election shall, in all things, be held by such inspectors with the like powers, and conducted in like manner, as nearly as may be, as is prescribed in and by the act, entitled "An act for regulating elections," passed April 17th, 1822, or any act amendatory thereof; which laws shall have as full applications, force and effect, with respect to such election, as they would have, provided members of assembly were then to be elected; and that the votes given at such election shall be deposited by the inspectors in proper boxes to be by them provided, and canvassed by the inspectors of the several polls, and returned to the county clerk, and the result certified by the board of canvassers, in like manner, as nearly as may be, as in case of elections for members of the assembly; one copy of which certificate shall be filed in the office of the secretary of state, and another delivered to the common council of the said city, and published; and that in case a majority of such votes shall, by the certificate of the canvassers, appear to have been given in favor of the provisions of this law, it shall be the duty of the inspectors who may be appointed by the common council of the said city to hold next ensuing election for members of assembly, to give notice of the holding of the election for charter officers, under the provisions of this act; and they shall provide the proper ballot boxes for charter officers; and that the ballots for all the charter officers to be voted for by an elector, in each ward of the said city, shall be received on one ticket, and be deposited in one ballot box.

Session Laws of 1824, page 162.

In 1828, April 18th, the above act of 1824 was re-enacted by the Legislature, and was submitted to the people at the next ensuing election, and was rejected; at this time three thousand seven hundred and fifty-three votes were cast in its favor.

In 1829, the citizens elected sixty-five delegates to meet in convention to frame a city charter. After a protracted session of about three months, the Convention adopted the following Bill or Charter, which was submitted to the people for their approval at the then next election, and was by a vote by ballot accepted. At the time this Bill or Charter was submitted, an address was published, signed by the President and fifty-seven members of the Convention, explaining the provisions of the charter. This address is very lengthy: we will in some future number publish it in full.

AMENDMENTS TO THE

CHARTER OF THE CITY OF NEW YORK,

As adopted in Convention, September, 1829.

Sec. 1. The legislative power of the city of New York shall be vested in a board of Aldermen and a board of Assistants, who, together, shall form the Common Council of the city.

Sec. 2. Each ward of the city shall be entitled to elect one person to be denominated the Alderman of the ward, and the persons so chosen, together, shall form the board of Aldermen; and each ward shall also be entitled to elect one person to be denominated Assistant Alderman, and the persons so chosen, together, shall form the board of Assistants.

Sec. 3. The Aldermen and Assistant Aldermen shall be chosen for one year, and no person shall be eligible to either office, who shall not at the time of his election be a resident of the ward for which he is chosen.

Sec. 4. The annual election for charter officers shall commence on the second Tuesday in April, and the officers elected shall be sworn into office on the second Tuesday in May thereafter. And all such elections shall be notified, held and conducted by Inspectors appointed in the same manner, with the like powers, and during the same number of days, as the election for members of Assembly of the state are notified, held and conducted.

Sec. 5. The first election for charter officers after the passage of this law, shall take place on the second Tuesday in April, 1831, and all those persons who shall have been elected under the former laws regulating the election of charter officers, and shall be in office at the time of the passage of this law, shall continue in office, or hold over, until the officers elected under this law shall be entitled to be sworn into office.

Sec. 6. The board of Aldermen shall have power to direct a special election to be held to supply the place of any Alderman whose seat shall become vacant by death, removal from the city, resignation, or otherwise. If a special election be not directed, the vacancy shall be supplied at the next general election. And the board of Assistants shall also have power to direct a special election to supply any vacancy that may occur in the board of Assistants. The person elected to supply such vacancy shall hold his seat only for the residue of the term of office of his immediate predecessor.

Sec. 7. The boards shall meet in separate chambers, and a majority of each shall be a quorum to do business. Each board shall appoint a president from its own body; and shall also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board shall keep a journal of its proceedings, and the doors of each shall be kept open, except when the public welfare shall require secrecy: and all resolutions, and reports of committees, which shall recommend any specific improvement, involving the appropriation of public moneys, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the Common Council, in all the newspapers employed by the Corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called, and published in the same manner.

Sec. 8. Each board shall have authority to compel the attendance of absent members, to punish its members for disorderly behavior, and to expel a member, with the concurrence of two thirds of its members elected to the board, and the member so expelled, shall, by such expulsion, forfeit all his rights and powers as an Alderman or Assistant Alderman.

Sec. 9. The stated and occasional meetings of the Common Council shall be regulated by their own ordinances, and both boards may meet on the same, or on different days, as they may judge expedient.

Sec. 10. Any law, ordinance or resolution of the Common Council, may originate in either board; and when it shall have passed one board, may be rejected or amended by the other.

Sec. 11. No member of either board, shall, during the period for which he was elected, be appointed to, or be competent to hold any office of which the emoluments are paid from the city treasury, or by fees directed to be paid by any ordinance or act of the Common Council, or be directly or indirectly interested in any contract, the expenses or consideration thereof, are to be paid under any ordinance of the Common Council; but this section shall not be construed to deprive any Alderman or Assistant of any emoluments or fees which he is entitled to, by virtue of his office.

Sec. 12. Every act, ordinance or resolution which shall have passed the two boards of the Common Council, before it shall take effect, shall be presented, duly certified, to the Mayor of the city, for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the board in which it originated, within ten days thereafter, or if the Common Council be not then in session, at their next stated meeting. The board to which it shall be returned, shall enter the objections at large on their journal, and cause the same to be published in one or more of the public newspapers of the city.

Sec. 13. The board to which such act, ordinance or resolution shall have been returned, shall, after the expiration of not less than ten days thereafter, proceed to re-consider the same. If, after such re-consideration, a majority of the members elected to the board shall agree to pass the same, it shall be sent, together with the objections, to the other board, by which it shall be likewise re-considered; and if approved by a majority of all the members elected to such board, it shall take effect, as an act or law of the corporation. In all such cases the votes of both boards shall be determined by yeas and nays, and the names of the persons voting for, and against the passage of the measure re-considered, shall be entered on the journal of each board respectively.

Sec. 14. If the Mayor shall not return any act, ordinance, or resolution so presented to him, within the time above limited for that purpose, it shall take effect in the same manner as if he had signed it.

Sec. 15. Neither the Mayor nor Recorder of the city of New York, shall hereafter be members of the Common Council thereof.

Sec. 16. Whenever there shall be a vacancy in the office of Mayor, and whenever the Mayor shall be absent from the city, or be prevented by sickness, from attending to the duties of his office, the president of the board of Aldermen shall act as Mayor, and shall possess all the rights and powers of the Mayor during the continuance of such vacancy, absence, or disability.

Sec, 17. It shall be the duty of the Mayor—

First. To communicate to the Common Council, at least once a year, and oftener if he shall deem it expedient, a general staetment of the situation and condition of the city, in relation to its government, finances, and improvements.

Second. To recommend to the adoption of the Common Council, all such measures connected with police, security, health, cleanliness, and ornament of the city, and the improvement of its government and finances, as he shall deem expedient.

Third. To be vigilant and active in causing the laws and ordinances for the government of the city, to be duly executed and enforced.

Fourth. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them, for violation or neglect of duty; and generally to perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of this state and the United States.

Sec. 18. Annual and occasional appropriations shall be made by proper ordinances of the Common Council, for every branch and object of city expenditure, nor shall any money be drawn from the city treasury, except the same shall have been previously appropriated to the purpose for which it is drawn.

Sec. 19. The Common Council shall not have authority to borrow any sums of money whatever on the credit of the Corporation, except in anticipation of the revenue of the year in which such loan shall be made, unless authorized by a special act of the legislature.

Sec. 20. It shall be the duty of the Common Council to publish, two months before the annual election of charter officers, in each year, for the general information of the citizens of New York, a full and detailed statement of the receipts and expenditures of the corporation, during the year ending on the first day of the month in which such publication is made; and

in every such statement the different sources of city revenue, and the amount received from each, the several appropriations made by the Common Council, the objects for which the same were made, and the amount of moneys expended under each, the moneys borrowed on the credit of the corporation, the authority under which each loan was made, and the terms on which the same was obtained, shall be clearly and particularly specified.

Sec. 21. The executive business of the Corporation of New York shall hereafter be performed by distinct departments, which it shall be the duty of the Common Council to organize and appoint for that purpose.

Sec. 22. It shall be the duty of the Common Council to provide for the accountability of all officers, and other persons to whom the receipt or expenditure of the funds of the city shall be entrusted, by requiring from them sufficient security for the performance of their duties or trust, which security shall be annually renewed.

Sec. 23. The clerk of the board of Aldermen shall, by virtue of his office, be clerk of the Common Council, and shall perform all the duties heretofore performed by the clerk of the Common Council, except such as shall be assigned to the clerk of the board of Assistant Aldermen. And it shall be his duty to keep open for inspection, at all reasonable times, the records and minutes of the proceedings of the Common Council, except such as shall be specially ordered otherwise.

Sec. 24. Such parts of the charter of the city of New York, and of the several acts of the legislature amending the same, as are not inconsistent with the provisions of this law, shall not be construed as repealed, modified, or in any manner affected thereby, but shall continue and remain in full force.

In Convention, Sept. 28th, 1829.

Resolved, That the members of this convention who are present, and also those absent, who approve the amendments to the city charter, sign the same as engrossed.

Done in Convention, at the City Hall in the city of New York, the twenty-eighth day of September, in the year one thousand eight hundred and twenty-nine, and of the independence of the United States of America, the fifty-third.

In witness whereof, we have hereunto subscribed our names.

Attest. WILLIAM PAULDING,
President, and Delegate from the fifth ward.

A. Dean,
Richard Hatfield. } *Secretaries.*

Thomas H. Leggett,	Michael Burnham,
John Van Buren,	Abraham Bloodgood,
Thos. Bolton,	William Thompson,
Jno. Leonard,	Stephen Allen,
Charles Mills,	Richard E. Mount,
William M. Johnson,	Evert A. Bancker,
Henry H. Schieffelin,	Garret Storm,
Peter Augustus Jay,	Reuben Munson,
P. S. Townsend,	Alpheus Sherman,
G. C. Verplanck,	Lambert Suydam,
Dudley Selden,	Joseph Meekes,
Saml. Andreas,	N. T. Arnold,
J. M. Bradhurst,	Peter Stagg,
Saml. Stilwell,	James Burling,
Peter McCartee,	Charles Henry Hall,
Eldad Holmes,	Thomas Miller,
Francis Cooper,	Nathl. Reynolds,
Joseph Johnson,	H. Van Wagenen,
Dennis McCarthy,	Thomas Morris,
Gideon Tucker,	John Hone,
Wm. Jas. Macnevin,	John Duer,
Charles Oakford,	Richard S. Williams,
Nathaniel Boyd,	Elisha Tibbets,
Philip Hone,	John Morss,
John R. Hedley,	Isaac Emmons,
Charles Town,	E. D. Comstock,
Benjamin De Witt,	Samuel Guilford, jr.
Saul Alley,	Effingham Schieffelin.

I, Thomas Jeremiah, Clerk of the city and county of New York, do hereby certify, that the preceding is a true copy of the proceedings of the Convention for the purpose of revising and amending the charter of the city of New York, on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the 7th day of September, 1835.
[L. S.

THOMAS JEREMIAH, Clerk.

IN 1830

The Legislature of the state acted upon the Bill agreed upon by the Convention, and after making in it several material amendments, passed it, and it thus became a law. Stephen Allen, Esq., was at that time a member of the Senate of the state, and was a most efficient and able representative. The Bill, as passed by the State Legislature, is to be found in No. 1 of this Gazette, page 8.

LEGISLATION.

That learned and able jurist, JUSTICE STORY, thus discourses on this subject:

"The task of legislation, too, is exceedingly different in a small state, from what it is in a large one; in a state engaged in a single pursuit, or living in pastoral simplicity, from what it is in a state engaged in the infinitely varied employments of agriculture, manufactures and commerce, where enterprise and capital rapidly circulate, and new legislation is constantly required by the new fortunes of society. A single week might suffice for the ordinary legislation of a state of the territorial extent of Rhode Island, while several months would scarcely suffice for that of New York. In Great Britain a half a year is consumed in legislation for its diversified interests and occupations; while a week would accomplish all that belongs to Lapland or Greenland, of the narrow republic of Geneva, or of the subordinate principalities of Germany. Athens might legislate, without obstructing the daily course of common business, for her own meager territory; but when Rome had become the mistress of the world, the year seemed too short for all the exigencies of her sovereignty. When she deliberated for a World, she felt *that Legislation, to be wise or safe, must be slow and cautious*; that *knowledge as well as power was indispensable for the true government of her provinces.* Men, to act with vigor and effect, must have time to mature measures, and judgment and experience as to the best means of applying them. They must not be hurried on to their conclusions by the passions or fears of the multitude. They must deliberate as well as resolve."

The remarks of DR. PALEY, on the same subject, are full of his usual practical good sense. "The first maxim," says he, "of a free State is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives, and directed to private ends. Whilst they are kept separate, general laws are made by one body of men, without foreseeing whom they may affect; and when made, they must be applied by the other, let them affect whom they will."

And the FEDERALIST has, with equal point and brevity, remarked, that "the accumulation of all power, legislative, executive and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced *the very definition of tyranny.*"

MR. JEFFERSON, in his notes on Virginia, has expressed the same truth with peculiar fervour and force.—Speaking of the Constitution of the government of his own State, he says,—"all the powers of government, legislative, executive and judiciary, result to the legislative body. *The concentrating these in the same hands is precisely the definition of a despotic Government.* It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes to *the republic of Venice. An elective despotism is not the Government we fought for.*"

In the foregoing quotations we have made, we see the state and condition of our Municipality.

The Common Council of New York publicly claim sovereign power, and actually exercise this power.

Take, for example, the building of a Common Sewer at an expense of Seventy Thousand Dollars, which was about the cost of that of the 2d Avenue. In this case, the Common Council decides upon the measure, direct their own officers to contract for its construction, appoint assessors to apportion the cost among a limited number of citizens, sit as a court to confirm the assessment, appoint a collector to demand the money, and if not paid, direct their own officer to sell the property of the delinquent, and their own officers become the purchasers, and their own officers execute a lease of 5,000 or 10,000 years, a greater estate than any fee simple known to our world.

This is exercising all the various powers by the same body of men. They are in fact legislators, judges, jury and executioners—combining together, what forms an elective despotism, and is in fact the most tyrannical and arbitrary body known in the civilized world. Our City Government is a complete usurpation of power, a violation of all law, an outrage upon the constitution and civil liberty, and a foul blot upon the present age.

That able jurist, Judge Savage, late Chief Justice of the State of New York, in one of his written opinions, makes this very excellent and accurate remark:—

"Much of our difficulty," says he, "arises from judicial legislation. It is the business of the legislature to make laws, and of the courts to expound them."

CORONER'S FEES.

We perceive that Alderman Woodhull introduced into the Board of Aldermen, last evening, a resolution to make application to the Legislature in relation to the fees of the Coroner. This is right.

We also perceive that Aldermen Benson introduced an amendment to the effect that application be also made to the legislature, to authorize the Common Council to appoint four additional Coroners and to assign them certain districts. We beg leave to refer the worthy Alderman to the Municipal Gazette, No. 2, page 21, § 11, for the provisions of the Constitution upon appointing Coroners, and also to § 15 of same page. Coroners are elective officers, and must continue to be elected unless the amending of the Constitution of the State alters that mode. The legislature may order more Coroners to be elected for the county of New York, but cannot authorize the Common Council to appoint Coroners.

PUBLIC OFFICES.

Of late years public offices are eagerly sought after, and anxiously desired by great numbers of our citizens, young and old. Very little advantage is gained by young men in obtaining office, and it more frequently happens that the holding of a public office is to them a great injury—unfitting them for their regular business and occupations. The expense and labor of obtaining public office is oftentimes greater than the amount of salary, and the anxiety to retain place and income keeps the mind of the incumbent in a constant state of excitement and uneasiness. It would be far better if fewer young men were appointed to office, and the offices given to men advanced in years—who have been in active business, and have experience to qualify them to discharge the duties to the advantage of the public, and credit to themselves.

FEES OF PUBLIC OFFICERS.

These, in all cases, whether under the general, state, or city government, should be limited, and whatever is an excess over a fair compensation should be paid into the public treasury. It may be said, as an objection to this plan, that if the fees fall short of a fair compensation, the amount should be made up out of the public treasury—and so it should be.

PLURALITY OF OFFICES.

No citizen ought to hold two public offices at the same time. There is no good reason to sanction such a practice, and it should in all cases be prohibited by law.

THE COLLECTION OF TAXES.

We have been looking at the provisions of the constitution of the state of New York, page 21 of this Gazette, Art. 4, § 15, and find this provision, viz.: "§ 15. *all officers heretofore elective by the people shall continue to be elected.*" It seems therefore that collectors of Taxes are to continue to be elected. This is our present impression, from the examination of this section. Under this state of things, it is competent for the legislature to pass a law, making the taxes hereafter to be raised to be paid to the city Comptroller, or to the Board of Commissioners, and such taxes as shall not be thus paid within the first three months of the year, shall be delivered to the Collector of the Ward, who shall proceed to collect the same, and he shall be paid for his services a commission in proportion to the amount, which commission shall be paid by the delinquent tax payer in addition to the amount assessed as tax.

The salary of Coroner of the city and county of N. York should be fixed by law, and should be a fair and reasonable compensation for his services.

The taxes of the city of New York are daily and continually increasing, and it is important to have every possible retrenchment made throughout, that can be consistently.

High taxes increase the price of rent as well as the price of every article of consumption, and are a canker upon unproductive real estate.

It would seem that a different mode of taxation ought to be adopted, in regard to unproductive property.

President Jackson, in his Proclamation in relation to the Nullification of South Carolina, (which, irrespective of politics, may be justly pronounced an able state paper,) thus remarks—"The wisdom of man never yet contrived a system of taxation that would operate with perfect equality." The apportionment of taxes is not so much complained of, as the lavish expenditure of public money by public officers. This *discretion* which they arrogate to themselves, is the great monster that is trampling down every thing.

TAXES.

In 1801 the taxes of the city of New York were seventy-five thousand dollars, and the population about sixty thousand—an average of about one dollar and twenty-five cents to each person. The taxes the present year amount to eleven hundred thousand dollars, and the population to three hundred and twelve thousand, or thereabouts, which is about three dollars and fifty-two cents to each person.

CITY EXPENDITURES.

COMPTROLLER'S REPORT.

(Continued.)

ROADS.

Year.	Expenditures.
1830,	$21,703 73
1831,	44,212 50
1832,	82,854 20
1833,	55,197 45
1834,	18,417 12
1835,	21,072 00
1836,	39,927 20
1837,	49.006 67
1838,	89,671 29
1839,	42,202 67
1840,	79,890 52
	$544,155 45

DOCKS AND SLIPS.

Year.	Expenditures.	Receipts.
1830,	$34,038 07	$43,790 00
1831,	26,564 93	48,181 86
1832,	37,932 25	48,313 70
1833,	75,080 99	55,913 34
1834,	106,804 60	53,652 13
1835,	112,038 97	64,607 77
1836,	115,878 76	49,776 65
1837,	173,314 37	73,182 22
1838,	107,047 11	72,832 79
1839,	79,084 33	60,886 02
1840,	81,187 14	87,981 20

SALARIES.

Year.	Expenditures.
1830,	$31,362 15
1831,	30,514 46
1832,	37,024 07
1833,	41,839 88
1834,	46,724 09
1835,	49,831 84
1836,	49,322 78
1837,	57,427 25
1838,	58,715 60
1839,	54,476 35
1840,	57,083 06

(To be continued.)

COMMON COUNCIL OF THE CITY OF NEW YORK IN FORMER TIMES.

From the year 1674 to the year 1691, a period of seventeen years, the entire proceedings of the Common Council did not cover five quires of paper closely written, now the business of our present Common Council for a single week; is greater than that of this early period for a whole year.

UNCERTAINTY OF TITLES TO REAL ESTATE ON THE ISLAND OF NEW YORK.

Peter A. Jay, Esq., one of the former Recorders of the city of New York, some short time ago purchased two houses and lots up town. A few days since he ascertained that both of the houses and lots have been sold for a trifling assessment for buiding a sewer in Avenue C; the time of redemption had expired, and the purchaser had obtained a corporation lease. These kind of proceedings are most extraordinary. There is blame somewhere in this. It behoves every person purchasing property to keep a sharp look out for these Land Sharks. There is no safety in titles while such a state of things continue. The books of the Street Commissioners show that many of the corporation officers are purchasers of lots sold for assessments, and from all that appears, and in fact from some particular cases which have occurred, it appears that the corporation favor this system of confiscation. I know of one case, a person in New Jersey, where the Street Commissioner, much to his credit, sent a special message to the owner of a house that the same had been sold, and that the time of redemption was near expiring, and he came and rescued his premises from the fangs of the Land Shark.

GOVERNOR CORNBURY'S CHARTER.

In 1708, during the reign of Queen Anne, a grant was made to the mayor, aldermen, and commonalty of the city of New York, of certain ferries. This charter, as it is called, never received the queen's assent, or confirmation. All the land not before patented on this island, was granted to the mayor, aldermen, and commonalty in 1686, by Governor Dongan, with the exception of certain specified reservations.

The ferries of the North and East Rivers are both across arms of the sea.

We had a conversation with a very intelligent member of the Board of Aldermen a few days since, during which he remarked that the city had some valuable franchises granted in the ancient charters, and named the ferries as one of this class. Since that conversation we have considered the matter with great deliberation, and are of opinion that the grant is not valid.

In Gazette No. 2, page 31, is the copy of an act passed by the Legislature of this State in favor of JOHN FITCH, granting him the exclusive right to navigate the waters of this State by steamboats for fifty years. This act was passed in 1787; but this was decided to be unconstitutional; and the ferry monopoly appears equally as much so. These are first impressions from an examination of the question—and we think we are right. We will return to the subject again.

OPENING STREETS, AVENUES, AND PUBLIC SQUARES.

In our last paper we gave copies of two resolutions for opening all the streets and avenues up to and including 42d street, which had not been previously opened by deeds of session or by due course of law, as laid down on the commissioner's map, under the act of April 3d, 1807; and also all the streets from 42d, to and including 57th street; and now we give another of the same class of resolutions, for opening Manhattan Square.

BOARD OF ALDERMEN, April 18, 1836.

"Alderman Benson presented the following resolution, which was read and referred to the Committee on Lands, &c.

Resolved, That the Committee on Public Lands and Places report on the expediency of *taking* Manhattan Square."—*See Vol. 10, Pro. Board of Aldermen, page* 465.

We shall continue these statements of all the streets, avenues, and public squares, &c., and show who have offered resolutions in either Board for the ruinous proceedings, and to show the citizens that it is not the speculators, as those who buy and sell lots are called, but it is the members of the Common Council and officers of the Corporation who have been the persons who have thus acted. We intend no personal disrespect to the persons who offered these resolutions; they no doubt thought and believed that they were right in the matter; but the true history of these proceedings should be generally known. If the Common Council have usurped power, or abused power, or used it without due consideration, it should be taken from them. The truth is, the Common Council arrogate to themselves power; they exercise power which was never given to them, and have brought, by these means, great losses upon the city and the citizens; and now they say the speculators have done it!!!

DISTRIBUTION OF POWERS.

That eminent jurist, Judge Story, one of the justices of the Supreme Court of the United States, in his excellent Commentary upon the Constitution, thus remarks:

"Every government must include within its scope, at least if it is to possess suitable stability and energy, the exercise of three great powers, upon which all governments are supposed to rest, viz., the executive, the legislative, and the judicial powers. The manner and extent in which these powers are to be exercised, and the functionaries in whom they are to be vested, constitute the great distinctions which are known in the forms of government. In absolute governments, the whole executive, legislative, and judicial powers are, at least in their final results, exclusively confined to a single individual; and such a form of government is denominated a despotism as the whole sovereignty of the state is vested in him.

"The remarks of Montesquieu on this subject will be found in a professed Commentary upon the Constitution of England. 'When,' says he, 'the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute those in tyrannical manner. Again; there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man, or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

"The same reasoning is adopted by Mr. Justice Blackstone in his Commentaries. 'In all tyrannical governments,' says he, 'the supreme magistracy, or the right of both making and enforcing laws, is vested in the same man, or one and the same body of men; and wherever these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws, and execute them in a tyrannical manner, since he is possessed, in quality of dispenser of justice, with all the power which he, as legislator, thinks proper to give himself. But where the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power as may tend to the subversion of its own independence, and therewith of the liberty of the subject.'

"Again; in this distinct and separate existence, of the judicial power in a peculiar body of men, nominated indeed by, but not removable at, the pleasure of the crown, consists one main preservative of the public liberty, which cannot long subsist in any state, unless the administration of common justice be, in some degree, separated from the legislative, and also the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would then be regulated only by their opinions, and not by fundamental principles of law; which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative."

COMPTROLLER'S REPORT.

We give below the preamble to the City Comptroller's Annual Report to the Common Council of the City of New York. It is a most extraordinary document:

The Comptroller speaks of New York being "*a free city of itself.*" In what respect it is free we are unable to discover. It certainly is not free from assessments; for no city on the earth ever suffered from this odious, abominable, ruinous, and detestable system of assessments as has this "*free city of itself;*" and, as for taxes, it is doomed to everlasting taxation, increased and increasing.

The worthy Comptroller says, "the charter of this city is an express contract, containing a covenant for the quiet enjoyment of the municipal powers it confers. It was made before the first shedding of blood in our revolutionary struggle." Now, what does all this amount to? What charter has the worthy Comptroller reference to? There were four charters "*made before the first shedding of blood in our revolutionary struggle;* viz., Governor Stuyvesant's, Governor Dongan's, Governor Cornbury's, and Governor Montgomery's; the last of these was in 1730; and I beg leave to refer the Comptroller to that charter, page 32 of Kent's City Charter, in which it is stated that the validity of the former charters were doubted, because these were not granted by the crown. Now, we ask the Comptroller, if Governor Montgomery's charter was ever ratified by the king, or in any way confirmed by the crown?

No one of the ancient charters of the city of New York was ever confirmed or ratified by the crown; but on the contrary, the king, in 1697, confirmed a very severe law against persons claiming to act under the authority or in the name of the Corporation, which remained in force from 1697 to 1830; a period of one hundred and thirty-three years; during which time this law was twice confirmed by the Constitution of the State of New York, and also by the general repealing act of 1787. This act is to be found in No. 3 of this Gazette, page 38. We have examined Chancellor Kent's notes upon this part of the charter, and find that the Chancellor is silent on this point; but from what he says at the end of the charter in *a mem.*, it appears that he only examined two printed copies furnished by the Corporation; one printed in 1793, and the other in 1832; the latter, the Chancellor says, is not accurate. Why have not the Corporation had a true copy of the charter published? As for the charter being a contract, it was to a certain extent—the Mayor paid three hundred and twenty-four pounds for it to Governor Dongan in 1686, and it was called *a patent;* and Governor Dongan subsequently disputed the validity of this very grant, as appears by the correspondence between him and the Mayor; and besides this, we find in 1692, six years after the date of this charter, that the Common Council passed a resolution, directing the Recorder to draw up an address to the Governor, desiring their Majesty's confirmation of the charter; and more besides this, the King would not do any such thing as grant a charter to the city; for the complaints were, even at that early day, loud and frequent against the officers of the Corporation for usurping power; and the act of 1695 is evidence of this. In 1732, the Corporation of the city of New York applied to the Colonial Legislature for a confirmation of Governor Montgomery's charter—and obtained an act to that effect. This act was not confirmed by the King; and this same act was repealed by the Revised Statutes in 1830.

But the Comptroller says, "*The charter is an express contract, containing a covenant for the quiet enjoyment of the municipal powers it confers.*" All political power was swept by the revolution which the Comptroller speaks of. The charter of New York, we say, was not, in our humble judgment, noticed in the Constitution of 1777 and 1821. We know that that able jurist and distinguished citizen, Chancellor Kent, says in his notes on the Charter, that it was confirmed by the two constitutions; but he says, in the same book, that he had before him a printed copy of the charter; and he did not, we presume, examine the various doings in relation to these charters on record in manuscript, nor the law of 1695; and was probably not aware that the charters were neither of them granted by the King or his predecessors, or confirmed by them; but on the contrary, that they refused their assent.

We do not, for one, for a moment pretend to dispute the title of the Mayor, Aldermen, and Commonalty to the public property; but we do deny them any political power under the old patents, or charters as they call them. A municipal power of such sort is not a vested right. *The Comptroller says further:*

"That charter still stands as much a protection to *her* citizens from State encroachments, as it was before the revolution against the British crown." Well this is so; for it was nothing then, and is the same now.

The Comptroller closes his most extraordinary preface by saying, "Should a continued disposition be manifested to impair its provisions, or to trench upon the undelegated rights of the people of this county, it will become their duty, as well as that of their county representatives, to test the strength of her municipal reservations, by an appeal to the Supreme Judicary of the United States." The Corporation counsel will advise them to keep out of the Supreme Court of the United States; that Court would soon settle the question, in the exercise of sound discretion too. But his Honor the Comptroller may rest easy on this head; the county representatives will not be troubled to go there to ask to have the matter examined. The proceedings, already commenced, are in the way of going there in full speed.

We have a great personal regard for the Comptroller; he is a most excellent citizen, and a worthy public officer; but in this matter of the municipal powers, he is out of his latitude.

CITY OF NEW YORK,
COMPTROLLER'S OFFICE,

January 25, *A. D.* 1811.

To the Mayor, Aldermen and Commonalty of the City of New York.

The people of this city have, with regard to their local government, reserved to themselves the right to, and require from their representatives, a full account of the manner in which their municipal interests are conducted, that they may possess a true knowledge of their responsibilities and prospects. This information is essentially necessary in forming a correct opinion in reference to the general action of their municipal government. It is especially so in matters of such vital importance to the people as the administration of the city finances. Opportunity is thereby afforded them to decide upon the effect that contemplated changes may have upon their pecuniary interests, as also, to ascertain what reforms, if any, are necessary. With this

view, the undersigned has endeavored to make the annexed report as succinct, and at the same time as comprehensive as the means of his office would permit. It will be found to exhibit a complete account of the financial condition of the city government, and in compliance with the charter laws is respectfully presented.

The information it embraces may be considered the more interesting at this time, because of the disposition recently manifested by the State Legislature to interfere with our municipal concerns, the management of which, so far as they are local, is secured to the people of this city by the strongest guarantees. The powers with which the people have invested their State Government are limited by the constitution of the state. The citizens of the several counties, and of this city and county in particular, have, in their local governments, distinct and independent rights, as clearly to be understood as those exercised by the states independently of the general government. With respect to this city and county, these rights are either controlled by the charter, which is our county constitution, or undelegated as yet, remain with its citizens.

The charter of this city is an express contract containing a covenant for the quiet enjoyment of the municipal powers it confers. It was made before the first shedding of blood in our revolutionary struggle, and under the decision of the Supreme Court of the United States, it is one that is protected by the Constitution of the United States from being impaired by any act of state legislation; all infractions of its provisions may be taken to that tribunal for final adjudication. Its charter is a constitution of a body politic, erecting the city of New York into "A FREE CITY OF ITSELF." Her independent sovereignty, in her local matters, is older than that of the state itself, and her representatives in the convention which formed the state constitution, showed they were sensible of its free position, when they procured an express reservation of her local rights under her local constitution. That charter still stands as much a protection to her citizens from state encroachments, as it was before the revolution against the exactions of the British Crown. Should a continued disposition be manifested to impair its provisions, or to trench upon the undelegated rights of the people of this county, it will become their duty, as well as that of their county representatives, to test the strength of her municipal reservations, by an appeal to the supreme judiciary of the United States.

Respectfully,
ALFRED A. SMITH,
Comptroller.

From the Evening Post.

COMMON COUNCIL.

OFFICIAL.

Special meeting of the Board of Aldermen,
March 29, 1841.

Present—Elijah F. Purdy, Esq., President. Aldermen—Bailis, Woodhull, Benson, Pentz, Jones, Ferris, Rich, Chamberlain, Hatfield, Jarvis, Smith, Nichols, Graham, Cooper, and Nash.

The minutes of the last meeting were read and approved.

PETITIONS.

Of the following persons, viz: Freman Rawdon, Charles W. Huntington, James Stoutenburgh, D. Coleman, John Collins, John Rogers and B. B. Edwards, severally for correction of tax or assessment—referred to the Committee on Assessments.

Of E. Cohen, D. N. Freeman and others, inhabitants of Manhattanville, to allow the Harlem Rail Road Company to lay rails through Manhattan street—referred to the Special Committee, of which Alderman Chamberlain is chairman.

Of John Dichett, for the enforcement of the law relative to hawking and peddling in the public streets—referred to the Committee on Police, &c.

Of J. P. Allaire, for lease of pier at the foot of Fulton street, East River—referred to the Committee on Wharves, &c.

Of A. Jackson and others, inhabitants of Fifth street, for the paving the foot-path in that street, from 3d avenue to avenue C—referred to Committee on Streets.

Of residents in the vicinity of avenue B, to have side-walks flagged six feet in width—referred to the Committee on streets.

Of Lane & Mangam, for permission to erect iron stairs in front of No. 121 Broad street—resolution to grant said permission adopted.

Of M. H. Grinnell and 1024 others, that the Harlem Rails may not be removed—referred to Committee of which Alderman Chamberlain is chairman.

Of fishermen in Catherine market, to have their stands regulated—referred to Committe on Markets.

Of J. H. Bennet and others, firemen, to compel fire companies to do general duty—referred to Committee on Fire and Water.

Communications from Pliny Robinson, relative to a machine for cleaning the streets—referred to Committee on Cleaning Streets.

REPORTS.

Of the Committee on Ordinances, in favor of confirming assessments for filling low grounds in the 11th and 16th wards—adopted.

Of the Committee on the Croton Aqueduct, against approving contract entered into by the Water Commissioners, with Wintersteen & Myerst for water pipes—laid on the table and ordered to be printed.

From the Committee on Finance, adverse to the memorial of Frederick De Peyster, to sell a piece of land in Madison Square—adopted.

Of the Committee on Assessments, in favor of the several petitions of H. D. Krack, A. B. Janin, Jonathan Hunt, the Mechanics' Institute, the Baptist church in Cannon street, for the correction of tax, were adopted.

Of the Committee on Assessments, against the petitions of Alfred Atkins and M. Silber, for the correction of tax—adopted.

Of the Street Committee concurring with the Board of Assistants in relation to granting of surplus water from sewers in Second Avenue, &c., to G. W. Bruen—concurred in.

FROM THE BOARD OF ASSISTANTS.

A report of the Street Committee on the communication of the Street Commissioners relative to alterations in the regulations of the streets and avenues between 22d and 42d streets—referred to the Committee on Streets.

A petition to build sewer in the 3d avenue, between 10th and 12th streets, and in 10th street between the 2d and 3d avenues at their own expense—referred to Committee on Streets.

Resolution granting Butcher's License to R. P. Perrin—concurred in.

An amendment to resolution of this Board, relative to salary of Keeper of Upper Police—concurred in.

A resolution that assessors give notice to persons assessed—referred to Committee on Assessments.

FROM DEPARTMENTS.

Communication from the Counsel of the Corporation, stating that the injunction heretofore obtained by the Water Commissioners has been dissolved—ordered on file.

Apportionments of Assessment from the Street Commissioner—passed.

Ordinance to regulate and set curb and gutter stones in 28th street, between the 7th and 8th avenues—passed.

UNFINISHED BUSINESS.

The report of the Committee on Cleaning Streets, in favor of cleaning the streets by contract, which was laid upon the table at a previous meeting, was taken up, and with some alterations adopted.

The report of the Committee on Wharves, &c., in favor of widening the carriage way on the westerly side of Coenties slip, laid upon the table at a previous meeting, was taken up and adopted.

RESOLUTIONS.

By Alderman Woodhull—Whereas, it appears by the report of the Comptroller, that the amount of Coroner's fees paid out of the city treasury for the year 1840, was about $5000;

And whereas, in the opinion of the Common Council, such amount greatly exceeds a just compensation for the services of that officer; therefore,

Resolved, that an application be made to the legislature to reduce the fees of the Coroner of this city, so that the amount, including summoning jurors and subpœnaing and swearing witnesses, shall not exceed the annual sum of $2000; and that the counsel of the corporation prepare and present a suitable memorial to the legislature for that purpose.

Aldrman Benson proposed, as an amendment—and also for permission for the Common Council to increase the number of coroners for the city and county to not exceeding four, and of assigning to each a certain district of said city and county—referred to Committee on Laws, &c.

By Alderman Benson, Resolved, That the Street Commissioner report to this Board the amount of bills paid since the 1st day of January last, for work and labor done on the roads and materials furnished for the repairs thereof, and which work and labor was performed and materials furnished before the said 1st day of January—adopted.

The Board then adjourned until Monday next, 5 o'clock, P. M.

SAMUEL J. WILLIS, Clerk.

CORPORATION NOTICE.—Public notice is hereby given, that a petition has been presented in the board of Assistant Aldermen, to grade and repave Washington-street, between Rector and Morris street.

Persons interested, having objections to the above petition, are requested to present them in writing to the Street Commissioner's office, on or by the 8th of April, 1841. JOHN EWEN, Street Commissioner.

Street Commissioner's Office, March 29th, 1841.

CITY TAXES.—The Collectors of the different Wards are required by law to return their tax-books to the Comptroller on the first day of April, that they may be transferred to the Collectors of Arrears, when all taxes remaining unpaid, will be subject to the addition of fourteen per cent. interest.

Collectors of Taxes, with their places of residence.

1st Ward, Oliver Cobb, No. 6 Coenties slip.
2d " E. T. Backhouse, 15 Fulton st.
3d " Garret Forbes, 261 Greenwich st.
4th " John V. Coon, 298 Pearl st.
5th " E. P. Horton, 110 Reade st.
6th " John Layden, 55 Elm st.
7th " John Murphy, 596 Water st.
8th " H. T. Kiersted, 529 Broadway.
9th " Martin Blanch, 106 Charles st.
10th " Darius Ferry, 98 Allen st.
11th " Moses Fargo, 1 Manhattan st.
12th " Patrick Doherty, 8th avenue and 4th st.
13th " John F. Russell, 34 Norfolk st.
14th " Nelson Sammis, 241 Centre st.
15th " Joseph Britton, 40 Amity st.
16th " John Stewart, cor. 3d avenue and 26th st.
17th " Cornelius Van Benschoten, 64 Stanton st.

For the convenience of the tax payers of the 12th and 16th Wards, the Collectors of those Wards will be at the Comptroller's office, on Saturday, 27th inst., from 10 to 3 o'clock.

(From the Journal of Commerce.)

CORPORATION NOTICE.—Public Notice is hereby given, that a petition has been presented to the Board of Aldermen, to extend Washington street from Gansevoort street to the 10th Avenue. Persons interested, having objections to the above proposition, are desired to present them in writing at the office, on or before the 12th inst. JOHN EWEN, Com.

St. Com. Office, April 1, 1841.

A CONTRAST.

We copy from the Journal of Commerce of 27th ult. the following:

"The FINANCES OF NEW JERSEY.—The expenses for the coming year are estimated at $82.700. The revenue at $53,933 38—leaving about $30,000, to be provided for by taxation or otherwise. The legislative expenditure are put down at $23,000."

The Fees of the Corporation Council paid and payable last year amounted to within less than $8,000 of the whole revenue of the state of New Jersey, and the "Counsel Fees and Court Charges," in confirming twenty-three street assessments by our Supreme Court, in 1839, as appears by the city Comptroller's report of last year, page 102, amount to three hundred and nineteen dollars and sixty-seven cents more than the whole legislative expenditure of the sovereign state of New Jersey! ! !

This grows out of the modern doctrine of discretion.

TO THE ANTI-ASSESSMENT CITIZENS.

We have found it necessary to make our publication day late in the week, and have fixed it on Saturday in place of Thursday in consequence of being under the necessity of being at Albany the early part of next week.

PRINTED BY R. CRAIGHEAD,
No. 112 FULTON, CORNER OF DUTCH STREET.

THE NEW YORK MUNICIPAL GAZETTE.

No. 5.] NEW YORK, SATURDAY, APRIL 10, 1841. [Vol. I.

Published Weekly, on Saturdays,
by the
ANTI-ASSESSMENT COMMITTEE.
Edited by E. Meriam.
Office, No. 6½ Wall-street, (up stairs.)

DEATH OF PRESIDENT HARRISON.

The illustrious head of the Government of a great nation has been suddenly called from the scene of his labors and from midst of his people.

On Sabbath morning, April 4th, at 30 minutes before one o'clock, William Henry Harrison, President of the United States, departed this life at the city of Washington, aged 68 years. He had been in office but one month, and sick one week. In the full enjoyment of the highest honors in the gift of his country and in the midst of prosperity, he has ended his course and ceased from his labors. The event is solemn and will make a serious impression upon the minds of his friends, and also upon those of his political opponents.

The bitterness and venom of party spirit has increased to such an extent in our country, that a citizen, to reach an office of dignity and honor, of power and patronage, must have a constitution of iron to withstand the opposition of those who are anxious for the success of their own favorite candidate, and for the defeat of his opponent.

Both political parties are alike in fault in this, and the present solemn event is calculated to produce, in the minds of many, serious reflections.

The present is the sixth death that has taken place of persons who have filled the office of President of these States since the organization of our government; five of these have died within the last few years, and in the death of all these individuals there has been something remarkable, peculiar, and impressive, and calculated to make a lasting impression upon the minds of the citizens of this republic.

John Adams and Thomas Jefferson died on the 4th of July 1826; James Monroe on the 4th day of July 1831; and James Madison on the 28th of June 1836; George Washington died on the 14th December 1799, and William Henry Harrison on the 4th of April 1841.

Thus it will be seen that four of these individuals died on the 4th day of the month, and three of these on the 4th of July, and two of them on the same day and within a few hours of each other. Mr. Madison died within six days of the 4th of July.

There is something remarkable in these events, denoting a particular and remarkable Providence.

President Harrison has shared largely in affliction; has drank deep of the cup of sorrow, which made a deep impression on his mind, and tended much to fit him for the responsible duties he was called to perform.

Into his own beloved family death but recently entered and removed one of his beloved sons.

The patriot, the statesman and the Christian, has now closed his earthly labors; he has left the cares of a great people in other hands; he has passed from a world of trouble, from scenes of peculiar trial, and gone to the bright world of peace, of joy and of everlasting rest.

The following circular, from the Heads of Departments at Washington, announces the death of our venerable President, General Harrison.

City of Washington, April 4, 1841.

An all-wise Providence having suddenly removed from this life, WILLIAM HENRY HARRISON, late President of the United States, we have thought it our duty, in the recess of Congress, and in the absence of the Vice President from the Seat of Government, to make this afflicting bereavement known to the country by this declaration, under our hands.

He died at the President's House, in this city, this fourth day of April, Anno Domini, 1841, at thirty minutes before one o'clock in the morning.

The people of the United States, overwhelmed, like ourselves, by an event so unexpected and so melancholy, will derive consolation from knowing that his death was calm and resigned, as his life has been patriotic, useful and distinguished; and that the last utterance of his lips expressed a fervent desire for the perpetuation of the constitution, and the preservation of its true principles. In death, as in life, the happiness of his country was uppermost in his thoughts.

DANIEL WEBSTER, Secretary of State.
THOMAS EWING, Secretary of Treasury.
JOHN BELL, Secretary of War.
J. J. CRITTENDEN, Attorney General.
FRANCIS GRANGER, Postmaster General.

ARRANGEMENTS FOR THE FUNERAL.

Washington, April 4, 1841.

The circumstances in which we are placed by the death of the President render it indispensable for us, in the recess of Congress, and in the absence of the Vice President, to make arrangements for the Funeral Solemnities. Having consulted with the family and personal friends of the deceased, we have concluded that the funeral be solemnized on Wednesday the 7th inst., at 12 o'clock. The religious services to be performed according to the usage of the Episcopal Church, in which church the deceased most usually worshipped. The body to be taken from the President's House to the Congress Burying Ground, accompanied by a Military and Civic Procession, and deposited in the Receiving Tomb.

The military arrangements to be under the direction of Maj. Gen. Macomb, the General Commanding in Chief the Army of the United States, and Maj. Gen. Walter Jones, of the Militia of the District of Columbia.

Commodore Morris, the senior Captain in the Navy, now in the city, to have the direction of the Naval arrangements.

The Marshal of the District to have the direction of the civic procession, assisted by the Mayors of Washington, Georgetown and Alexandria, the Clerk of the Supreme Court of the United States, and such other citizens as they may see fit to call to their aid.

John Quincy Adams, Ex-President of the United States, members of Congress now in the city or its neighborhood, all the members of the Diplomatic body resident in Washington, all officers of Government, and citizens generally are invited to attend.

And it is respectfully recommended to the officers of Government that they wear the usual badge of mourning.

DANIEL WEBSTER, *Secretary of State.*
THOMAS EWING, *Sec. of the Treasury.*
JOHN BELL, *Secretary of War.*
JOHN J. CRITTENDEN, *Att. General.*
FRANCIS GRANGER, *Postmaster Gen.*

THE COMMON COUNCIL OF THE CITY OF NEW YORK AT THE COMMENCEMENT OF THE PRESENT CENTURY.

January 6, 1800.

Richard Varick, Mayor. Francis Harison, Recorder. Selah Strong, Jotham Post. Richard Furman, John Bogert, John B. Coles, Aldermen. Philip Brashier, Mangle Minthorn, Philip F. Arcularius, John Crolius, John Nitchie, Nicholas Carmer, Assistants.

Not one of the above named persons who composed the Common Council and administered the city government at the commencement of the present century, are now living—all, all are gone! Yes; in the short space of forty-one years these have all passed from time to eternity. When forty-one years more shall have passed away, those who now compose the present Common Council of this city will, in all human probability, have ceased from their labors.

We give below the proceedings of the Common Council on Monday evening, on receipt of the intelligence of the death of William Henry Harrison, President of the United States.

These proceedings were proper and appropriate, and entitle the Common Council to the commendation of the citizens. The expression of respect for the Christian religion by public officers and public bodies on every proper occason, is productive of great good. Every public body which pays a proper regard to these great principles, entitles itself to the good opinion of the people.

The present occasion is one of peculiar solemnity and is calculated to make a very deep, and we trust a durable impression on the minds of public men, and will, of course, have an influence on public measures.

In the death of each of the persons who have filled the office of President of the United States, there has been something unusual and powerfully admonitory, caculated to produce in the minds of the inhabitants of these States serious reflections.

The present is a peculiar time; and at no period has so much gloom pervaded the minds of all classes of citizens as the present. Could party excitement be quieted, and the good men of both political parties unite in endeavoring to promote the good of all, instead of a few, it would be attended with the best results.

It is not saying too much to say, that the violence of party spirit is doing more to weaken the foundation of the Government, the destruction of human happiness, and the business and prosperity of the country, than every other cause combined.

The great ambition and desire of selfish individuals to retain, or obtain public office for the sake of its emoluments or its patronage, is at the bottom of this evil, and the principal cause of it.

The American people have enjoyed great advantages, and have been highly favored. The productions of the earth have been abundant, and every section of our country has been uncommonly free from the scourge of sickness and pestilence.

From the Journal of Commerce.

BOARD OF ALDERMEN.

The following communication was received from the acting Mayor:

Mayor's Office, April 5, 1841.

Gentlemen: It becomes my painful duty to announce to you the melancholy intelligence of the death of General William Henry Harrison, President of the United States; an event sudden, solemn and afflicting to the nation. Of his services, civil and military, it is unnecessary for me to speak—they are identified with the history of our country.

I should do injustice to my own feelings, and the station I temporarily fill, were I not to partake of the general gloom that pervades the community, which mourns the loss of a Chief Magistrate, recently called from peace and retirement to preside over a nation of freemen.

I respectfully suggest, that such measures be taken as will evince the respect and affection due to one who has occupied so exalted a station, and shared so largely in the public confidence.

I am with respect, gentlemen, yours, &c.

ELIJAH F. PURDY, Acting Mayor.

Alderman Smith then offered the following resolutions:

Resolved, If the Board of Assistant Aldermen concur, that the Common Council of the city of N. York, have received with deep emotions the afflicting intelli-

gence of the death of General William Henry Harrison, President of the United States; and that while they sincerely sympathize with the family of the deceased upon the occasion of their sudden and melancholy bereavement; they cordially participate with their fellow citizens throughout the country, in the grief which is felt for the loss of one who was endeared to the nation by the patriotism and fidelity of his public services, by the purity of his private character, and by the exalted station to which he had so recently been called by the voice of the American People.

Resolved, That a suitable demonstration of respect for the memory of the late President, by the adoption of fitting solemnities, should be made by the public authorities and citizens of New York, and that a committee of the Common Council, to consist of six members from each Board, be appointed to make such arrangements in that behalf as they may deem expedient.

Resolved, That the Presidents of both Boards be requested to direct the Chambers of their respective Boards to be hung with black during the remainder of the term of the present Common Council, and that the members of each Board will wear the usual badges of mourning for the same period.

Resolved, That his Honor the acting Mayor be requested to communicate a copy of these Resolutions to the afflicted family of the deceased, and to cause the same to be published in the newspapers of the city of New York and the city of Washington.

These resolutions were seconded by Alderman Benson, in a series of neat, appropriate remarks, and also supported by Alderman Graham in a few judicious observations.

The resolutions were then unanimously adopted, and the President appointed Aldermen Smith, Benson, Graham, Hatfield, Nash, and Woodhull, the committee on the part of this Board.

BOARD OF ASSISTANTS—Monday evening.

Mr. President Lee, upon taking his seat, announced the sad occasion of the meeting as follows:

But a few short months since it became my painful duty to announce to you the decease of one of our associates, the Assistant Alderman of the 14th ward, who, at a good old age, finished his course on earth, and I trust is now receiving the rewards of a well spent life in a brighter and a better world. Scarcely has the gloom which then pervaded this Board been dispelled, before we are again called upon to mourn the loss of the Chief Magistrate of the United States. William Henry Harrison is now no more. Elevated as he was to the highest office in the gift of the people, melancholy indeed is the reflection, that after the short period of one month from the inauguration to the most important situation in the world, millions of free and independent people should be called to mourn his death. This sudden bereavement has cast a gloom throughout the nation which time alone can eradicate. Unexpected as was this event, the only consolation left to his friends is, that their loss is his gain. The last moments of his life were marked by a calmness and resignation to the Divine will. He died as a Christian should die, trusting in the promise of the gospel, and relying upon the merits of a once crucified and now ascended Saviour. He died actively engaged in the public service, closing his mortal labors as the President of the people, appointed by their free election. In his life he was patriotic and useful, and in his death expressed a fervent desire for the preservation of the principles of the constitution.

This is the first instance since the formation of our government that the people have been called upon to mourn the loss of the great head of the nation. An overruling Providence has thought proper for some wise purpose thus to afflict us. "Mysterious are thy ways, O God," and past finding out.

He whose death we now deplore, after serving his country year after year, on the battle field and in the councils of the nation, at a period of life when men are usually desirous of retiring from public duties, when nearly three score years and ten had laid their burthens on his frame, stood at his country's call to take command of a nation that is respected throughout the world, to guide and direct it in the defence of liberty and order. Justly may he be venerated and respected, and justly may his death be universally deplored; with us indeed would it be a disgrace did we not evince our respect for his character, and our gratitude for his services; many done it while their friend was living, and I trust all will show their attachment to the acknowledged head of the government. He has gone to that bourne from whence no traveller returns; the tidings of grief will resound throughout our land, every city, town and county, will re-echo the note of sadness, and will unite in their condolence with the family of the illustrious dead. They indeed need our sympathies and prayers. The ancient partner of his bosom, who shared with him his sorrows and his joys, and fondly anticipated meeting him surrounded by a retinue of friends; but oh! how changed the scene; the solemn mandate has come forth; they meet no more until the second coming of the Redeemer in glorious majesty to judge the world; he has now rested from his labors, and his best eulogium is the universal grief of the American people.

But I have done, and would only add that I have convened the Board at this time in order to enable you to adopt such measures as you may deem necessary upon this mournful occasion.

The resolutions from the other Board, were on motion of Mr. Davies, seconded by Mr. Underwood, unanimously adopted, and Messrs. Davies, Wood, Pollock, Peers, Underwood and Penny, were joined as a committee on the part of this Board.

PRESIDENT HARRISON'S INAUGURAL.

We commenced the publication of extracts from the Inaugural Address of William Henry Harrison in the second number of this Gazette, and ere we had completed these, the lips which uttered them were closed in death. We give below the conclusion of his address, which breathes sentiments and feelings which are worthy to be treasured up by every citizen in all after times. These sentiments are worthy of the man, and befitting the occasion that called them forth.

"I deem the present occasion sufficiently important and solemn to justify me in expressing to my fellow citizens a profound reverence for the CHRISTIAN RELIGION, and a thorough conviction that sound morals, religious liberty, and a just sense of religious responsibility, are essentially connected with all true and lasting happiness; and to that good Being who has blessed us with the gifts of civil and religious freedom; who watched over and prepared the labors of our fathers, and has hitherto preserved to us institutions far exceeding, in excellence, those of any other people; let us unite in fervently commending every interest of our beloved country in all future time."

PRESIDENT TYLER.

John Tyler, Vice-President of the United States, arrived at the seat of Government from Williamsburgh, Virginia, on the 5th instant, and immediately held a Cabinet Council, and subsequently took and subscribed the oath of office as President of the United States before Judge C[illegible]nch. The health of Mr. Tyler is said to be good, although not of a strong constitution. He, no doubt, will pursue the same system of measures laid out by his lamented predecessor. He enters upon the discharge of the duties of President of this Republic under peculiar circumstances, solemn and admonitory. The people of these United States, as a nation, have, by the strongly-marked providences of God, been called to reflect upon the past, to meditate upon the present, and to have an anxious care for the future.

OLDEN TIMES.

The following is a copy of a Petition presented to the Legislature in 1800, and is interesting in a double point of view — FIRST, in showing that the Common Council did not exercise the power of appointing weigh-masters formerly; *and*, SECONDLY, in presenting a long list of highly respectable houses doing business at the commencement of the present century.

There are comparatively few of the numerous commercial houses in large cities that continue forty years in business, and the proportion is decreasing more and more.

Commercial embarrassments, which are oftentimes the result of fluctuating trade, have a powerful influence in shortening the duration of human life. It is a remark we have often heard made by aged citizens, who have been attentive observers of the changes which have taken place around them.

To the Honorable the Legislature of the State of New York, in Senate and Assembly convened.

The Petition of the subscribers, inhabitants of the city of New York, humbly showeth:—

That some of your petitioners have of late experienced great inconvenience with respect to private weighing in this city. And others of your petitioners are fully sensible that such inconvenience doth exist.

Therefore beg leave to represent, that the private weighing has heretofore generally been performed by the Custom-House weigh-masters, who, by a late law of Congress, appear to be prevented from weighing every other save such articles as are necessary to be weighed to ascertain the duties thereon; which has left this city completely destitute of weigh-masters legally appointed for private business.

In his Excellency the Governor's Message to the Honorable the Assembly, of the 17th instant, "it is submitted to the consideration of the Legislature, whether the inspection of provision, potash, lumber, &c., would not be better performed if each of these branches of inspection was committed to a single inspector, who should be allowed competent fees, should appoint and pay his own sub-inspectors or deputies, and should be responsible for the whole."

Your petitioners highly approve of the principle recommended by his excellency the Governor in the aforesaid message.

Your petitioners therefore pray that a law may be passed, authorizing the appointment of a city weigh-master, and who alone shall be responsible, with such compensation and under such regulations and restrictions as to your honorable body in your wisdom shall seem meet.

New York, Feb. 27, 1800.

John Broome	Edward Goold & Son
A. L. Bleecker	Thomas Knox
Gilb't & Jn. Aspinwall	James Farquar
N. W. Rogers	David Smith
Samuel Franklin	Minturn & Bowne
John Franklin, jr.	Coit & Woolsey
James Roosevelt	Nath'l Pearsall
Peter Schermerhorn	Sam'l & Peter Talman
John P. Schermerhorn	Wm. Ustick, jr.
James M'Intosh	Wm. Laight, jr.
J. & N. M'Vickar & Co.	Edmund Prior
Lyde, Rogers & Co.	John Titus
Sol. Townsend	William Hill
Edmund Seaman	Saltus, Son & Co.
James R. Smith	Blackwell & M'Farlan
A. Wyckoff	Freeman Clarkson
Wm. Rhinelander	Murray & Mumford
Jn. & Alex'r M'Gregor	Isaac Moses & Sons
Sam'l Gilford & Son	John & Philip Hone
Van Horne & Clarkson	Jas. & Samuel Watson
Streatf'd & L. Clarkson	Josiah Blackwell
David Clarkson	Duryee & Heyer
Wm. M. Seton	Thomas Storm & Son
Brothers Costar & Co.	James Manning
Wm. Codman	Suydam & Wyckoff
B. M. Mumford	Sebring & Van Wyck
Lawrence & Van Zandt	Kip & Dubois

HIGHLY IMPORTANT DECISION.

IN CHANCERY,

Before the Hon. Murry Hoffman, Assistant Vice-Chancellor.

Jacob Westervelt, et al,
vs.
The Mayor, Aldermen, and Commonalty of the city of New York.

David Codwise *vs.* The same.

These causes involve most of the great questions which have lately given rise to so much litigation respecting the assessments by the Corporation of the city, and the nature and extent of their powers. Every material fact is stated fully in the opinion.

Mr. Lewis H. Sandford and Mr. Holland for the complainants in the suit of Westervelt and Talmadge.

Mr. Theodore Sedgwick, jun., and Mr. D. D. Field for the Complainant, David Codwise.

Mr. P. A. Cowdrey, Counsel of the Board for the Defendants.

The Assistant Vice-Chancellor:—The time of the Court, for nearly a week, has been well employed in listening to copious and able arguments upon the most important and interesting questions that have arisen before me. The two cases in which this argument has taken place, present almost all those weighty topics. I approach their discussion with great distrust. I had hoped that, ere this, a determination of these points would have been made by one of those high Tribunals before which they have been in part investigated. But although opinions have been expressed by Judges, for whose *dicta* even the greatest respect is due, yet I know of no adjudication upon any point involved in these causes which forbids my unfettered examination.

No one can feel more reluctance in bringing to bear the interference of this Court in matters of so purely a legal nature. But whether acting as a ministerial officer to allow a temporary stay of proceedings, or as a Judge, however lowly, to pass upon these subjects, I can take counsel only of what the law of the State and the constitution of this court prescribe; and if I find a breach of the law, and a jurisdiction here to redress it, my duty to the suitor demands that I should interpose.

The question of Jurisdiction will be the last topic I shall discuss; because I find it impossible to decide it without a full view and determination of the nature of the acts complained of, the points of law involved, the situation of these parties, and the application of the remedies at law alleged to be appropriate.

I have entitled my opinion in both of these causes, because the three most important questions are involved in both; and the arguments of the different counsel of the Complainants have so aided and expanded the positions of each other, and the reply of the counsel of the Defendants in the last cause has been so full and pointed upon all the topics, that I cannot do them justice without considering them in common. But in the case of Westervelt there is one question which does not arise in the other, and which I shall first dispose of. I shall examine the causes in this order.

First—As to the effect of the cession of the parcel of 31st street, in exempting the complainants, Westervelt and Talmadge, from any assessment.

Second—The authority of that body, by which the various improvements in each suit were directed. Under this, the point that the Common Council, as now constituted, had no jurisdiction to take any step in reference to opening, making, or repairing streets or sewers, will be examined. The extent and nature of the powers conferred by charters or legislation, will also be inquired into. It is indispensable that the origin and character of the powers should be understood, to judge rightly of the legality of the acts now in question.

Thirdly—If that body has the authority, then, whether it has exercised it according to law, what are the prescriptions of the law, and what are the legal consequences of neglecting them. This point will divide itself into two; the one relating to opening or altering streets, and the other to the paving or regulating them, or the making sewers.

Fourthly—The question of jurisdiction.

I. As to the effect of the cession of part of 31st street. A party, from whom the title to the land through which 31st street runs, from the 9th Avenue to the Hudson River was derived, made a cession to the Corporation of the land necessary for that street. The Corporation accepted it, and have since recognized it as part of a public street. It appears very clearly from the map, abstract, and rule, that the assessment for damage actually commenced on the East side of the 9th Avenue. The petition and rule include, indeed, as part of the land to be taken, a small strip on the Westerly side of the 9th Avenue, of about 89 feet deep. But as this is plainly omitted in the assessment and report, I must suppose that some error occurred.

At any rate, it is clear that no assessment is made upon the Complainants for any damage arising, or expense accruing upon any part between the 9th Avenue and the Hudson River. It is also certain that there was no express agreement as to the cession, defining its operation as to future assessments. The question is only as to its implied effect.

That question is, whether by the cession the party was to be exonerated only from paying anything upon his lots fronting the street along the ceded line for any benefit; or whether he was to be exempted from any charge for the whole line of the street to its final limit?

An owner may, undeniably, be sometimes more benefited by the opening of a street than the amount of the strip of land taken for it. And the good sense of the matter appears to be, that to this extent an agreement is presumable; that is, the land is given up in consideration that the contiguous land along the line should be discharged from any imposition for that opening. Here is a plain contract. The Corporation take the strip of land, and are relieved from the possibility of paying at a future time, in the shape of damages, more than the amount reasonably to be imposed for benefit. The owner gives the land, and is relieved from the chance of paying more thereafter for benefit than its value allowed him for damage. It is true, as has been urged by counsel, that the owners of the property on the other side of the 9th Avenue are thus relieved from contributing anything for the damages which might be given to the persons ceding; and hence it is said should not be allowed to go upon such persons for any part of their own damages. But they get this benefit, not as owners of that property, but as citizens, and in common with every other citizen to whom the street becomes public by reason of the bargain. And if the ceding persons had been benefited beyond damage for their own part of the operation, the other parties would pay nothing. This, I think, shows the true meaning of the transaction. It is—we agree, that the damage and benefit for this part of the opening are equal; and when a farther part of the street is opened, if any benefit accrues to us, we must bear it.

Then as to the statute, (sect. 168,) the first provision (page 172) refers to an agreement with the owners of *all* the property required for the improvement, or benefited by it. The next part of it relates to an agreement with part only of the owners or persons benefited. Then the act directs and authorises the commissioners, *first*, to enter upon or proceed with their estimate and assessment as to the residue of the lands required for the improvements; *next*, as to the residue of the lands to be benefited. In both instances it is to be done of lands concerning which there is no agreement.

I think, therefore, it is clear, that to exempt lands from the assessment for other parts of a street to be opened beyond the limits of the cession, there must be an express agreement; and hence clear, that the implied agreement in this instance does not reach to that extent.

II. The next topic was the authority of the Common Council upon the subject matter of the improvements in question—the origin, nature, and limits of their powers. These topics have been largely dwelt upon, and constantly invoked to bear upon every question that has been raised. The point of the present organization of the Common Council falls under this head. I shall state my views upon these important matters in the first place, and make the application hereafter to the facts in these causes.

In the course of the discussion, the old charters of the city have been repeatedly referred to, and many arguments built upon their provisions as supposed on the one side to exist, or on the other to be repealed and varied. I deem it necessary to state what I regard to be the law upon this head.

In a former work, in examining the history of the Court of Chancery of this state, I came to the conclusion, that every law passed by the Colonial Assembly was valid until repealed by the crown. In the language then used: "Even upon the doctrine of the freedom of the people resulting from the bounty of the king—upon the doctrine of a crown lawyer of the reign of James II., a law passed as prescribed in the Bill of Rights of 1683, and, undisturbed by the king, remained a perfect law until changed by the authority which framed it." (1 Hoffman's Ch. Pr., vii.)

The steps of reasoning through which this conclusion was reached were these:

The patent of the Duke of York of 1664, granted the tract of country with all royalties, and all his majesty's estate, together with the right of government. The commission to Governor Nicolls and that to Governor Dongan authorised them to perform every power which by the letters patent were granted to the duke. The first assembly, which was convened in 1683, passed the bill of rights, which was assented to by Gov. Dongan in Council; and by that it was provided, that all laws agreed upon by the representatives, if approved by the Governor and Council, should be laws, and remain in force *until disallowed by the King*. I then entered into some historical details of legislation, upon this and upon other subjects, to show that this bill of rights had never been disallowed, and was in force. In most other royal charters, there was a clause for the submission of enactments to the king; and hence, in the English edition of colonial laws, the date of the royal confirmation or refusal is affixed.

The argument which was thus applied to the colonial laws seems to me still correct; but whether it is so or not, it is perfectly unanswerable when applied to the city charters.

The old Dutch charter of 1657 is not of consequence, except as an historical monument. The first charter was one granted by Nicolls in 1665, the capitulation being in August, 1664. This charter is recited in a petition of the Corporation made in November, 1668, stating that Governor Nicolls had incorporated by

the charter in question, the inhabitants into a body corporate and politic, under the government of a Mayor, Aldermen and Sheriff. (Records Common Council.) The petition recites the privileges and franchises then granted, and seeks an extension of them.

It is to be remembered that in the interim the Dutch had regained possession of the province, viz. in 1673. In 1674, it was surrendered, and in November of that year, Governor *Andros* issued a proclamation, declaring that all former grants, privileges, or concessions theretofore granted, and all estates theretofore legally possessed by any under his Royal Highness, before the late Dutch government, were thereby confirmed. In October, 1675, *Andros*, by proclamation, and in virtue of the Duke's letters patent, appointed certain persons to be the Mayor, Aldermen and Sheriff, with full power among other things, "*to rule and govern all the inhabitants of this city and corporation, or liberties and all strangers.*" Thus the city government remained until the application before mentioned, in November, 1683. Numerous discussions took place in that year, between the Corporation and Governor Dongan. A part of that application of the Corporation was granted, and other parts referred to the Duke; and at last, in April, 1686, the complete charter was granted by Governor Dongan, Lieutenant-Governor of James II. That monarch came to the throne on the 6th of February, 1685.

I hold it to be immaterial whether, between February, 1685, and April, 1686, Dongan had received a new commission from James as King, or acted under his old commission from the Duke. If the latter, the Duke was the grantee of all royalties and right of government directly from the crown. He had conferred them in the utmost extent upon his Governor. The accession to the throne of the individual patentee never merged or destroyed the patent, so as to affect any rights conferred under it. It is clear that, as King, he could not repeal a charter granted under royal authority. I am aware that it has been urged in old times, that the accession of the Duke to the throne merged what he had done as Duke in his kingly power; and that he could abrogate charters granted by him. The doctrine is equally contrary to reason, justice, and law. The crown cannot revoke or annul a patent issued directly by itself (Burrows, 1656,) nor, consequently, a patent granted by its *fully constituted agent*. When Charles II. assailed the charters of the realm, he did it through the forms of law, by a *quo warranto*, to which the *courts* lent themselves. (Millar's English Government, Vol. 3, p. 58.) Other chartered bodies, intimidated or seduced, accepted new patents from him. In the reign of James II. it was asserted in the House of Commons, "that the compulsory substitution of new for ancient charters, amounts to a dissesin of the subject of his freehold without a trial." (Viscount Lonsdale, May, 1685. 4 Lingard's History, 28.)

In Marshall's History of the Colonies it is stated that ineffectual efforts were long made to induce the General Court of Massachusetts to surrender the charter, but they were resisted, they deeming it better "to die by the hands of another than by their own." See also Pownall's History of the Colonies, 54, 58. It is clear, therefore, that the Charter of Dongan was in full force, when that of Montgomerie confirmed it.

The Colonial Legislature has also been invoked to illustrate these questions.

In April, 1691, an act was passed for confirming unto the cities and towns within the Province, their several grants, patents and rights respectively; and by another act, passed in October, 1732, all the charters, &c., theretofore made under the great seal of the Province, were confirmed, and declared valid, binding and effectual for ever. This was after the last charter of Montgomerie, which was dated the 15th Jan. 1730.

The constitution of 1777 provides, that nothing therein contained should annul any charters to bodies politic, made prior to the 14th of October, 1775. The constitution of 1821 contains the same provision. But by both constitutions, the colonial laws in force on the 19th of April, 1775, (not since repealed, expired or altered,) were to be and continue the law of the State, *subject to such alterations as the Legislature shall make concerning the same.*

On the 10th of December, 1828, the Legislature passed a law "that no statute passed by the Government of the late Colony of New York, shall be considered a law of this State."

The colonial acts recognizing the charter conferred no new powers, nor did they enlarge or abridge existing powers. They were made for the better settlement of the community and quieting men's minds, as one of them recites. They perhaps, also, may have in part arisen from the republican tendency of the city authorities, in rejecting the Crown as the source of their power, and seeking it from the representatives of the people.

Then the question is, how far was colonial Legislation, in respect to the charter of the city, affected by the Statute of 1828? It is just to regard the colonial acts as repeating and expressly granting all the powers of the charters.

It cannot be disputed that these colonial ratifications, treating them even as actual grants, were subject to legislative power, wherever any corporate franchise is subject to it. The King may grant a charter, and neither he nor his successors can repeal it. It must be done by regular process of law. But the Parliament can annul, modify, or enlarge every charter granted by the Crown of a pure municipal character, where no vested rights in property have been bestowed or exist. The people of the state succeeded to all the authority of Parliament, as well as all the privileges of the Crown, and through a convention they delegated the exercise of their power to certain bodies. The transition was effectual and gentle. The political power survived, though the King's authority expired. The maxim of the French Monarchy, *Le Roy meurt, Le Roy vie*, is perfectly applicable. (See 9 Mass. 454.) When the constitution ecognized the colonial laws, as they prevailed in 1775, it recognized them as subject to the alterations of the Legislature. That involves the right to repeal. But the same instrument saves the charters. It does not, however, declare them to be unalterable. It merely provides that nothing therein shall affect them. What effect, then, has the act of 1828 upon the Statute of 1732? That Statute, it must be noticed, contains in the first section, what is equivalent to an express creation of a Corporation; so that if every charter had been plainly abrogated and null at that time, the Corporation would still have been established; its integral parts being the persons then answering the description of the Mayor, Aldermen and Commonalty. All grants and charters before made are declared valid and effectual, and they may for ever peaceably hold all powers, liberties, and franchises before conferred by any letters patent.

Now, although it has been held that a general law of the Legislature respecting the licensing of grocers affecting the whole state, repealed the powers granted in the charter of a village upon the subject, yet I doubt whether the principle could extend to the case considered. (11 Wendell, 232.) It appears to me, some more special legislation would be requisite to destroy a Corporation, or take away all its power and liberties. I am speaking of course of those powers and liberties admittedly municipal or political only, and within the authority to annul. I do not, however, perceive at present, that this question is of moment. If the colonial act is abrogated, the charters remain. If the act is not affected, and it is treated (as a colonial lawyer on the popular side would, I think, have regarded it,) as the true source of the powers, then the charters are to be looked to only for the enumeration of what has been bestowed, as a mere schedule to the statute. But in either view, the question as to the power of subsequent Legislation is the same. Whatever that authority may be, it is as extensive in its application to a previous statute of the colony or the state, as to a Royal charter. It is certainly not more limited as to the latter than the former. The recognition of the charters in the constitution cannot impair that power. The whole provision is, that nothing therein contained shall be construed to annul any charters to bodies politic or corporate made by the King. It gives no new right—it exempts from no previous control. It preserves them as they then existed, unshaken by any of its own provisions, and it leaves them subject to every principle of the law.

Then the question is, what is the power of the Legislature over the Corporation of the city and all its franchises, whether viewed as springing from the Royal bounty or the colonial Statute? It belongs to the Legislature to repeal or modify every right and every power—to abolish or restrict every franchise or liberty now vesting in the Corporation, not coupled with a beneficial interest in property. Any statute rescinding or modifying a provision contained in the charter relating to such a power or franchise; any statute prescribing a new mode of exercising such a power, or varying the former mode; any statutory regulation repugnant to a provision of the charter, is valid, and must prevail. Every statute granting a new power and directing the manner of its exercise, is of course the only rule of action.

It is necessary here to advert to the doctrines of the English law and our own upon this subject.

A subsequent charter of the Crown operates upon a previous one as a grant, as a confirmation, as an enlargement, or as a restriction.

This is the language of the common law. But to have the last effect, it must be accepted; and Lord Mansfield, and Justice Wilmot declared that an acceptance in part, proven by acting under it in a particular case, does not prove acceptance of the whole, so as to supersede entirely the former character. (Rex *vs.* Cambridge, 3 Burrows, 1656.) Here, however, arises a most important difference. The legislature may control these municipal bodies entirely and absolutely. They may take away the right, or modify it, or direct a new mode for its exercise. The king could do neither. (3 Burrows, 1656.) Acceptance of a new charter from him and action under it was proof of a new compact, and went no farther than the acceptance went. But as to an act of the legislature, it does not depend upon the fact that the company has agreed to the change in their former powers, when, but for that agreement, the change could not be made. The change may be made in utter disregard of their wishes and assent. I must repeat that, in these positions, I am considering merely corporations in relation to franchises not involving rights to property.

The following authorities establish the right of the legislature to interfere with every power not involving such vested interests in property.

"Public Corporations which exist for public purposes, such as towns, counties, &c., the legislature may change, enlarge, modify, and restrain, securing, however, the property for the use of those for whom it was intended. (4 Wheaten, 418.) In *Coates* vs. *The Mayor of New York*, (7 Cowen, 585,) a statute had empowered the Corporation to make by-laws regulating, or if found necessary, preventing the interment of the dead. A by-law prohibiting it was found valid as an authority to make police regulations. Necessity was considered synonymous with expediency. It was also said in that case, that the powers of the Corporation depended on statutes which had superseded the original charter, especially as to those things in relation to which a statute makes provision either agreeing with or differing from the charter.

"Political powers conferred upon a Corporation for the local government of a place are not vested rights as against the state, and may therefore be abrogated by the legislature as well by a general law affecting the whole state, or by a special act altering the powers of the Corporation." (The *People* vs. *Morris*, 11 Wendell, 325.) Hence the revised statute as to the licensing grocers suspended the powers given in a village charter.

In *Satterlee* vs. *Sutton*, cited by Chancellor Kent, (notes to the charter, p. 149,) it was held that the statutory provision authorizing the appointment of measures of grain by the state, and regulating the measurement, superseded the power given in the charter to the Corporation to appoint measurers.

And upon the principle of this supremacy of parliament has the important statute called the Municipal Corporation Act been passed. (6 William 4th, c. 76.) By the first section all laws, statutes, usages, charters, grants and letters patent, inconsistent with the provisions of the Act were repealed and annulled. Its provisions are numerous, and its regulations affected many corporate powers. Indeed, as to the income of the property of a vast number of Corporations, it prescribed many new regulations, although the principle was not interfered with. See upon this statute, *The Attorney General* vs. *Aspinwall*, (1 Keen, 513, 2d Mylne and Craig, 613.) *Attorney General* vs. *The Corporation of Pool*, (2 Keen, 190, 4 M., and Craig, 17,) particularly the report in 2 M. and Craig. So the statute of the 6th Geo. 4, c. 91, is a striking illustration of the power of parliament over the king's patent. An express statutory provision was necessary to enable the king in any subsequent patent to make the corporators individually liable in person and property for the debts of the corporation; (section 2,) clearly showing that such a provision, without a statute, would be contrary to the common law and void. And see the recital in the act of 4 and 5 William 4th, c. 94. The following cases will also show the regard to private rights united with the assertion of the power over Municipal Corporations exhibited in that act, (*Regina* vs. *Liverpool Corporation*, 3 Nev and Perry, 280, *Harvey Exparte* ibid 159.)

Another point upon this subject is equally clear and equally important. If the power is one giving a vested right in property, it is beyond the reach of the legisla-

ture. The constitution of the United States has here interposed, treats it as a contract, and has forbidden the state to impair it. Hence, if it is necessary to resort at all to the act of 1732 respecting the charters, the repealing act of 1828 would be wholly void as to *such* powers: and as the constitution of the state has preserved the charters, and these are equally compacts, any legislation, so far as it entrenched upon rights of this description, would be null.

It may be difficult to draw the distinction between these classes of powers with accuracy. The case of a ferry is, in my opinion, an instance of a franchise coupled with a right of property. The cases of improvements relating to the streets and sewers are clearly not so. The opinion of Chancellor Kent on both of these points is conclusive. (Notes to the charter, p. 140. Ibid, p. 142.)

Upon this distinction between the vested rights of corporations in property, which cannot be abridged, and the exercise of powers which may be wholly abrogated, the following cases deserve attention. (*Dartmouth College case*, 4 Wheaton. Cranch 87, 7 John Rep. 477, 2 Gallison, 139, 7 Pick, 344, 2 Greenleaf, 175, 6 Ibid, 474, 9 Wendell, 392.)

Another and most important inquiry is as to the extent of the powers granted by the charter, and what are necessarily implied from the powers bestowed. The distinction between acts of the legislature merely auxiliary, and those essential to the exercise of power, may prove important.

First, every exercise of power must be according to the course of the common law. The king by his charter could not authorize a by-law infringing it. As has been well expressed, if the king in his letters patent of incorporation make ordinances himself, they are subject to the general rules of law. (Hobart, 210.) Hence in *Waltham* vs. *Austin*, (8 Coke, 115,) it was held that a by-law authorizing the seizure of cloth dyed with logwood, by a corporation of dyers, was void as against *magna charta*, although the power was expressly given in the king's patent. And hence a power of seizure and distress cannot be exercised, unless it is expressly granted by an act. (*Clarke* vs. *Turket*, 2 Vent, 128. See also 1 Kenyon's Car: 195.)

In *Kirk* vs. *Nowell*, (1 T. R. 118,) an act of Parliament having granted power to a Corporation to enforce its ordinances by fine and amerciament, it was held that they could not impose a forfeiture.

NEXT, the power to make by-laws is incidental to a Corporation, whether expressly conferred by the charter or not. (*Norris* vs. *Slops. Hob.* 211.) They may be made for the regulation of franchises conferred as well as of the municipality. (*Lenden* vs. *Vanacre*. 12 Mod. 276. See also Strange, 462.) But they must be in subservience to the common law; so that a custom to make them does not sanction any contrary to common right. (*Wilton* vs. *Wilks*. 2 L. Ray, 1131.) And an act of Parliament confirming the customs of a chartered body, only ratifies such as were originally legal. (Hamburgh Comp. Case, 1 Mod. 213 n. *Wilton* vs. *Wilks*, 2 Ld. Kay 1133. *Fazakerly* vs. *Wiltshire*, 1 Strange 466. *York* vs. *Welbench*, 4 B. & Ald. 440.)

In the case of *Hurt* vs. The *Mayor of Albany*, (9 Wendell, 571,) the rule is found that where a Corporation is authorized to enforce its ordinances by fines or any other prescribed mode, it is by implication prohibited from adopting any other mode.

In *Dunham* vs. The *Trustees of Rochester*, (5 Cowen, 462,) the charter of the village gave the trustees power to make prudential by-laws, particularly relating to markets, public streets, taverns, gin-shops, and huckster-shops, not contrary to the laws of the state. A by-law requiring all hucksters to take out a license, and imposing a fine of five dollars for every day's doing business without it, was held against the law and void, as a restraint of trade. For all purposes of jurisdiction they were like inferior courts, and must show the power given them in every case. If this be wanting, their proceedings must be holden void whenever they came in question even collaterally, for they are not judicial, and subject to direct review on certiorari.

The *Mayor of New York* vs. *Ordinaux*, (12 John Rep. 122.) A statute had been passed, April, 1806, for the better government of the city of New York, and to grant certain additional powers to the Corporation; among them to regulate the keeping of gunpowder. The statute also provided that the Corporation might direct the forfeiture of the same, and that they might impose penalties for non-observance of the ordinances, not exceeding $250. An ordinance passed forbidding the keeping of gunpowder exceeding twenty-eight pounds in any one place, and then to be divided and kept in a particular manner; and imposed for a violation, first the forfeiture, and next the penalty of $125, for every hundred-weight of powder not so kept. It was assumed that under the act the forfeiture could be inflicted, and the penalty could be also imposed. It was held clear, however, that the fine could be but $250 for the single offence. Under the by-law, the second count claimed $1375 for the violation in one instance, being regulated by the quantity. Justice Spencer, delivering the opinion of the court, also said that the act must be presumed to have passed on the application of the common council, that being the ordinary course. That if it were conceded that the by-law was authorized by the general powers given by the charter, (upon which we express no opinion,) the application by the Corporation to the Legislature, and the latter having legislated on the subject-matter of the by-law, operated as a limitation of any general and undefined powers in the charter.

And in *The Rail Road Company* vs. *The Canal Company*, (4 Gill & Johnson, 1,) it is laid down that where a Corporation is created to effect a particular object, as to make a river navigable, and no mode of accomplishing it is pointed out, it will be intended that the Legislature designed it to be done in any of the known modes in which the navigation of a river may be improved. And again, that where alternative modes of exercising the power are given, each subject to the will of the Corporation, no experimental trial of one will preclude a resort to the other.

"Whenever a by-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights, or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shown to legalize it." (*Taylor* vs. *Griswold*, 2 Green, N. J. Rep. 235. Hornblower, Ch. Justice.) The question was as to right to make a by-law authorizing a vote by proxy. "The incidental power of making by-laws is limited not only by the terms of the charter, but by the spirit and design of the charter, the purpose for which it was created, the object which the crown or the Legislature had in view, and the general principles and policy of the common law." (*Ibid.*)

It has been held that a by-law to levy a talliage for keeping up beacons and watch-towers in the *Cinque Ports*, was good. (*Winchelsea case*, Thos. Ray's Rep. 449. *Clark's case*, 5 Coke, 64.)

In *Playor* vs. *Vere*, (Thomas Ray, Rep. 328,) the rule was laid down expressly that the levy of any tax was illegal, and a by-law pretending to effect it was void. Neither could the king grant a power of the kind, for it is confined to Parliament alone. A contribution to the general charges of the Corporation was, however, valid.

The right to make by-laws necessary to the execution of its powers thus restricted, was then inherent in the Corporation; and was also expressly conferred with the like restrictions by both charters. The 14th section of Montgomerie's charter is very full. With respect to streets and sewers, the powers given by it are in very ample terms. In that of 1730, the clause is, "not only to establish, appoint, and direct the making and laying out of all other streets, alleys, and highways not already laid out; but also the altering, amending, and repairing of all streets heretofore laid out, or hereafter to be laid out." And the power is also given "to make all laws and ordinances, as shall be deemed necessary for the better government of the city, and to enforce the same by distress and sale of goods, or action of debt, or any other lawful method." Thus an ordinance, or by-law, to carry out this power as to streets, consistent with the common law, the constitution, and the public statutes, would be lawful. Where legality terminates and encroachment begins would be sometimes difficult to define.

An ordinance, however, in restraint of common right or of trade, would be essentially void. An ordinance creating a new officer, except to fill an office granted, would be void. And an ordinance respecting an office not given by the charter but by a special act, must be consistent with the act as well as with the common law, where the act establishes no new rule. Hence the ordinance compelling the weighing of anthracite coal was, in my opinion, illegal, being in restraint of common right respecting an office not granted by the charter but by a new statute, and where no change of the common law was made. The general power to make ordinances was in that case wholly inapplicable. *West* vs. *The Corporation*, Jan., 1841. See *Taylor's, of Ipswich, case*, 1 Rolle, 5; *Sackville College case*, T. Raymond, 178.

An ordinance, then, (if there were no statutory regulations as to streets,) consistent with the common law for the carrying into effect the power to alter, lay out, and establish streets, would be valid. The appointment of officers for the purpose, the regulation of their duties and mode of acting, would be plainly an implied power. And an ordinance, imposing a fine and penalty for neglecting to do an act prescribed for the purpose of regulating or repairing a street, would also be valid. And the charter itself gave this remedy.

But here I consider the power, expressed or implied, terminates. First, there could be no general tax laid upon the citizens for the improvement or operation. It is too clear a proposition to need argument that general taxes could not be levied. The case of *Player* vs. *Vere*, before cited, the bill of rights, with the annual application for a tax law, set this matter at rest. *Next* an ordinance, prescribing the mode of taking land for a street, and of ascertaining the damages payable to the owner, even if it called in a jury, would not be legal. Under Governor Dongan's charter it clearly would not have been so, for it could only be done by consent, or under some known law of the Province, (section 2.) This plainly meant a statute of the legislature; and the legislature did give the authority by an act of October, 1691, hereafter particularly noticed. Of course, no other mode of taxing private property, and fixing the compensation, could be lawfully prescribed.

And again, the principle of assessment upon a portion of the citizens for a public benefit, never could be enforced by an ordinance. Nothing less than an express statute could sanction it.

Thus from the review of the charter and decisions, it may be concluded that the implied powers as to streets were these and these only: to direct what should be done where no private land was taken or no private land was charged, and to appoint the necessary officers; to pay for the works out of the annual revenue of the city; to direct each owner to perform the proportionate part of the work, and to impose a fine for its neglect. Indirectly this would obtain the end.

And the conclusion is also clear that whenever the legislature have made a statutory provision which directly or impliedly extinguishes, modifies, or restricts any power of the charter, it must prevail. Whenever it has established a mode of exercising a power, that mode must be pursued, and none other can be. Of course, where it has conferred a new power, the extent and method of executing it are governed by the statute solely.

The history of the ordinances and colonial legislature upon the subject of streets strikingly corroborates this view.

For example, on the 9th of May, 1676, an ordinance was adopted as follows: "Ordered that all persons living within the street called Here Graft, shall fill up the graft, ditch, or common sewer, and make the same level with the street, and then pave and pitch the same before their doors with stones as far as every inhabitant's house shall be fronting towards the said graft or ditch, upon pain of having such fines inflicted upon them as the court shall see fit."

On the 24th April, 1686, there was the following proceeding of the Common Council: "Adrian Werterhouse making application for satisfaction for his ground that was taken away to make the new street, did consent to convey his right and title therein to the city, and in consideration thereof it is ordered that he be free from all public taxes for the use of the city for a term of years, and also from payment of what has been already taxed."

On the 8th of August, 1687, an ordinance was passed, directing the inhabitants to pave the portions of the street opposite their lots, and imposing a fine for neglect.

On the 1st of October, 1691, an act of the colony was passed empowering the Corporation to appoint a surveyor and supervisor of streets, and providing that the pitching and paving of such streets, or making or amending vaults and sewers should be ordered and directed by such Corporation; and they might impose a reasonable tax upon all houses within the city, in proportion to the benefit received thereby, and levy the same by distress and sale.

And after this act, and on the 11th of February, 1692, an ordinance was passed ordering the inhabitants in the streets to pave, or cause to be paved, at their own

streets. Now, however, a general power is vested in the city authorities. It also appears that the system of imposing the expense upon the parties deemed to be benefited, has generally been adopted or sanctioned in the statutes relating to that city.

In the case of The *Mayor of Baltimore* vs. *Moore*, (6 Hard John, 376,) an act of the Legislature gave the Corporation power to pass ordinances for paving and regulating streets; and to tax any particular part or district of the city, for paving the streets therein, as may appear for the benefit of such particular part or district. An ordinance directing such a pavement, and taxing a particular district, but reciting enough in the preamble to show that it was for public convenience, was held void in an action of assumpsit. (See the language of the Court, page 380.)

The act of 1787 remained in force, with a few alterations, until the statute of April, 1801, which is the foundation of our present system. By that the principle of assessing damages by means of commissioners instead of a jury, the principle of imposing the assessment upon adjoining owners, and the mode of selling the property upon default of payment, were recognized and carried out. The act of 1813 completed the system.

After this examination of the charters and the legislation respecting them, the questions raised as to the corporate powers will be better understood.

I shall now examine the point as to the constitution of the present Common Council.

It is recited in *Dongan's* charter, of April, 1686, that divers lands, liberties, and franchises, had been granted, as well by charter as grants and confirmations, to the inhabitants of "this ancient city," sometimes by the name of Schout, Burgomasters and Schephens of the city of New Amsterdam; sometimes by the name of the Mayor, Aldermen, and Sheriff of the city of New York; sometimes by the name of the Mayor and Aldermen, as by other names. It then proceeds to grant and confirm unto "The Mayor, and Aldermen, and Commonalty of the city of New York," all the privileges and rights which by that name or otherwise they have held.

The fifth section of this charter provided that there should be a Mayor and Recorder, Town Clerk, six Aldermen, and six Assistants, who should thereafter be termed THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK. The sixth section constituted and declared such Mayor, Recorder, Aldermen, and Assistants, for the time being, a body corporate and politic, and gave to that body all the lands, privileges, franchises, and rights therein mentioned; and confirmed to them every franchise and power. (§ 16.)

The Governor in that charter appointed all the officers—the Mayor, Recorder, Aldermen, Assistants, and Clerk. The right to elect subsequently was given to the citizens.

Then in the 7th section it is provided, that the Mayor, Recorder, Aldermen, and Assistants for the time being, or the Mayor, Recorder, and any three or more of the Aldermen, and any three or more of the Assistants for the time being, shall be and be called, "the Common Council of the said city."

The power conferred upon this body is to make laws, orders, and ordinances for the government of the city and liberties. The power is large, but the words need not at present be cited.

The first and important observation to be made is, that the whole control of the property, the whole execution of every power, the whole management of all the franchises, and the whole police regulations, are vested in this Common Council thus constituted. Except the town clerk, the integral members are the same as the body to which the powers and property were granted. For convenience, the number of the two more numerous classes competent to act was defined.

In theory, therefore, the right might reside in the one body, so that writs or deeds should be in its name. In practice and by express provision, the exercise of every right and the control of all property was in the other body.

Montgomerie's charter of 1730, while reciting disputes and doubts as to the charters and grants, still treats the Mayor, Aldermen, and Commonalty as a subsisting Corporation. The fifteenth section varies only the organization of the Common Council, by providing that the Mayor or Recorder, (before both were necessary,) with *four* or more aldermen, and *four* or more assistants, should be necessary. The power to make laws and ordinances for the government of the *body corporate* and the citizens, is conferred upon this body in the largest terms.

Then follow certain sections as to ferries, as to streets, and as to the other franchises. They are of importance. They grant to the Mayor, Aldermen, and Commonalty, "*that the Common Council at the time being, or the major part of them,* shall establish ferries, establish, order, and direct the laying out of streets, water courses, highways, &c.

Again—the *grant* of offices is, in most cases, made to the Mayor, Aldermen, and Commonalty; the power of appointment of the officers and removal is given to the Common Council, except where the Mayor is designated. (See sections 18, 19, 22, and 24.)

The act of 1813 occasionally employs the phrase The Mayor, &c., in Common Council convened, but rarely. In the 177th section, for example, when referring to the streets and avenues on the map of 1807, it refers to the Mayor, Aldermen, and Commonalty merely. In referring to streets not on that map, the terms in Common Council convened are used.

But with this exception, which I take to be entirely accidental and unimportant, arising from pursuing the words of the ninth section of the act of 1807, the provisions of this statute and many others strikingly corroborate the principle I have stated. Wherever property is vested, rights are bestowed, or obligations are imposed, the phrase is, The Mayor, Aldermen, and Commonalty. Wherever an act, law, ordinance, or resolution is to be done or passed, implying the exercise of a duty or a power, it is generally the Mayor, &c., in Common Council convened. There is an instance of both in the 183d section of the act of 1813. All suits must be by and against the former. The land taken is vested in them. But when assessments are to be ratified, it is done in Common Council convened, (sec. 185.) When a cistern is to be built in a street, the Common Council may order it. (Laws 31st Jan. 1817.) The power bestowed to restrain the mooring of ships, is to be exercised in Common Council. (Law, March 4, 1814; sec. 4.)

I am far from saying that this distinction has, in all instances, been observed. There are, however, frequent cases of its being had in view. Throughout the whole legislation down to the charter of 1830, there is nothing inconsistent with its existence.

Upon the whole, I consider it indisputable, that at that period while all property and all franchises were vested, in contemplation of law, in the Mayor, Aldermen, and Commonalty, the exercise of every power connected with them was in the body termed the Common Council, except where, as in the case of certain officers, it was placed elsewhere. And I hold further, that if the legislature had conferred any new power, or any new office upon the Corporation by its corporate name, (as they did in the case of weighers,) the exercise of the power, and the regulation of the office, must impliedly be in the Common Council. If the legislature prescribed the mode, of course the case would be different.

It follows, from the principles before stated, that the legislature could always change or remove any of the integral members of the body. Hence by an act of the 27th of February, 1807, the common clerk, called town clerk in Dongan's charter, was, as I construe the act, divested of his functions as a member of the Mayor, Aldermen, and Commonalty.

Then the new statute of 1830 provided, that neither the Mayor nor Recorder should be a member of the Common Council after the second Tuesday of May, 1831. It provided, also, that the legislative powers of the Corporation should be vested in a Board of Aldermen, and a Board of Assistants, who, together, should form the Common Council. And it directed that the Board should meet in separate chambers.

Now, in my opinion, it is wholly immaterial whether a given power exercised by the Common Council is of a legislative character, or of any other. The principle I have advocated constitutes that body the organ for exercising every power of every description conferred upon the Corporation in its corporate name, unless there is an express statutory direction of another mode. Although the members act now in almost every case in separate Boards, yet they are still in Common Council convened, as much as the Lords and Commons are in parliament assembled, though sitting apart. And the conclusion is certain, that where the seventh section of the new charter is not imperative, the Boards may act separately or jointly as they think proper. Hence all appointments to office are made (under a mere joint rule, however,) when assembled together, but there is nothing to prescribe this. It is rare that anything else is thus transacted, as the language of the act is broad. But throughout, the two Boards are treated as forming in the aggregate the Common Council. This is the

long-known agent for the execution of all ministerial, administrative, or judicial, as well as legislative power, unless otherwise specially prescribed, or where the Common Council has itself delegated the execution to its own officers. In the case of streets and sewers, no statute has pointed out any other organ. The acts of 1824 and of 1828, and their rejection by the people, have been referred to. The powers which I consider to exist, were expressly conferred upon the Common Council by these proposed statutes. But it is not a just inference that the citizens rejected them because of such a clause. It may have been that the reason was that the proposed charter was prepared by the Corporation itself. The objection raised on this subject is therefore not tenable.

III. The next and most serious question relates to the manner in which the power of the Common Council has been exercised in these cases, and whether the provisions of the law have been complied with. And first as to the force of the seventh section of the act of 1830.

I must here advert to the course of proceeding in relation to opening 31st street, one subject of the Bill of Talmadge and Westervelt.

It is stated in the Bill, and admitted in the answer, that on the 17th day of February, 1836, a resolution which had passed both Boards was approved by the Mayor, which is in the following words: "Resolved, that all the streets and avenues as laid down on the commissioners' map of the city, shall be opened up to and including Forty-second street, excepting such parts of said streets and avenues lying within the said limits as have already been opened by Deed of Cession from the proprietors, or by due course of law."

On the 24th day of June, 1836, a petition was presented to the supreme court in the usual form, stating that the Mayor, &c., in Common Council convened, had deemed it desirable for the public convenience, to open 31st street between the Tenth avenue and the East river. Under this commissioners were appointed, and an assessment made.

Whether the object of the Common Council was attained by the manner of carrying out this resolution, or whether it was a judicious exercise of power to make so sweeping a one, seems to me immaterial. It is not any ground for imputing illegality to the proceedings.

The commissioners having made their report, it was confirmed by the supreme court on the 9th of February, 1838. It is to be assumed that the regular notice of the report and application to confirm it was published as required by the statute. This, therefore, was the first notice the party is to be charged with, and that is constructive, although sufficient. (15 Wendell, 374.)

But it is here proper to remark, that the complainants would not have been permitted to have raised any of these questions, either before the primary commissioners, or the judges sitting as commissioners. The office of the latter, as I understand it, is only to revise the report as to the principles upon which its estimates are made, or as to the legal right to include certain property in it; to send it back in a case of gross error in amount, and to refuse its confirmation where the benefit plainly appears not to be equal to the damage. (19 Wendell, 667. Ibid, 681. Albany-street case, 11. Ibid, 150. Patchin, Mayor of Brooklyn, 13. Ibid, 669. See also the valuable case of Bennet *vs.* the Camden R. R. Company, 2 Green. N. J. Rep. 147.) The case should receive no prejudice from the omission to object.

The report was confirmed in February, 1838, and in May, 1838, a resolution was approved, fixing the actual opening of the street for the 9th of May, 1839. The Bill was filed in June, 1840, pending the advertisement of the premises for sale.

The part of the 7th section involving the question is as follows: "All resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of the public moneys, or taxing or assessing the citizens of the said city, shall be published immediately after the adjournment of the board, in all the newspapers employed by the Corporation. And whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner."

It is necessary to settle the precise meaning of this clause not only by a philological dissection, but by examining the object of those who adopted it. I shall break it into all the propositions of which it seems susceptible. There are two distinct branches of it. In the first place it may mean, that all resolutions as well as all reports, recommending an improvement involving the application of public moneys, shall be passed and published in the mode directed. This construction has this difficulty: that a resolution properly does not *recommend* an improvement, which a report of a committee does, but enacts it, or directs an inquiry. It is, however, in exact conformity with the section as originally introduced into the convention. (See p. 156 Kent's charter.)

A second reading is this: *First*, all *reports* recommending a specific improvement involving the appropriation of public moneys must be so passed and published. *Next*, all resolutions involving the application of public moneys, must be in like manner passed. If this is the true meaning, then a resolution respecting a specific improvement not leading to the expenditure of public money is not within the clause; but a resolution, whether relating to such improvement or not, is within it, if such expenditure is involved.

The second branch relates to taxing or assessing the citizens. Here, also, there may be several interpretations. One is, that the clause refers to a resolution, or report, or both, recommending an improvement involving *[the]* taxing *or* assessing the citizens. Another, that it refers to a resolution involving such taxing or assessing, irrespective of any improvement. And a third, that it relates only to a resolution directly taxing or assessing citizens.

The last construction cannot be sustained. I have before shown that the power to tax is nowhere specially granted, and that the Bill of Rights forbids it without the assent of the Legislature. An assessment directly laid, is similar in its nature, and is an imposition within the Bill of Rights. The annual application of the Legislature, and the annual law passed authorizing a general tax, show conclusively that this action was not referred to.

But if it is interpreted to mean a resolution *involving* the taxing or assessing the citizens, there are several cases in which it would apply in a broad extent. For example, to the annual resolution to apply for a tax law which specifies the sum to be raised. And two striking illustrations may be adduced of this—one before the new charter, and one afterwards. A resolution was adopted in March, 1821, for erecting a public market between Fulton street and Crane wharf—that $15,000 be raised annually for ten years by tax, which, with the income of the market, should be applied to pay the debt created for the purpose, and that the Legislature be applied to for a law authorizing it. (See Corp. Ordinances, 149 Ed: 1839.) Another was after the Corporation had obtained the Fire Indemnity act, an ordinance was adopted that application be annually made for power to raise $25,000 by tax, for the redemption of the stock.

It may be remarked, that there is certainly less reason for such a provision, where the Legislature is to be applied to for the specific purpose of authorizing a general tax upon all the citizens, than where the Corporation is acting under its ordinary powers. Publicity is obtained in the former instance by the notice required by the act of the Legislature of 1818, re-enacted 1 R. S. 150, § 1.

Nor does it seem consistent with the provision, or the object of its makers, to hold it applicable to cases only of such a general tax upon all the citizens. In the address of the members of the convention, they speak of it thus: "All propositions, involving assessments or burthens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard."

But in fact, if we adopt the most limited meaning which can be reasonably urged, viz: that the clause applies to resolutions involving the expenditure of public money, or the taxing or assessing the citizens at large for specific improvement, then there is not a case in which in contemplation of law and consequently in fact, an opening or alteration of a street, or pitching and paving it, or the making of a sewer, may not involve such an expenditure or such a charge. In opening streets, if the improvement is below the line of the map of 1807, one third of the value of all buildings on the premises may be assessed upon the Corporation, and if within the map one third of the value of such buildings as existed before it was filed. In every case, property belonging to the city is assessed, where that of individuals would be.

It strikes my mind as too plain for cavil, that the provision covers every resolution relating to an improvement for which public money may be requisite through the effect of an existing law, and every resolution through which the citizens, or any class of them, may be assessed for improvements. I know of no other construction adequate to the object, or consistent with the spirit of the section.

What was that object? In the language of the address before cited, "careful and deliberate legislation, strict accountability, judicious economy, and perfect publicity. These are the remedies which the convention have sought against the evils and abuses to which all wealthy city governments are subject, of which this city has felt its share, and of which the public voice has at different times loudly complained."

And for the securing this object, they provided, that in the cases of such resolutions, they were to be immediately published in all the newspapers employed, and that whenever a vote was taken relating to them, the ayes and noes should be called and published in the same manner. And thus they deemed, "would be secured at once publicity and notice to all concerned, and the strong influence of personal responsibility upon the vote of every individual member."

The framers of this charter had, it is to be supposed, the constitution of the United States in view in a t- ing this provision as to the ayes and noes. By that, the ayes and noes shall, at the desire of one fifth of those present, be entered on the journal. In our own constitution, if a bill is returned with objections, the votes of both houses shall be determined by ayes and noes, and the names shall be entered on the journal. By a rule of the Assembly, upon a division, the names of the voters shall be entered on the minutes upon the requisition of any ten members.

In speaking of this provision of the constitution, Judge Tucker says, "In a representative government it is of the utmost importance that the people should be informed of the conduct of their delegates, individually as well as collectively. This purpose is fully answered by the rule spoken of. But to prevent a call of the ayes and noes too frequently, as is said to have been practised in the former Congress, the constitution has set reasonable limits to the exercise of the power, by requiring one fifth of the members to concur in it." (1 Tucker's Black. 205 App.)

Thus the convention and Legislature were not content with requiring the call, and the usual entry on the minutes which follows; but they also prescribe that the names shall be published. Now can it be possible that this provision was introduced thus expressively and imperatively, only to declare that in these instances the ayes and noes should be called if any member chose to demand them? Is it to be imagined that in these two selected cases, and in these alone, those grave bodies, the convention and the Legislature, meant no more than an admonition to do the act? Again, when this charter thus explicitly directs that every such resolution shall be published in all the newspapers employed by the Corporation, what did it mean? Did it mean that this need not be done unless demanded; that the performance or neglect of it was a matter of pure indifference; that if any member required it, it might be done, and if no demand was made, it might be omitted? Nay further, that if the requisition was made, it might be denied; for the right to refuse stands on the same basis of construction as the right to neglect? Can it be within the range of imagination, much less of argument, that the convention passed through this idle pageantry of legislation, in prescribing this act to be done, and then left its performance at the mercy of custom or caprice? They knew the summary process given by the law for taking away the citizen's property. They knew the vast powers of the Corporation over the subject. They anxiously adopted these provisions as safeguards against neglect, as securities for caution, as methods of publicity, and as restraints upon recklessness: and yet the construction is that they left them to be broken down and contemned by that very body against whose heedlessness or encroachment they were reared. The supposition shocks every doctrine of the common law. It violates every principle governing the action of municipal Corporations, clothed with special powers for special purposes. It tends to the perpetual encroachment of those constituted and inferior bodies upon legislative authority; and it generates disregard and contempt for private property and interests. It begins in convenience, grows into a custom, and terminates in the defence of usurpation as a right.

But it is urged that the clause is only directory. The meaning of this phrase is said to be, that while a particular direction of a statute is proper to be observed, its neglect is not fatal to the act done under it. The omission then not being material, the direction need not be pursued. As has been justly observed by counsel, it is then discretionary. This is a solecism in law as well as in terms. The true solution of the matter is this. Provisions are sometimes not essential, where the sta-

cashiers should give a bond satisfactory to the Board of Directors. A bond was given, the subject of the suit, by a cashier and sureties. He had long acted as cashier. It was objected that there was no record of such satisfaction, and held untenable. This position was approved of by Justice Cowen, in *The Matter of M. & H. R. R. Co.* (19 Wendell, 136,) where it was held that the taking of an oath "*well* and faithfully to perform the duties of the office of inspectors," instead of the oath prescribed by statute, "to execute the duties with strict impartiality, and according to the best of their abilities," was not ground to set aside an election. This oath is prescribed in the general statute, (1 R. S. 605,) not in the charter. The court appear also to adopt the position that if the oath had been omitted, it could not have been taken advantage of; citing several cases where it was held that such an omission shall not prejudice strangers, nor be taken advantage of by strangers. Justice Story says in another case, "that it is an established rule, that where the Legislature mean to impose a positive and absolute duty, and not merely to give a discretionary power, the word *may* should be construed *must.*" (1 Peters, U. S. R. 64.) In Plowden 206 b, it is said, "when a statute limits a thing to be done in a particular manner, it includes in itself a negative, viz. that it shall not be done otherwise."

In The *King* vs. *Bagshaw*, (7 T. R. 363,) it appeared that power was given to trustees of a turnpike company incorporated by act of Parliament to widen and turn any part of the road through private grounds, making satisfaction to the owners, with whom they might contract and agree. The statute then enacted, that if any person interested in such lands, *upon notice* to him given, should, for twenty days, neglect or refuse to treat, or should not agree, *then* the trustees should cause the damage to be inquired into by a jury, and upon the ascertainment by a jury, the amount so assessed was to be paid to the owners," &c. The trustees made a new road through the close of the defendants. They tendered the sum of £100, which was refused, and then summoned a jury, who assessed the damage at £100; upon which the trustees made their order, reciting the dispute, &c., that under the act a jury had been empannelled, who had heard counsel and evidence, and had assessed the damage at £100, which they therefore ordered to be paid to the parties. The proceedings were removed by certiorari. Upon a motion to set the assessment and verdict aside, the court said, that notice to the parties interested was the foundation of the proceedings below; and that, therefore, it should have been stated; for if no notice were given, the trustees had no jurisdiction; and with respect to counsel having been heard, it did not appear that counsel for the *defendants* had been heard. The rule was made absolute.

In the *King* vs. *The Mayor of Liverpool*, (4 Burr, 2244,) the application was made upon a certiorari to quash an inquisition of a jury, under an "act to enable the Corporation of Liverpool to make a grant to Sir Charles Moore for liberty to bring fresh water into the town." The jury had determined that there should be paid to the owners and occupants of the lands mentioned in the inquisition, the sum of £176 in the proportions therein mentioned. The assignee of Sir Charles Moore was the prosecutor. It was objected, among other things, that there was no notice appearing to have been given on the face of the proceedings. The three judges, *Mansfield*, *Aston*, and *Willes*, expressed the clear opinion, that *notice* ought to have been given to the parties interested, and that it ought to have appeared upon the inquisition to show that there was a jurisdiction. Without notice there was none. The inquisition was unanimously quashed. The statute under which this corporation acted, directed that notice should be given twenty days before the inquisition. See also *The King* vs. *The Norwich and Walton Road*, (5, Adol and Ellis, 563.)

In *Rex* vs. *Cooke*, (Couper, 26,) an act of Parliament had given power to the Corporation of London to make a road from Blackfriars' Bridge across St. George's Fields. In case of the owners of the soil refusing to treat, a jury was to be summoned to assess the value of the lands, &c Proceedings were had, and a verdict given, on which the Court of Quarter Sessions gave judgment for a certain sum as the value of the premises and for payment. The judgment was quashed on certiorari on the grounds chiefly, first, that the statute prescribed that "the Mayor, Aldermen, and Commons, in Common Council assembled, had not declared the land to be necessary, as directed in the act, but the Mayor, Commonalty, and citizens. No evidence was admissible to show that the latter were the proper persons. Next, that the statute had prescribed a notice in writing, to be given, while the record stated that *due notice* had been given. Lord Mansfield said, "This is a special authority delegated by act of Parliament to particular persons to take away a man's property and estate against his will; therefore it must be strictly pursued."

In *Wispard* vs. *Wilder*, (1 Burr, 330,) it was held, that under the statute 12 Geo., 1 c. 29, the declaration on a bail bond deed not set forth that there was an affidavit of debt, or that the sum sworn was endorsed on the writ. That the provision in the statute was not in the nature of a condition precedent, but only directory to the sheriff; so that, though the sheriff might be answerable, yet the bond was not void.

But in *Hill* vs. *Heale*, (2 Bos. & Pull, 196,) Sir James Mansfield, speaking of this case, says, "I should have great difficulty in agreeing with the doctrine imputed to the Court of King's Bench, that the statute of 12 Geo. 1, is merely directory. I cannot help entertaining great doubts respecting the dictum. The sheriff must see by the writ whether it be endorsed or not; and I cannot think he could justify an arrest without it. But this was merely a dictum, and not necessary to the opinion of the Court."

In *Hill* vs. *Heale*, (2 Bos & Pull, 196, N. S.,) the question arose under the bankrupt act, 5th Geo. 2 cap. 30. sec. 23. The act provides that no commission shall issue upon the petition of any creditor "unless the single debt of such creditor shall amount to £100 or upwards, or unless the debt of two or more creditors shall amount to £150 or upwards, or unless the debt of three or more creditors so petitioning, shall amount to £200 or upwards. Then the statute proceeded that the creditor or creditors petitioning for such commission, shall make affidavit of the reality of the debt or debts. This direction is not introduced by the word *unless*, but by the word *and*. In an action by the assignee of a bankrupt, the trading and act of bankruptcy was established, *and also debts due* to the petitioning creditors, who were four in number, to the amount of above £200. But in defence the affidavits were produced, in which the petitioners swear respectively; one to a debt of £50 and upwards, another to the same sum and upwards, a third in £60 and upwards, and the fourth £39 and upwards; thus making £199 expressly sworn to; and it was insisted that the commission was void. But it was held that the existence of the debts was a condition precedent, while the provision as to the affidavit was only to regulate the conduct of the Chancellor in issuing the commission. It was irregularly issued, and on that account an application to the great seal could have been made, but it did not render the commission void. The requisition as to the affidavits was but by way of caution, to prevent commissions being hastily issued.

In *Exparte Sneyds & The Bank of Ireland*, (1 Molleys, 261,) it was decided that a Corporation might become a petitioner for a commission in bankruptcy, and that the bond might be given by the petitioner, an officer of the company, but the affidavit be made by another officer.

The statute in force in Ireland is the same as that upon which *Hill* vs. *Heale* was decided. The Lord Chancellor adverted to the impossibility of a Corporation doing some of the things required by the act, such as making the affidavits, and yet that did not prevent them suing out the commission. That the case of Hill vs. Heale was an authority in point, there being a difference between the clauses; one being indispensable, and the other merely formal, which the Chancellor might correct if important. He held the irregularity here unimportant.

I look upon these two cases as plainly illustrating one of the distinctions I have taken. The Statute itself, by the change of its phraseology, in the same section, with respect to two matters, pointed out that the irregularity was not to be fatal, but was the proper subject of correction by the Chancellor.

In *McCall* vs. *The Byram Co.*, (1 Conn. Rep. 428,) the general rule was recognised, that an officer elected for a year, continues in office until another is elected in his place. That the time prescribed for such an election is generally not imperative, but directory, except where there is the expression or implication of a negative.

In the *People* vs. *Runkle*, (9 John. Rep. 156,) it was held that where a Statute directed that one third of the Trustees should be elected annually, and that the election should be at least six days before the vacancies should happen; an election on a moveable holiday was valid, though not a day certain, and it might happen

that the election would not be six days before the vacancy.

In the case of *Wicks* vs. *the town of Lancaster*, (1 Rolls. ab. 512,) was cited, deciding that where an election was to be held within eight days after death or removal, yet an election afterwards was good, for the power of election was incident to the Corporation; and the affirmative power to elect within eight days did not take away the implied power. So a case from Strange (625) is cited with approbation, that though certain Aldermen were to be annually chosen, the words were only directory, and the Aldermen held over. But the distinction was noticed where the Statute was, that the officers should hold for one year only, or the election should be on such a day annually. It was doubted whether, under the peremptory word employed, the one third of the Trustees could hold over. The ground, however, of the decision was, that the two thirds remaining, the Corporation was not dissolved.

The two cases last cited, *McCall* vs. *The Byram Co.*, and *The People* vs. *Runkle*, obviously rest upon one of the principles I have stated; that the Statute itself fairly admitted the construction that the act, or the mode of doing the act was not prescribed as imperative. The appointment in a Statute of the day of election is presumed to be subject to the known law of holding over, and there must be express words to make the case an exception.

In *The People* vs. *Allen*, (1 Wendell, 489,) the act regulating the militia directed that the commanding officer should, on or before the 4th of June in every year, appoint a brigade court martial. A court martial was not appointed until July, and the defendent was then fined an amount which the suit was to recover. The general rule was held to be, that where the Statute prescribes a time for doing any official act, regarding the rights and duties of others, it was *directory* only, unless the contrary was to be gathered from the Statute. The court rely upon *Jackson* vs. *Hooker*, (5 Cowen,) and *Pond* vs. *Negus*, (3 Mass 230.) The Chief Justice observes, "There was nothing in the nature of the power showing that it might not be as effectually exercised after the 1st of June as before; there was no prohibition to exercise it after that period, and the naming the day was a mere direction to the officer. There is nothing in the nature of the power given, or in the manner of giving it, that justifies the inference that the time was mentioned as a limitation."

Test the present case by this principle of the learned Judge. Is there nothing in the direction in question, and nothing in the manner of presenting it, that leads to the inference that it was meant as a limitation? It is too clear for discussion, that it was introduced, canvassed, modified and enacted for that purpose—and that alone.

In the case of *Johnson* vs. *Hooker*, (5 Cowen, 269,) the court held, that a purchaser at a Sheriff's sale who had got his deed, was not to be defeated by the omission of the Sheriff to file a certificate of the sale as prescribed by the Statute. The judgment debtor himself appears to have set up the objection. It is plain, from the Statute, that the intention was to give an opportunity to his creditors, more than himself, to redeem, and to ensure the facility of information to them. He must be presumed cognizant of the proceedings. I apprehend the case would have been different if a creditor, a mortgagee for instance, had got into possession. The answer to the case is, that it may justly be inferred the judgment debtor was not the object of the protection given by the section.

In the case in Massachusetts, (*Pond* vs. *Negus*, Mass. Rep. 230,) assessors were directed to assess a tax for building a school house, within thirty days after a certificate of a Clerk that a vote for the purpose had been passed, was delivered. An assessment was made for such a purpose after the expiration of the thirty days from the reception of that certificate. It was held valid. The Chief Justice said: "Although the assessors are directed to assess the tax within thirty days after the certificate, yet there are no negative words restraining them from making the assessment afterwards, and accidents might happen which would defeat the authority, if it could not be exercised after the expiration of thirty days. The naming of the time must, therefore, be considered as directory to the assessors, and not as a limitation of their power."

Thus it could be gathered from the statute itself, (as the law-makers may have foreseen the possibility that the direction could not be literally fulfilled,) that they meant it as a mere regulation in matter of form, not essential to the imposition.

No case can more fully illustrate this distinction than that of *The King* vs. *The Inhabitants of Birmingham*, (8 B. & Cresswell, 29.) The consent to the marriage of parties under a certain age, was required to be given by certain persons. The language of the section is explicit. But other sections declared the marriage void where certain other provisions of the Statute were not regarded. The want of consent was not among them. Thus the Statute itself exhibited what was meant for the officiating clergyman to require, and what rendered the marriage illegal.

And the case of *The King* vs. *The Justices of Leicester*, (7 Bard Cress. 11,) proceeds upon the distinction that the power to fix the time for holding courts belonged to the Sessions, and an act directing the court to be held at specific times was affirmative and not exclusive.

I have gone through all the important cases cited on the part of the defendants to this point, or which I have discovered. They fall far short of establishing that the provision in question was one that could be neglected without rendering the proceedings illegal. They are all distinguishable upon one or other of the grounds I have mentioned. They arise where there is an implication of a power, and the Statute has not expressly abridged it; where there is just reason for the construction that the Legislature did not mean an imperative rule; or where that body itself, which sets up the omission, was chargeable with the performance. There are, however, a few very important decisions yet to be noticed.

And first, there is the case of *Thurston* vs. *Little*, (3 Mass. 430,) decided by the Supreme Court within two months after its decision of *Pond* vs. *Negus*. A Statute had directed that assessors of taxes were to make a list for invoice and valuation of the property upon which the taxes were to be imposed, and to keep the same in a book for inspection. The amount of tax was stated in such a book without a list of the items and proportions of the tax. It was held void, and judgment given for the defendant who was sued for his tax. The case deserves attention, for it was urged that the defect arose from the party's own act, who was directed by Statute to deliver a list of his taxable estate; that the uniform practice of the town was here pursued; that the law was merely directory to the officers; that a decision against the custom would throw the Commonwealth into confusion.

In *Gilbert* vs. *The Col. Turnpike Co.* (3 John. Co. 107,) an inquisition was quashed for not showing on its face a disagreement between the company and the owner of the land taken, and that the judge who appointed the appraisers was not interested; all which was required by the act to give jurisdiction. The Court say "that this was the case of a special power granted by Statute and affecting the property of individuals, which ought to be strictly pursued, and appear on the face of the proceedings to have been pursued. This was an established rule, and especially to be maintained in cases which so materially interfered with private rights."

In *Van Wikle* vs. *The Rail R. Co.*, (2 Green's N. J. Rep., 125,) the statute authorizing lands to be taken, directed notice to be given in a specified manner. The order stated that the commissioners had proceeded upon proof of *due notice* having been given. It was held insufficient. The power was delegated to persons to take away private property without consent, and must be, and appear to be strictly pursued.

In *Parker* vs. *Rules Lessees*, (9 Cranch, 64,) the question arose upon an ejectment between a purchaser under a sale of land for taxes and the former owner. The case involves the examination of various sections of the act of Congress of July, 1798, (See Story's Laws, vol. i., p. 519,) and is a strong case to show the necessity of pursuing rigorously the directions of a statute which authorizes the sale of property for taxes. It was admitted, says the Chief Justice, that if the preliminary requisites of the law have not been complied with, the collector could have no authority to sell, and the conveyance can pass no title. The advertisements prescribed in some sections were held to be essential before the sale could be made.

In *Williams* vs. *Peyton Lessee*, (4 Wheaton, 77,) the same doctrine was declared, and the marshal's deed was held not even *prima facie* evidence that the prerequisites required by law had been complied with.

It should be noticed that in the statute there is nothing but the ordinary directing words, not a clause avoiding the sale, if the provisions are not complied with.

We must also look at the great distinction prevailing in the books between the case of a company defending itself against a meritorious claim upon the ground of irregularity in its own proceedings, and that company seeking to enforce a demand, the existence and legality of which depends upon the due exercise of its powers. Of the former class are the cases of *Clarke* vs. *The Imperial Gas Company*, (4 Bar & Adol, 315,) *Marshall* vs. *The Corporation of Queensborough*, (1 S. & St. 519,) and *The Queen* vs. *The Trustees of Swansea*, (Reports of cases, &c., 1 Jurist Ed., N. York, p. 126.) The argument of Sir W. Follett in the latter case, contains the true principle well expressed, and is adopted by Chief Justice *Denman*.

"With respect to the cases that have been cited, there is one simple answer to them all, that they were cases of a party setting up a particular claim of right or exercising a particular jurisdiction, of which on its being complained of by another party, the strictest proof has been required. But in the present case the Trustees put the act of Parliament in motion, and now turn round and refuse the payment on account of some alleged informality." Lord Denman said, "It appears that the Trustees are the persons to set the law in motion under this act, and consequently they ought not to be allowed to take the advantage of objections of this nature. I am not prepared to say the proceedings are not sufficiently set out."

The case was this. By an act of Parliament power was given to the Trustees to purchase certain lands of T. and S. Benson for the purposes of the charter, and all questions were to be submitted to a jury. The order recited the summons to the jury, the attendance before them of counsel of the Trustees and of Benson, their verdict in a certain sum, and proceeded to award and adjudge the payment. The objection taken was that it did not appear on the face of the order, that a difference had existed, in which case alone the jury could be summoned. The answer of Sir W. Follett was this: As the jury could only have jurisdiction in such a case, the existence of a difference must be intended. Justice Littledale adopted this in substance.

Now what can be more striking than the comparison of this case with that of *Gilbert* vs. *The Turnpike Co.* before cited. The identical objection that the disagreement did not appear on the record, was taken in each case. In the one it was sustained because the Corporation was proceeding against the owner to enforce the order; in the other it was disallowed, because the Corporation sought to profit by the irregularity, See also *Green* vs. *Kleinhans*, (3 Greens, N. J. Rep. 476.)

And lastly, a glance at other portions of the statute of 1830 will show the extreme danger of tampering with words so express as these. The direction to meet in separate chambers is part of the same section, made in the same form of words, no more prohibitory than the clause in question, of any other manner of exercising power. No one has yet dreamed that an ordinance passed by the boards assembled together would be valid. I know of no right and of no reason to believe that the convention looked upon this security to the public for wise deliberation, as of more importance than upon the provision in question, as a safeguard for the citizens' property. And the necessity of obeying those mandates of the statute, before an assessment for a public improvement can be lawfully made, is established, in my judgment, upon such an immovable foundation that no ability can overthrow or even shake it.

2. There is one question peculiar to the case of the sewers, and the paving and regulating the 9th avenue and 31st and some other streets. It is insisted that the assessment and resolution confirming it are void, because an estimate was not made until the work was completed. The contract price was then taken, with the expenses, and the amount assessed upon the adjoining owners.

The facts are these in the case of regulating 8th street, from avenue B to avenue D, which will be a sufficient example of the course of proceedings. The ordinance is dated the 10th of October, 1835, directing that 8th street be filled and regulated, and appointing assessors to *make an estimate of the expense of conforming to the provisions of this ordinance*, and to make an equitable assessment thereof among the owners intended to be benefited thereby. A contract was entered into to do the work, and it was finished before August, 1838. In that month, the assessors make their estimate and assessment, in which they take the contract price, $6,273, and add certain expenses, and then proceed to assess the benefit upon the parties, according to their opinion of the benefit to accrue.

The frame of the 175th and 176th sections of the act

It is inserted that the complainants have a clear and adequate remedy at law.

First, that upon a *certiorari*, the illegality of these proceedings may be adjudged, and the parties relieved.

The answers to this are very decisive. It appears to me in the first place, that the great question as to the call of the ayes and noes and the publication, cannot be brought up in this manner in a case *of the opening or widening a street*; at least the point is exceedingly doubtful.

The statute provides that when the Mayor, &c., shall be desirous of opening a street, and shall deem the opening thereof necessary and useful, they may cause the same to be opened, that is, by application to the Supreme Court as directed. This is the phraseology as to streets laid down on the map of 1807.

Much argument has been used as to the nature of this power. It is to be observed that after passing a resolution for making this application to the Supreme Court, the Common Council have no authority over the proceedings. Their whole office is at an end, except that they may discontinue the proceedings at their will. (Act of 1859, sec. 7.) And except that upon the confirmation of the report they become vested with the street in trust, and are bound to pay the damages. It appears to me that the action of that body in such case is scarcely to be termed legislative. It is, in truth, not the creation of a new rule of action, but a mere ministerial representation that the case has occurred in which a statute should be applied.

It is still more clear that it is not a judicial act. The exercise of the judgment of the Corporation in determining the necessity or utility of the measure, does not render it so. The true test whether the act is judicial or *quasi judicial*, is whether a *certiorari* would lie to take up the proceedings. I apprehend that the writ could not be had to take up the initiative resolution of the Common Council and the petition.

In none of the English cases cited is there a trace of this writ upon the preparatory proceedings. It is after the verdict and the judgment of the proper tribunal upon the verdict. (See the cases from Cowper.)

And the case of *Parker* vs. *The Mayor &c. of Boston*, (8 Pickering, 218,) so much dwelt upon, confirms this view. The first resolution was a declaration merely that public convenience required that Doane street should be widened, and a reference to a committee as to the expense. After an intermediate resolution, not important here, a resolution was passed that the public safety and convenience required the opening, *and the same is* hereby widened and laid out in manner following; (then describing the courses and measurement,) and notice to be given, &c. The petition was for a *certiorari*, and these proceedings were brought up, and held a judicial act, and as such the fit subject of the writ. In this case also the court said that if the legislature should provide for the expense being borne by the abutters on the line, it would be valid, and not contrary to the tenth article of their bill of rights.

Again, in *Bogart* vs. The *Mayor, &c. of New York*, (7 Cowen, 158,) it was decided that the writ goes to the justices of the supreme court sitting as commissioners, not to the corporation of the city. See also *Livingston* vs. The *Mayor, &c.* 8 Wendell, 87.

In The *State* vs. The *Morris Canal Company*, (2 Green's Rep. 428,) often my guide in this investigation, it was held that the writ could only go to the officer in whose custody the record was in law presumed to be; and the statute having directed that the proceedings should be filed in a particular office, within a certain time, it was to go to the clerk of that office.

The writ then going to the justices of the supreme court after confirmation of the report, would carry, up all that was in their custody, and nothing more, viz. the petition, rule for appointing commissioners, report, and rule of confirmation. The writ is here a common law writ, and the court will look only into the record and proceedings returned. It must find error in these. It has been of late the tendency of our courts to hold that they will enter upon nothing but the question of jurisdiction. *Allyn* vs. The *Commissioners of Highways*, (19 Wendell, 312.) *Prindle* vs. *Anderson*, (10 *ibid.* 174.) *Nicholls* vs. *Williams*, (8 Cowen, 13.) *Wolfe* vs. *Horton*, (3 Caines, 86.) *Birdsall* vs. *Phillips*, (17 Wendell, 464.) If the return is defective, diminution may be alleged, and a new writ be issued; but when the full record is obtained, the court cannot travel out of it. (*Commonwealth* vs. *New Milford*, 4 Mass. 446. *Wood* vs. *Talman*, 1 Cox N. J. Ca. 153.) It appears to me, then, that in no possible way could the minutes of the clerk of either board be carried up upon such a proceeding, relative to a street. Any application for the writ to the corporation would be denied.

Then suppose that the affidavits laid before the judges on the application to confirm could be taken up, (which is doubtful, See 20 Wendell, 104,) and suppose that they established the omission to call the ayes and noes, or to publish, could the supreme court enter upon the question? A plain reason against it seems to be, that it could not adjudge error to have been committed in a point which the justices below could not legally consider. It is the decision below, on what could be and has been there decided, which is the subject of revision; nothing more: and hence the only remaining question would be, whether upon the record as it appeared in the supreme court, the presumption would be that what was legally required to be done preliminarily had been done, the record not contradicting it; or whether the preliminary proceeding should appear upon the record, and if it did not appear, must be inferred to have been omitted. There is a large body of cases in which the legal presumption is made that the necessary preliminary steps have been taken to support an act, where the record does not show the contrary. (See 1 Phillips, 469, and notes.) It is, however, said that this rule does not apply in cases of questions as to acts of inferior courts and judicial proceedings by magistrates, so as to confer jurisdiction. (*Rex* vs. *Inhabitants of All Saints*, 7 Barn & Cress, 79. *Rex* vs. *Hilling*, 1 Str. 7. *Rex* vs. *Hulet*, 6 T. R. 583. *Rex* vs. *Liverpool*, Burr, 2544. *Snediker* vs. *Quick*, 1 Green's N. J. Rep. 308. See also the numerous cases recited by Justice Cowen in his notes to Phillips, vol. iii. p. 1013. Ibid. vol. ii. p. 304.)

I do not deem it necessary to pursue this branch of the case minutely. My impression is, that as the jurisdiction is admittedly in the corporation by former statutes or the charters, and as this is a provision as to the mode of exercising it, the presumption *omnia rite acta* would be made. (See *Voorhies* vs. *Bank U. S.*, 10 Peters 471. *Case of the Schuylkill Falls Road*, 2 Binney, 254.

This view, however, does not apply to the case of sewers, or paving and regulating streets. There the whole proceeding, from the beginning to the end, is before the Common Council. A certiorari could, I presume, be so followed up as to compel the production of the clerk's minutes upon the vote on passing the resolution; and then the argument of Mr. Cowdrey possesses great force. As it would certainly appear that the calling of the ayes and noes was not entered on the record, the inference would be that it was not done. Thus the question would be fairly presented. As I understand the act of 1830, it probably would be necessary to pursue its provisions by the call and publication, first when the resolution is passed for doing the work and appointing the assessors, and next when their report is confirmed.

The course of proceeding under the ordinances will illustrate this question. The application is usually made by petition, for the building of a sewer, for example. The petition is referred, as a matter of course, to a committee. The street commissioner under an ordinance advertises that such an application has been made, and that objections may be handed in to him by a specified day. If there are objections, they are submitted to the committee, who examine them, and usually hear the objectors. If they report in favor of the application, the street commissioner prepares an ordinance. Objections may, through a member, be urged upon the board before which it depends. It then passes or is rejected. If it passes, it goes to the other board; and if it is there passed, the Mayor approves it. Thus, from the beginning to the end, there is no notice provided for but that general one to all persons that the improvement is in consideration.

The resolution of reference merely, of course, does not require the act to be complied with; and it would perhaps be convenient to pursue its directions but once. But such is not the statute; and I take it to be clear that until the confirmation of the assessment by the Common Council, a *certiorari* would not lie. There would, in fact, be no one aggrieved, for no one would know of his being assessed until it was made, and none actually assessed until it was confirmed.

But next, while these considerations show at least doubtfulness as to this remedy, other objections are insuperable.

The application of this writ is addressed in these cases to the discretion of the Court. It may be refused on grounds of public expediency. It is never granted as of course, except upon the application of the people through the Attorney General; and if refused, there is

no redress by writ of error to a higher tribunal. (*Rex* vs. *Bos*, 5 T. R. 252.—*Comstock* vs. *Porter*.—5 Wendell, 97.—*Lee* vs *Child*, 17.—Mass. Rep.—*Monroe* vs. *Baker*.—6 Cowen, 396.—*Lynde* vs. *Noble*, 20.—John. Rep. 84.—*Commonwealth* vs. *Peters*, 2.—Mass. Rep. 125.—*The State* vs. *Woodward*, 4.—Halst. N. J. R. 21. —*Elmendorf* vs. *The Mayor & Sup. Court*, Feb. 1841.)

In the last cited case, the discretion was considered so absolute, that the Court would not allow the writ after the lapse of two years, although there is no statute of limitations in the matter; but it was judged inexpedient to grant it. See also *Trigg* vs. *Boyce*, 2 Hayw. N. C. Rep. 280.

Again—this remedy may be adopted although an action will lie, where the tribunal proceeds without jurisdiction. (6 Wendell, 564.) The converse of the proposition is equally true. The power to resort to a *certiorari* does not prevent any other legal remedy; and the great doctrine which counsel has so strongly urged, that the objections to the proceedings of this body, treating them as *quasi* judicial, must be made by a direct appeal from the decision, is applicable only to a judgment between parties directly. See the leading case of *Voorhees* vs. *Bank of U. States*, (10 Peters, 470.) It has never yet been applied to such summary proceedings, conducted without notice to any one who may be made liable, except the general notice in case of sewers, &c., by publication of the Street Commissioner, and in the case of streets the publication of the notice of the filing and intended confirmation of the report. The individuals assessed are not parties to a single step in one case or the other. In the case of streets, they become bound by the published notice to make objections of one class, viz., as to the amount or principle of the assessment. They can do no more. It would be iniquitous to hold that this confirmation of the report shuts them out from everything else. In the case of sewers, &c., they have no chance of being parties, except if one should deem it probable he will be assessed, he may object before the committee to the work, or to the assessment before the Board.

There is another consideration upon the effect of a *certiorari*. If it is sustained, the judgment acts as an absolute reversal of the proceedings, quashing the record. (*Baldwin* vs. *Calkins*, 10 Wendell, 167.) Hence all the proceedings are void; and hence money voluntarily paid by those who have been assessed, may be recovered back. This effect is stated by the Chief Justice in *Elmendorf* vs. *The Mayor*, &c. I do not understand, however, that without a reversal upon certiorari, an action for money had and received would lie for such assessments paid. The result upon a judgment on certiorari arises from the same principle as sustains an action for money paid under a judgment subsequently reversed. *Clarke* vs. *Pinney* (6 Cowen, 297—*Green* vs. *Stone*, (1 Harr & John, 405)—*Feltham* vs. *Tenny*, Loft. 207.) But I apprehend this is not the rule, if the proceedings stand unaffected by a reversal on certiorari. The action for money had and received lies where the defendant has in his hands money which *ex equo et bono* belongs to the plaintiffs, (C. J. Savage, 6 Cowen, 297.) It lies for money paid upon a consideration which fails, or if obtained by imposition or oppression. It lies if paid upon a mistake; but that mistake must be a mistake of fact, not of law. (*Mowvartt* vs. *Wright*, 1 Wendell, 360.)

In *Knibbs* vs. *Hall*, (1 Esp. 84,) where defendant claimed that his rent was 20 guineas, and the landlord threatening to distrain, the defendant paid the demand, 25 guineas, and attempted to set off the excess in a subsequent action against him. Lord Kenyon held, that this could not be deemed a payment by compulsion, as the defendant, by replevin, could have defended himself.

This case is recognized in *Hall* vs. *Schultz*, (4 John. Rep. 245,) and appears to be sustained in *Mowatt* vs. *Wright*, 1 Wendell, 361.

In *Dillingham* vs. *Swan*, (5 Mass. Rep. 557,) Ch. Justice Parsons, upon the question of the legality of an assessment, said: "If the objection prevail, the conclusion is that the whole assessment and the warrant issued to collect it are illegal; and the collector is not obliged to obey his warrant, or to collect the tax of any person assessed; but if he do he may not be a tresspasser, and he may receive of any person his tax, for *volentia non fit injuria*." And see *Humbtett* vs. *Richardson*, (9 Bingham, 644,). The Chief Justice, in the case of Elmendorf, states his impression, that upon a reversal on *certiorari* new proceedings may be instituted. This was in the case of a sewer. And with respect to sewers and the regulation &c. of streets, it is a most important question whether the Common Council could not now, by a resolution, set aside what has been done, and direct a new assessment. If the view taken of the right to make the work before assessing is correct, I should have little doubt of the existence of this power. In the case of *Cummings* vs. *The Mayor of Brooklyn*, I considered that an authority existed to correct an assessment after confirmation, by the appointment of new assessors, making a new assessment, or correcting the former by inserting definite boundaries. The statute under which the Corporation of Brooklyn acts, does not differ much from that relating to the city of New York. See also *Pond* vs. *Negus*, 3 Mass. 230.

But an examination of the statutes, especially that relative to streets, will show how great embarrassment and difficulty must arise in carrying out a new assessment.

The pressure, however, of such views must be felt where an application is made to the discretion of the court for a *certiorari*. The Court will necessarily look to the fact that such consequences will ensue if the writ is sustained; and that if it is not sustained, the questions are all left open for adjudication in suits with individuals who resist the claim.

The other remedies then, whatever they may be, and the right of resistance to any action to enforce the proceedings, are not forbidden to the party by a neglect to sue out a *certiorari*. What are those modes of redress?

They consist of an action of trespass, a defence to a suit by the Corporation, or to an action of ejectment by the purchaser at the Corporation sale, or to bring such an action if the purchaser gets possession. As to the action of trespass, it might arise if a distress warrant was sought to be enforced, and an entry made to seize any goods. With respect to this suit, I deem it of some moment that it appears to be the law that such an action will not lie against the officer if his warrant is on its face regular, though it would lie against those by whose authority it issued, under the 186th section. See *Saracool* vs. *Boughton*, 5 Wendell, 179, and the mass of cases examined by Justice Cowen, 3 Philips on Er. 1006, 1009—also, 3 Adol. & Ellis, 433.

The action of replevin will not lie in this case, it being one of the statutory exceptions. (2 R. S. 522, § 4—7 Wendell, 453.)

The action of debt or assumpsit which is given by the 186th section of the act, would test all these questions fully in one suit between the two parties. And the same observation applies to the action of trespass. A resort, however, to either of these actions by the Corporation is, I believe, never had, at least since the year 1823, where the assessment is a lien on real estate. By that act the assessment for every improvement became a lien on the property, and the course of selling as prescribed by the act of 1816 for the collection of assessments, was sanctioned. Under that, the collector makes an affidavit of two demands for payment, or that the owner cannot be found in the city. The notice of sale is then published.

In the cases before me, this course has been pursued. The Corporation has given no opportunity to the complainants to try these questions at law, in an action of trespass upon their warrant of distress, or in an action of debt or assumpsit. In both cases a large number of lots are advertised for sale. In general each lot is separately assessed. Each lot so assessed, must be separately sold. There may be a purchaser for each.

I am well satisfied, from all the cases cited, that the owner could set up the various objections noticed in an action of ejectment. See *Parker* vs. *Rubes, Lessee*, 9 Cranch 64. *Williams* vs. *Peyton, Lessee*, (4 Wheaton 177.) Cases of Cowen's Philips on Ev. p. 1289. But the question is, whether there is not power to do that which equity clearly dictates, to prevent a *bona fide* but deceived purchaser intervening, and settling the matter between the parties themselves.

It must strike every man of common sense, that it is immeasurably more just that the legality of these proceedings should be tried in a suit where those alleged to have committed the illegality are a party. It must be felt by all that the situation of a purchaser sways somewhat every question of this nature. But above all, if the action of the party charged with the illegal proceeding and seeking to enforce it, has precluded any mode of trying the question at law between himself and the party aggrieved, when it was entirely in his power to have done it, it does seem the clearest dictate of equity that this court should compel him to such a trial.

And this seems to me the principle which will apply to every case; which will distinguish those where jurisdiction has been refused, and support those in which it has been exercised.

For example, let the cases before Chancellor Kent be examined. *Le Roy* vs. *The Corporation*, (4 Johnson's Rep. 352,) only settled the rule that no bill would lie in this court to rectify an assessment made by commissioners.

Jerome vs. *Ross*, (7 John. Ch. Rep. 315,) established, that where the action of trespass would lie and the mischief was not irreparable, or the property peculiar, this court could not be applied to for an injunction. And it is strongly put by the Chancellor, that he will not suppose that after trial and recovery, there would be repeated trespasses, when the damages could be made exemplary.

The cases which have followed up this doctrine as to trespass, were all cases in which the right could thus be fully tried between the parties. (*Hart* vs. The *Mayor, &c. of Albany*, 3 Paige, 214, 9 Wendell, 579.) So in the instances in which Chancellor Kent granted injunctions (2 John C. R 162. Ibid. 463,) upon the ground of irreparable mischief, for which trespass could not afford a remedy, the case was the same.

So in the late case before the Chancellor, (*Wiggins* vs. The *Mayor, &c.*, Feb. 1841,) the property had not been advertised for sale. The bill was by the owner of several houses and lots on which an assessment had been laid. It stated the proceedings, and alleged that the Corporation were threatening to proceed to raise the money by sale, *or to collect it personally against the complainant*; and the injunction prayed was, that they might be restrained from advertising, or selling, or taking any measures, by suit at law or otherwise, for collecting the amount. I must again remark that the Corporation have the clear right to sue in debt or assumpsit, or to distrain, if they think proper to pursue such a course.

And although in the opinion of the Chancellor it is intimated that the seventh section is directory only, it is not the point upon which the motion for an injunction was denied. The illegality being triable at law between those parties to the bill, is, I apprehend, the ground of the decision.

On the other side, let the two leading cases before Chancellor Walworth be attentively considered. (*Oakley* vs. The *Trustees of Williamsburgh*, 6 Paige, 264, and *Merserole* vs. The *Mayor, &c. of Brooklyn*, MS.) In the former the Trustees of Williamsburgh were authorized by charter to establish the level of certain streets. It was held that upon the true construction of the act, they had exhausted their power after they had once settled the grades, and filed their proceedings as prescribed. They afterwards proceeded to vary the grade of one of such streets. The complainant was the owner of lots which were to be cut down under the new grading, and he owned other lots which would be assessed for that new work. The bill stated that the carrying on the work as prescribed would expose the complainants to heavy assessments, that it would sink the level of the street six feet below the one before settled, and would irreparably injure them. The injunction ultimately granted was to restrain them from digging down the street or altering the grade. The Chancellor said, "The assessments upon the lots for the expenses of the proceedings to alter the gradations of the streets, although they might be so far void as not to affect their legal title to the land, would of themselves be a cloud upon the title, which must necessarily diminish the value of it, if not entirely prevent the sale of the land as village building lots. And as this court sometimes exercises its jurisdiction for the purpose of removing a cloud from the complainant's title to real estate, it may also in a proper case interpose its authority to prevent the illegal act from which such a cloud must necessarily arise."

So in *Merserole* vs. The *Mayor, &c. of Brooklyn*, (June, 1840, MS.) A statute had appointed certain commissioners to lay out streets and avenues in the city of Brooklyn in the new wards. It was held that this power was paramount to that of the city authorities, who had, in general, control in the premises. They had, however, directed the opening of a street; and the commissioners appointed had made an estimate and assessment of benefit, charging, among others, the plaintiff's lots to a large amount. The bill stated other grounds, but this is the one on which the Chancellor proceeded. The bill prayed an injunction restraining the collection of the assessments, and that the property might be decreed to be discharged from them. The Chancellor said the Vice-Chancellor was right in

a chief point in the case. It was decided upon the ground, however, that there was evidence of a fraudulent collusion between the judgment debtor and purchaser prior to the expiration of the ten years, to defeat the judgment. But the Chancellor, after noticing that the party was probably too late in taking the objection at the hearing, said, "As the defendant persisted in her intention of selling the farm upon the execution, notwithstanding the remonstrance of the complainant, I think the objection could not have been sustained even if it had been made in time. The jurisdiction of the court to set aside instruments which are a cloud upon the title, seems now fully established. And if the court would have jurisdiction to set aside a sheriff's deed given on a sale as forming an improper cloud on the title, it seems to follow as a necessary consequence, that it may interpose its aid to prevent such a shade being cast upon the title, when the defendant evinces his determination to proceed to a sale." The defendant was the administratrix of the judgment creditor, and had revived the judgment. He therefore was seeking to enforce what but for the fraud was a spent judgment, and where the defence at law could be perfect.

The cases of negotiating a transfer of negotiable instruments are common, but they stand on a peculiar principle. *In Curtis* vs. *Marquis of Buckingham*, (3 V. and Bea, 108,) where a parole agreement for an exchange had partly been performed, a sale was restrained by injunction.

It may be observed these suits were commenced in June, 1840. The cases have been prepared with every fact and every document which could aid the decision; not one withheld, and not one omitted. It is also a case with which a jury can have nothing to do. It is a mere question of law.

But while I am satisfied there is a clear ground for the interference of this court, the extent of that interference, and the conditions upon which it will be granted, are points of moment.

The questions in these cases are of a strictly legal character, all the fitting subjects of a trial at law, and which could have been properly tried there if the defendants had taken another mode of collecting the money. Now the methods which the English court has adopted of disposing of pure legal questions which arise before it have been various. In former times some of the judges were called in, and heard the argument, in order to aid the Lord Chancellor with advice. Still their opinions were merely advisory; and we accordingly find that in the great case of perpetuities, (3 Ca. in Ch. 1,) the decision of Lord Nottingham was in opposition to the views of the judges who sat with him. Subsequently the course has been to send a case to a court of law for its opinion. The principle of this court is thus stated by Lord Langdale in a late case of great importance. "The question raised is a purely legal question, which, considering the important consequences involved in its decision, cannot be satisfactorily determined without the aid of the opinion of a court of law. Where the circumstances were such as to require the interference of a court of equity without delay, the court would itself decide a question of legal right for the purpose of granting an injunction." The necessity not being pressing, the case was sent to the Common Pleas, and the opinion being obtained, the motion for an injunction was renewed and prevailed. (*Bank of England* vs. *Anderson*, 2 Keen, 362.)

In New Jersey the Chancellor may call in the judges to aid him in hearing a case. But in our state this practice, either by calling upon the judges, or making a case, has not prevailed; and perhaps the fact that the judges of the Supreme Court as members of the Court of Errors, may be called upon to review the decision of the Chancellor, forms a sufficient reason against it.

Another mode, however, of ascertaining the judgment of a court of law upon a purely legal point is by retaining the bill with liberty to bring an action which will test it. The whole doctrine of the court on this head may be thus summed up. That wherever there is a pure legal right in question, but some circumstances exist, especially if growing out of the conduct of the defendant, which raise an equity for this court's interference, and may warrant in the end a perpetual injunction, it will retain the bill, giving an opportunity to try the matter at law; and it will grant or refuse an *interim* injunction according to the nature of the case.

In *Motly* vs. *Dowman*, (3 Mylne & Craig, 1,) Lord Cottingham thus expresses himself: "The court, when it interferes in cases pf this sort, is exercising a jurisdiction over legal rights, and although sometimes in a very strong case it interferes in the first instance by injunction, yet, in a general way, it puts the party upon asserting his right by trying it in an action at law. The court is only acting in aid of, and is only auxiliary to the legal right." The order for an injunction granted by the Vice Chancellor was discharged, with liberty to the plaintiff to bring an action, the defendants not to be prejudiced in the interim, and both parties were at liberty to apply. The Lord Chancellor thought the question on the merits one of considerable nicety.

In the case of *Duval* vs. *Waters*, (1 Bland's Rep. 585,) the Chancellor makes the following judicious observations. "If the plaintiff's bill is denied, and he acquiesces in the denial by refusing to bring an action at law to have it authenticated and sustained, he can have no ground of relief in this court, founded on a claim which he shrinks from having judicially investigated, or put in a course of being legally established."

In the causes before me, the plaintiff has it not in his power to try the case at law. The defendants have the power by a single action of debt or assumpsit. Thus will ample justice be done to all in a legal tribunal between the immediate parties without the intervention of a purchaser, and avoiding perhaps a vast number of suits.

There is, however, one great principle of the court which perhaps must be applied in these cases. It is a maxim that he who seeks equity must do equity. This is frequently applied to usurious agreements. A more pointed example, however, is the jurisdiction exercised upon annuity grants. The English statutes require certain provisions to be observed without which an annuity is void—such as the registration of a memorial, and the insertion of a redemption clause. Yet relief is given against such instruments only upon payment of what has been advanced in purchasing the annuity. *Holbrook* vs. *Sharkey*, 19 Vesey, 131, Exparte Shaw, 5 Vesey, 620.

I have reflected upon this subject, but come to no conclusion, because it has not been argued at all before me, although one of the Counsel slightly glanced at it.—It is too important to justify me in passing upon it without hearing the parties. The defendants have a right to say that if the court finds any ground for interference, it should only put the case in the way of a proper decision at law upon the legal questions; protecting the complainants from the vexation of many suits or risk, by the intervention of purchasers. That they have a right to try the questions at law, although upon such terms as the court will prescribe to secure justice. But they are not compelled to do this. Clearly there could be no justice in allowing them to take the chance at law, and then, if defeated, that the relief here should be only upon terms. If the assessment is adjudged void in an action of law, the decree must set it aside absolutely, as an injurious blemish on the title to real estate.

But the nicer question remains, if they will not proceed at law—is this court to decree relief absolutely by adjudging the assessment void and a perpetual injunction, or upon terms of doing what shall be considered justice; and if the latter, what does equity require and how shall it be ascertained?

These points it is proper should be argued by counsel if they desire it, and it may be done on the settlement of the decree. I shall make some suggestions merely, which may aid counsel upon the subject.

Whether it is to be assumed that in general some benefit has accrued to the parties by these improvements. Whether such amount of benefit as a jury should find truly received should not be paid. The assessments already made, being in pursuance of illegal ordinances, are of no moment.

Again—can the expenses be charged? This must be considered in relation to the cases of paving and regulating streets, and making sewers, and the opening streets separately. Under the statute regulating the streets in Albany, it was held that the costs and expenses could not be included in the assessment. (*Canal Bank* vs. *The Mayor of Albany*, 9 Wendell, 259.) Afterwards a statute was passed, authorizing the addition of the expenses to an assessment, (Laws 56 session, ch. 172. See also 15 Wendell, 387.) The statute had directed that the sum to be allowed *for damage and recompense for the property taken was to be assessed.*

In the law of 1813, (section 175,) the assessors are directed to estimate the expense of conforming to the regulation directed in the ordinance. The fair meaning of this may be nothing but the cost of the work. The regulation is, that a sewer be built. The expense of building it is what is incurred to conform to it. And in the second section of the act of 1823, providing for

the filling up of lots, care has been taken to authorize the levying the amount with all reasonable costs and expenditures attending such proceedings.

But this act of 1823, section 1, in connection with the 270th section, must be examined, to see if they do not sanction the charge of the expenses. By the latter, all reasonable costs and charges attending the proceedings may be collected.

However, the statute relating to opening streets, expressly empowers the assessment of the costs and charges in addition to the damages allowed. Hence it must be decided whether there is an equity to render the owner responsible for a part of the charges of the operation actually paid.

The expenses incurred, being under a void proceeding, are not to form a guide. They may have been reasonable, though large. And there seems some reason, if a party's benefit exceeds his share of the sum allowed for damages and his share of the expenses, that he should bear it. Still the argument deserves notice. These expenses have been incurred upon an illegal and void assessment. The party has the right to resist payment at law, and defeat the action absolutely. He never could have arrested the proceedings in which the charges were incurred. Whatever right he possesses, arises after they are consummated. He comes here, and terms are imposed. He may well contend, that what a jury shall say, is, the just proportion of the damage paid to others shall be borne by him, and no more.

Then arises another and most serious question. The parties assessed for benefit contribute to the damages allowed. These arise from the value of the ground taken. They must be permitted, in ascertaining what they are to pay, to investigate that value. Even where it is clear that the true benefit was beyond the proportion of the sum allowed for damages in these street cases, this result would be the same; for the parties are to pay, not up to the extent of benefit, but so much of it as will pay, in proportion with others, for the improvement.

If the sum allowed for damages was clearly liquidated, so as to be binding on the complainants, would there be any difficulty? The simple question to the jury might be, first, whether the complainants had received any benefit; and if this was answered affirmatively, then whether the amount of benefit was equal to the sum assessed. If equal, there would be an end to the inquiry. That sum must be paid. If not equal, then such sum as the jury should find just shall be paid.

But as the damages are not so liquidated and binding, a question arises.

The benefit to be assessed in these cases is, as before observed, not the extreme actual advantage, but so much of that advantage as, in proportion with that paid by others, will defray the expense of the work. Hence the party has a manifest interest and right to reduce the cost of the work, or damages allowed.

Here, again, in the case of sewers or the regulation of streets, I see very little difficulty. The jury can ascertain the fair price of the work from witnesses.

For example: in the assessment for filling and pitching 9th street, between avenues B and C, the assessment is made on this basis. The contract price was $3,332·25 The number of feet fronting on the street is 66,645, which at five cents a load makes up the price, and there is then added a certain *per centage* to cover the fees, which amount to $73·88. The complainants pay according to their feet of front. There is no difficulty in a jury saying if the price of five cents a load for these lots was reasonable or not.

So as to sewers. The contract price may be testified to by competent witnesses, to show that it was beyond the value. In settling an issue, however, it would be necessary to ascertain the extent to which benefit may be carried. The estimate and assessment of the assessors ought to be before the court.

In the case of grading, regulating, and paving streets, the question may be very much simplified. It may be merely what it would cost the party to have conformed to the regulation opposite to his own lot. This is in accordance with the whole principle of the colonial law and of the act of 1787, upon these matters.

In the instance of opening 31st street also, I see very little difficulty in properly framing an issue to do justice to all upon the trial. It should first be ascertained whether the damage has been properly allowed as to amount, whether there had been grants fronting on the street, excluding the owner from more than nominal damages. If the soil is to be paid for, then an appreciation of the fair value of the ground, as well as any ancient buildings, is to be made. Next, to set the limit at which the supposition of any benefit must be abandoned, whether to the next avenue, or to the next that is opened, or farther. Thus having got the true amount of damages, the property on each side, to the half of each block within the limit taken, is to bear that sum, and the jury can apportion it as they deem right. I can readily see, however, that in some street cases the difficulty before a jury may be excessive. A master's office may then be the best forum.

In the case of 31st street, by looking at the abstract and map, it will be seen that the complainants' property was either assessed for the expenses merely, or for a benefit for the opening eastward of the 8th avenue. The property on the line up to that avenue pays for the opening itself, and there is an excess of benefit of sixty-two dollars.

In all these cases the first great question will be whether any benefit was received. It is impossible not to be aware that in some instances damage has arisen to parties who were assessed for benefit.

In concluding a case of such great interest, upon which the public attention has been often roused, and private rights and interests are so deeply involved, I trust it will not be deemed unbecoming to advert to the considerations respecting the evils to the city, and the impediments to her progress, predicted from a decision that these proceedings are void. I will not dwell upon the fact, that under the mild doctrines of a Court of Chancery, the party who is sheltered from illegality is compelled to justice; that the public agents who have neglected the plain command of law, may yet impose upon the citizen whatever a jury of his fellows shall declare he ought to pay. But were it otherwise, what principle will justify the achievement of the city's greatness at the sacrifice of the slightest right of the lowliest individual? What tribunal of justice may refuse to arrest her, if she forget the limit of her authority, and break through that sacred circle of law, within which she is all powerful—beyond which she is a reed? Can it be conceived that one of her children, nurtured in her bosom, proud of her strength, more proud of her integrity, could willingly do an act to impede her progress? No! May her march be as stately hereafter as heretofore! May a munificent and well-guided policy pour around her prosperity like a river, and plenteousness as a flowing stream. And as her towers of strength are multiplied, and the palaces of beauty cluster upon her surface, may the asylums of indigence, the retreats of suffering, and the sanctuaries of education, spring up abundantly! May the early light be caught by a thousand spires of her religious temples! Then, indeed, will her prosperity rest upon immutable strength, and be crowned with unfading beauty. Then may the fond poetic apostrophe, MATER MEA! MATER PULCHRA! be mingled with the ascription of warm though misdirected devotion, MATER SANCTA! MATER BEATA!

LOOSE LEGISLATION.

The Common Council of the city of New York, pass ordinances, or rather claim to pass them, without opening or reading; and the Mayor signifies his approval by signing his name upon a *loose* wrapper which encloses the pretended ordinance. Merchants who send their customers' notes to the bank for discount, may with equal propriety endorse the wrappers or envelopes which cover the notes, instead of endorsing the notes. Such is the whole system of Common Council proceedings, completely enveloped in a budget of blunders.

AN OLD GENTLEMAN OUT OF EMPLOY.

There are many of our readers who will recollect an old gentleman by the name of Punches, who wrote at the back desk in the Surrogate's office for many years. He is a good penman; slow, but accurate; and would be useful to any person having writing to copy. We meet him often in the street; he is out of employment, and is needy. Perhaps some one who may see this may have occasion for the services of such a person, and would be willing to pay him as much as would support him. The old gentleman is very capable, honest, and deserving.

BOARD OF COMMISSIONERS.

It is proposed that the Legislature of the State shall organize a Board of Commissioners for the city of N. York, and that the Board shall consist of three Commissioners, who shall each receive an annual salary—that the Commissioners shall appoint one or more Surveyors, who shall also be salary officers, and shall also appoint a suitable number of Clerks and other subordinate officers. The Board of Commissioners to be commissioners of the sinking fund—to have the management of all street and other assessment proceedings, and also of the public property.

It is proposed, also, to authorize the Comptroller to receive at his office the City Taxes up to the 1st April each year, and that on that day he deliver to the Tax Collector the books to collect from delinquents, who are to pay the collector's fees in addition to the tax, for his compensation, and to abolish the office of collectors of arrears.

A Board of Commissioners to be selected from among the following named persons, viz: Stephen Allen, Robert C. Cornel, Philip Hone, Myndert Van Schaick, Thomas Lawrence, George B. Smith, Wm. S. Johnson, W. W. Fox, and D. D. Williamson, would give great satisfaction to the citizens, (politics aside,) and would add to the value and intrinsic worth of our City Stocks, give great additional dignity to the city government. and save half a million annually to the city besides.

The time is coming when it will be necessary to ask men to take office, instead of having citizens seeking office for the sake of the fees or patronage of office.

The persons we have named would have the entire confidence of this community.

The city debt is becoming large, and it will be necessary to increase it very much—it is important, therefore, to make the stock acceptable to capitalists, and it is important, also, to economize the city expenses.

The gentlemen we have named are full of experience—capable, honest, and responsible—such men will do right, and are such as will give confidence to the holders of City Stocks.

APPOINTMENTS TO OFFICE.

If changes should be made in the officers employed in the Custom-house in this city, we hope that some old merchants, who may have been unfortunate in business, may find employment. There are some of this class who are needy, and who are also deserving and worthy—who are applicants for employment. These persons may not have that kind of bold confidence which will enable them to insist on having office; and therefore influential citizens, whose prosperity gives them confidence and energy, should make exertions for these individuals.

We are led to make these remarks from knowing the fact that Mr. Hinton, formerly of the firm of Hinton and Moore, is an applicant; Willet Coles, an old merchant, is also an applicant — for places in the Custom-house. We hope Mr. Curtis will remember these old citizens in dispensing his patronage.

ASSESSMENTS.

The odious system of assessments in the city of New York, has developed a state of things of an alarming character. It is not the dollars and cents in these matters that are alone objectionable, but the effort made in various quarters to cloak up these iniquitous proceedings, by sti-

SENATE.

FRIDAY, April 2d, 1841.

MR. VERPLANK presented a Petition of PETER LORILLARD, ROBERT SMITH, STEPHEN ALLEN, JON. THOMPSON, and about two hundred others, landholders in the city of New York, for an entire modification of the Assessment Laws of this city.

Mr. SCOTT presented the Petition of the Mayor, Aldermen and Commonalty of the city of New York, to be vested with the title of lands sold for assessments in certain cases.

This last petition we have not seen, and therefore cannot speak of it understandingly, and consequently not at all.

We are in favor of the Corporation being vested with the real estate sold for assessments, in preference to their surveyors and collectors, and other public officers, who have been heretofore largely engaged in this way, as a great many of our citizens must have noticed who have looked over the books of sale lying on the counter in the Street Commissioners' office.

It is, however, very discreditable to the Corporation, to cause the lands of citizens to be assessed to such a RUINOUS EXTENT that the land will not be taken as a compensation for the *improvement* made upon it—if a *ruinous*, *infamous* and *odious* assessment can be called an improvement.

Such, however, is unfortunately the state of things. The Corporation of the city of New York, and various public officers have depredated upon the lands of the citizens to such an extent, that a knowledge of the evil has aroused the indignation of the people, and they will now seek justice in the matter,—and will obtain it.

The lands now assessed should not be sold for the assessment, but a re-assessment should in all cases be made, and the property be described by its right ownership and occupancy, and by the known street number; or be described with sufficient accuracy to enable the owner to know when his property is assessed. This done, let a book be provided and kept in the office of the Register of Deeds, in which shall be entered all the property assessed, and the particulars of the assessment—let these assessments be a lien upon the property, and bear an interest of eight per cent, and be payable at any time, at the option of the owner, within ten years; and if not redeemed at the end of that time, then let the property be sold absolutely and let the proceeds of the sale be paid into the State Treasury, after deducting the assessments and interest and charges, that the owner may obtain it within twenty years if he applies for it, and otherwise it escheats to the people. Let the Corporation be specially authorized to issue Stock redeemable in ten years, to pay the *awards* and *the contractors*, and let this whole business be done by a Board of Commissioners, to be composed of such men as STEPHEN ALLEN, MYNDERT VAN SCHAICK, PHILIP HONE, W. W. FOX, JACOB DRAKE, ROBERT SMITH, THOMAS LAWRENCE, GEORGE B. SMITH, JONATHAN THOMPSON, ELIJAH F. PURDY, D. D. WILLIAMSON, ROBERT C. CORNELL, STEPHEN WHITNEY and OGDEN EDWARDS.

A Board of Commissioners selected from this list would possess the entire confidence of this community —would give value to the Stock—satisfaction to the people, and add dignity to the city government.

It is to be hoped that our Common Council will not be so anxious to acquire power, as to be unwilling to have a suitable Board organized to manage some of the city concerns.

The time has now arrived when something must be done—large Loans must be contracted, and these are to be negotiated; and in order to be done on favorable terms, the capitalists must have confidence in those who are to manage these affairs.

The Corporation property by no means amounts to that adequate security which it has been, and is represented to be.

We shall, in our next number, commence the schedule of all the public property, with the valuation which has been put upon it, and shall also make an estimate of its real value ourselves, and will submit both at the same time to the public.

From the New York Observer.

POPULATION OF AMERICAN CITIES.— The annexed statement shows the population of various cities and villages according to the census just taken, compared with the population of 1830.

Cities.	1840.	1830.	*Increase.*
New York	312,234	202,589	109,645
Philadelphia	258,832	188,797	70,135
Baltimore	101,378	80,625	21,753
Boston	84,401	61,392	23,319
Brooklyn	36,283	12,403	24,830
Cincinnati	46,382	24,831	21,551
St. Louis	24,585	5,852	18,783
Washington	22,777	18,827	3,950
Pittsburgh	21,296	12,512	8,754
Dover	3,775	3,416	359
Wilmington	8,367	6,663	1,704
Middletown	7,210	6,892	31[illegible]
Bridgeport	4,570	2,800	1,770
Norwich	7,239	5,179	2,060
New London	5,528	4,356	1,172
New Haven	14,390	10,678	3,712
Hartford	12,793	9,789	3,004
New Orleans	102,191	50,104	52,088
Savannah,	11,214	7,303	3,911
Newburyport	7,161	6,388	773
Wilmington, N. C.	4,268	2,700	1,568
Natchez	4,826	2,790	2,036
Newport	8,321	8,010	311
Buffalo	18,356	6,321	12,035
Portland	15,218	12,601	2,617
Gardiner	5,044	3,709	1,335
Canandaigua	5,653	5,162	491
Troy	19,372	11,405	7,967
Bath	5,000	3,773	1,227
Dover, N. H.	6,438	5,449	989
Providence	22,042	16,832	5,210
Newark	17,202	10,753	6,449

CAUTION.

There have been several petitions recently presented in the Common Council for regulating streets and avenues. Among these is one for regulating a part of 28th street; another for regulating a part of the Seventh avenue; and another for regulating a part of Ninth avenue. The petitions should be examined by persons interested, and the foundation of them looked into. We do not say that the Corporation officers have anything to do with these matters, or any of them, but one thing is certain, these very streets have been proceeded in, in the courts, and we have been informed that in two cases which embrace the assessments for opening the Ninth avenue, the Seventh avenue, the Fifth avenue, 50th street, 22d, 24th, and 25th streets, and several sewers, the Corporation have not put in answers to the Bills, but have procrastinated the proceedings, and that orders were entered

on Thursday in the Court of Chancery to take the Bills as confessed. Persons interested in property on the 5th avenue, 7th avenue, and Twenty-eighth street, will do well to call at the Clerk's office of the Common Council, and examine the petitions above referred to.

CORPORATION ORDINANCES.

We commence the publication of the entire volume of Corporation Ordinances, which have been published in a volume of near four hundred pages, by the authority of the Common Council.

ORDINANCES
OF THE
MAYOR, ALDERMEN AND COMMONALTY
Of the City of New York.

CHAPTER I.
AN ORDINANCE.

Of the powers and duties of the Mayor.

(Passed May 14, 1839.)

The Mayor, Aldermen and Commonalty of the City of New York in Common Council convened, do ordain as follows:

§ 1. It shall be the duty of the Mayor to cause to be employed as many persons as he may deem sufficient from time to time as City Watchmen, for the purpose of preserving the peace, and protecting the city from the acts of incendiaries; and that all expenses incurred thereby be charged to the general appropriation for the Watch Department, and be paid under similar warrants.

§ 2. That the Mayor be, and hereby is authorized to issue his Proclamation, at all times when he may deem it necessary, for the apprehension of any incendiary; and to offer such reward as he may think proper, not to exceed, in any instance, the sum of five hundred dollars.

§ 3. In all cases where the Mayor shall deem it expedient to commute for alien passengers arriving at this port instead of requiring indemnity bonds, he is hereby authorized to receive such sum, in lieu of such bonds, as he shall deem adequate, not less than one dollar, and not more than ten dollars, for each passenger.

CHAPTER II.
OF THE COMMON COUNCIL.

(Passed May 14, 1839.)

The Mayor, Aldermen and Commonalty of the City of New York, in Common Council convened, do ordain as follows:

TITLE I.

Of Committees.

§ 1. The members of the Board of Aldermen who now are, or who may hereafter be, appointed members of the Market Committee, and the members of the Board of Assistant Aldermen who now are, or who may hereafter be, appointed members of the Market Committee, are hereby jointly constituted the Market Committee of the Common Council for all legal purposes.

§ 2. The said Market Committee shall have the entire control, direction and regulation of the respective Public Markets and Market Places in the City of New York.

§ 3. A Committee of the Common Council shall be, from time to time, appointed, to consist of threepersons from each board, to be denominated the Road Committee, whose duty it shall be to examine the state of the roads, streets, avenues, and highways, at least once in every month: and to give the Street Commissioner any and all such information as they may think necessary and proper, relative to regulating and keeping the same in repair.

§ 4. It shall be the duty of the Committees of the Board of Aldermen, and of the Committees of the Board of Assistants, in reporting to their respective Boards upon any subject referred to them, to attach to such reports all resolutions, petitions, remonstrances and other papers in their possession, relative to the matters reported on.

§ 5. Reports of Committees, which shall contain a statement of facts, and the opinion of the Committee thereon, if adopted by the Board where such reports originated, shall be printed under the direction of the Clerk of such Board, and be placed on the files of the members.

TITLE II.

Miscellaneous Provisions and Rules.

§ 1. No donation shall be made to the Vaccine Department of the New York Dispensary, or to the Vaccine Department of the Northern Dispensary, until they respectively shall lay before the Common Council, a statement of the number of males and females vaccinated during the year, designating those vaccinated at the dwellings of the said persons, and those vaccinated at the office of the respective institutions; and no grant shall be made toward the ordinary expenses of the said institutions, until they shall respectively have laid before the Common Council an account of their receipts and expenditures for the year.

§ 2. No donation shall be made to any Charitable Institution, until they shall furnish the Common Council with a statement of the number of persons or families relieved during the year by the institution; and also a statement of their receipts and expenditures for the year.

§ 3. All applications hereafter made to the Common Council, by the owners of lands adjoining to those parts of the Warren, Southampton and Fitzroy roads, and Lowe's lane now closed up, to purchase parts of the said roads, shall be referred to the Comptroller and Street Commissioner for adjustment and settlement, in conformity with the principles which have received the sanction of the Common Council.

§ 4. In all cases where the owner of a lot or piece of the common lands heretofore sold by the Corporation, shall apply to the Common Council for an adjustment of the boundary lines thereof according to the map or plan of the city, such application shall be referred to the Finance Committee of both Boards, with power to treat with the applicant, and to settle by agreement the terms of such adjustment; and in case such settlement cannot be effected by agreement, the said Finance Committee shall have power to appoint an Arbitrator on the part of the Corporation, who, together with such Arbitrator as may be appointed for that purpose by the applicant, shall determine upon what terms, according to the principles of the Report made to the Board of Aldermen on the tenth day of November, eighteen hundred and thirty-four, (being printed Document No. 22,) the said boundary lines shall be adjusted; and in case the Arbitrators so chosen shall not be able to agree upon the matters referred to them, they shall be authorized to appoint an Umpire to determine the same; but a concurrence of two of the three persons, so to be chosen or appointed, shall be necessary to make an award.

§ 5. In all cases of reference, as provided for in the last section, the Street Commissioner shall furnish the Arbitrators with the necessary maps; and all the necessary bonds, deeds, and other instruments, which shall be required for such Arbitrators, or to carry any award into effect, shall be prepared by the Counsel, and executed in the usual manner.

§ 6. All petitions and applications for apportionment of assessments or taxes, shall be referred to the Committee on Assessments of both Boards, with power to said Committees to make the proper apportionment in all cases: Provided, that, in the judgment of said Committees, the case presents no difficulty requiring the special direction of the Common Council.

CHAPTER III.
OF THE OFFICERS OF THE COMMON COUNCIL.

(*Passed May* 2, 1839.)

The Mayor, Aldermen and Commonalty of the City of New York, in Common Council convened, do ordain as follows:

TITLE I.

Of the Clerk of the Common Council.

§ 1. A suitable person shall be appointed, to be known as Clerk of the Common Council of the City of New York.

§ 2. The said Clerk shall, before he enters upon the duties of his office, take and subscribe, before the Mayor of the said city, an oath or affirmation, well and faithfully to execute the said duties.

§ 3. The said Clerk shall execute a bond to the Mayor, Aldermen and Commonalty of the City of New York, with good and sufficient security to be approved by the Finance Committee of each Board, in the penal sum of one thousand dollars, conditioned for the faithful performance of the duties of his office.

§ 4. The said bond shall be renewed on the first day of May, in every year.

§ 5. The said Clerk shall receive a salary of two thousand dollars a year for his services.

§ 6. It shall be the duty of the Clerk of the Common Council to attend all meetings of the Board of Aldermen; also, of the Board of Aldermen and the Board of Assistants, when assembled together for the purpose of joint ballot; also, of the Board of Health, and of the Board of Supervisors of the City of New York; to keep the minutes of all such meetings respectively, and to cause proper records of such minutes to be made and kept in his office, in books to be provided for such purpose.

§ 7. It shall be the duty of the said Clerk to receive all and singular the fees, profits, revenues and emoluments, grante by the Charter of the city to the said Mayor, or which the said Mayor, by virtue of such Charter, or of any law or usage, may be entitled to receive or take; except such fees and perquisites as he may be entitled to by law, as a Judge of the Court of Common Pleas; and except, also, such fees as the said Mayor was entitled to receive as Clerk of the Markets, and for granting tavern and cartmen's licenses.

§ 8. It shall be the duty of the said Clerk to receive all sums paid for commutation by alien passengers; and all fees for licenses to owners and drivers of hackney coaches, carriages, and accommodation stages; also, to butchers, pawnbrokers, dealers in second-hand articles, keepers of junk shops, keepers of intelligence offices, and sweepers of chimneys.

§ 9. It shall be the duty of the said Clerk to enter in a book, to be provided for that purpose, the names of the respective payers of all moneys which he may receive for the Corporation; the amounts received by him, and for what the same has been paid; and to render a faithful and distinct account to the Comptroller, of all such moneys, on the first Thursday of each month, and thereupon to pay over the same to the Chamberlain of the city.

§ 10. It shall be the duty of the said Clerk, on the day succeeding the final passage of any ordinance or resolution directing the payment of any sum of money out of the Public Treasury, to deliver to the comptroller a certified copy of the same; and also, all references made to the said Comptroller by the Common Council, and statements of all subjects connected with the Comptroller's department. And he shall also, without delay, deliver to all other officers in the employ, or under the direction of the Common Council, and to all committees of the Board of Aldermen, all such resolutions and communications as may be referred to them respectively, by such Board.

§ 11. It shall be the duty of the said Clerk to keep under his charge and custody the common seal of the Mayor, Aldermen and Commonalty of the City of New York, and to cause the same to be affixed to all grants, leases, certificates, and other instruments and writings which may, from time to time, be made, granted or issued by order of the Common Council, pursuant to the Charter of the said city, or of any law of the state.

§ 12. It shall be the duty of the said Clerk to keep under his charge and custody the seal commonly called the seal of Mayoralty, and to cause the same, under the direction of the Mayor for the time being, to be affixed to all such writings and instruments as are usually certified under any seal of Mayoralty.

§ 13. It shall be the duty of the said Clerk to issue notices to the respective members of the different committees of the several Boards of which he is Clerk, and to all persons whose attendance may be required before any such committee, when directed so to do by the chairman thereof.

§ 14. It shall be the duty of the said Clerk to deliver, without delay, to the Mayor, all papers or documents under his charge, which may require to be approved or otherwise acted upon by the said Mayor.

§ 15. It shall be the duty of the Clerk of the Common Council, whenever and as often as the fire limits of this city shall be extended by any act of the legislature, to cause the same to be published in the papers employed by the Corporation, for the information of the citizens.

without delay, to the Mayor, all papers or documents under his charge, which may require to be approved or otherwise acted upon by the said Mayor.

(*To be continued.*)

ASST. VICE-CHANCELLOR HOFFMAN'S OPINION.

We publish for the information of the readers of the Gazette, the very important opinion of his Honor Murray Hoffman, Esq., Assistant Vice-Chancellor of the First Circuit, given in two assessment cases recently argued before him, on giving his decision. The opinion is very lengthy, is ably sustained by numerous authorities cited, and is very clear in its conclusion.

The Assistant Vice-Chancellor has not made a Decree in either of these causes, and we understand that Counsel are to be heard before him before settling the Decrees.

As soon as these Decrees are entered we shall endeavor to obtain copies for publication.

The proceedings in these two Causes we deem of such great public interest, that we delayed the putting our paper to press until we obtained a copy of the opinion of the ASSISTANT VICE-CHANCELLOR, which we now give at full length, commencing on the *third page* of this day's paper.

These are the first causes in assessment matters that have been fully argued before any of the courts of our state.

In the Supreme Court, at the Special Terms, several motions have been noticed of application for certioraris to bring up assessments, but the great hurry in which the business of the Special Terms of our Supreme Court is disposed of, gives no opportunity for the deliberate argument of important questions. This we consider a great defect in the judiciary system, inasmuch as there is no appeal from the decisions made in this summary and off-hand system of doing business.

From the Journal of Commerce.

THE DEATH OF PRESIDENT HARRISON, after just a month's service in the high station to which the people had called him, has created a sensation of sorrow in the public mind which is apparent to even the most casual observer. It is the first instance which has occurred, of a President dying during the term of service for which he was elected. In consequence of this event, the colors of our shipping were set at half mast yesterday, and remained so during the day. All the Courts adjourned without doing any business. From the City Hall and other public buildings, the American flag floated at half mast. The Common Council met in the evening, and passed resolutions appropriate to the occasion. [See proceedings.]

Great reliance was placed upon President Harrison and his Cabinet by a majority of the people of this country, and the happiest results were anticipated from his Administration. By his death these expectations are in a measure blasted. It is however to be presumed that the Cabinet will remain as at present,—and although on some points of public policy, the views of Vice-President Tyler, [who now succeeds to the Presidency,) may be different from those of President Harrison, yet in the main his administration will doubtless be satisfactory to those who elected him. It is stated (we know not how correctly,) that he is opposed to a National Bank, and to an increase of the Tariff. Mr. Tyler's own health is said to be very delicate, and fears have been expressed that he will not be able to endure the labor and fatigue incident to his new station. In such a case, the Executive power will devolve upon the Hon. SAMUEL L. SOUTHARD, as President of the Senate *pro tem.* Chancellor Kent, in his Commentaries, thus states the law on the subject:

"In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the office, the same devolve on the vice-president; and, except in cases in which the president is enabled to reassume the office, the vice-president acts as president during the remainder of the term for which the president was elected. Congress are authorized to provide, by law, for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer should then act as president; and the officer so designated is to act until the disability be removed, or a president shall be elected, and who is in that case to be elected on the first Wednesday of the ensuing December, if time will admit of it, and if not, then on the same day in the ensuing year. In pursuance of this constitutional provision, the act of Congress of March 1st, 1792, sec. 9, declared, that in case of a vacancy in the office both of president and vice-president, the president of the Senate *pro tempore*, and in case there should be no president of the Senate, then the speaker of the House of Representatives, for the time being, should act as president, until the vacancy was supplied."

MOUNT MORRIS SQUARE.

The Chief Justice of the Supreme Court has taken the papers prepared for the re-argument of the motion for certiorari in the matter of this assessment, and is to consult his associates as to hearing an argument.

TWENTY-EIGHTH STREET, SECOND AVENUE, SEVENTH AVENUE, AND NINTH AVENUE.

These assessments are before the Chief Justice on motion for the re-argument, the same as Mount Morris.

CORPORATION NOTICES.

In the New Era of the 12th instant is the City Comptroller's notice of the leasing of the public slips on the 19th day of April, at the City Hall, *by auction.* Also a notice that the Interest on the City Stock due May 1st, 1841, will be paid on that day at the Bank of the State of New York, by the City Chamberlain, C. W. Lawrence, Esq.

Also Street Commissioners' notice of assessment for well and pump in 7th street near 2d avenue, embracing both sides of 7th street below 2d and 3d avenues, and west side of 2d avenue between 6th and 8th streets; also for well and pump in 24th street near 2d avenue, embracing both sides of 24th street between 2d and 3d avenues, and both sides 3d avenue between 24th and 28th streets.

Also for well and pump in 49th street, embracing both sides of 49th street, and on the old post road, and on both sides of 3d avenue between 48th and 50th streets.

Also a petition for extending Washington street from Gansevort street to the 10th avenue.

Persons interested will do well to make inquiry into these last proceedings.

We have delayed the publication of the present number of our paper in order to give the important opinion of ASSISTANT VICE-CHANCELLOR HOFFMAN, in the causes argued before him a few weeks since: and also in consequence of the death of our lamented Chief Magistrate, William Henry Harrison, President of the United States, whose funeral solemnities have occupied the attention of all classes of citizens during most of the last week.

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Municipal Gazette.

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CONSTITUTION OF CONNECTICUT.

PREAMBLE.

The people of Connecticut, acknowledging, with gratitude, the good providence of God, in having permitted them to enjoy a free government, do, in order more effectually to define secure, and perpetuate the liberties, rights and privileges, which they have derived from their ancestors, hereby, after a careful consideration and revision, ordain and establish the following Constitution, and form of civil government.

ARTICLE I.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established,

WE DECLARE,

Sect. 1. That all men, when they form a social compact, are equal in rights; and that no man, or set of men, are entitled to exclusive public emoluments, or privileges, from the community.

Source of political power.

Sect. 2. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that they have, at all times, an undeniable and indefeasible right to alter their form of government, in such a manner as they may think expedient.

Religious profession and worship.—Limitation.

Sect. 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.

No preference to be given by law to any christian sect.

Sect. 4. No preference shall be given by law to any christian sect or mode of worship.

Right to freely speak, write and publish sentiments.

Sect. 5. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Liberty of speech or of the press not to be restrained.

Sect. 6. No law shall ever be passed to curtail or or restrain the liberty of speech or of the press.

Libel.—Evidence—Right of the Jury.

Sect. 7. In all prosecutions or indictments for libels, the truth may be given in evidence; and the jury shall have the right to determine the law and the facts, under the direction of the court.

Security from searches and seizures.—Restriction as to search warrants.

Sect. 8. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of the accused in criminal prosecutions.—Presentment of a grand jury when necessary.

Sect. 9. In all criminal prosecutions, the accused shall have a right to be heard by himself, and by counsel; to demand the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his favor; and in all prosecutions by indictment or information, a speedy public trial by an impartial jury. He shall not be compelled to give evidence against himself, nor be deprived of life, liberty or property, but by due course of law. And no person shall be holden to answer for any crime, the punishment of which may be death or imprisonment for life, unless on a presentment or an indictment of a grand jury; except in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger.

Security from arrest, &c.

Sect. 10. No person shall be arrested, detained or punished, except in cases clearly warranted by law.

Right of private property.

Sect. 11. The property of no person shall be taken for public use, without just compensation therefor.

Right of redress for injuries.

Sect. 12. All courts shall be open, and every person, for an injury done him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial or delay.

Excessive bail or fines not to be required.

Sect. 13. Excessive bail shall not be required, nor excessive fines imposed.

Prisoners, in what cases bailable.—Writ of habeas corpus.

Sect. 14. All prisoners shall, before conviction, be liable, by sufficient sureties, except for capital offences, where the proof is evident, or the presumption great; and the privileges of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it; nor in any case, but by the legislature.

No attainder of treason or felony.

Sect. 15. No person shall be attainted of treason or felony, by the legislature.

Right of the citizens to assemble: and to petition for a redress of grievances.

Sect. 16. The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance.

Right to bear arms.

Sect. 17. Every citizen has a right to bear arms in defence of himself and the state.

Subordination of the military to the civil power.

Sect. 18. The military shall, in all cases, and at all times, be in strict subordination to the civil power.

Quartering of soldiers.

Sect. 19. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No hereditary emoluments.

Sect. 20. No hereditary emoluments, privileges or honors, shall ever be granted, or conferred, in this state.

Trial by jury.

Sect. 21. The right of trial by jury shall remain inviolate.

ARTICLE II.

OF THE DISTRIBUTION OF POWERS.

The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy—to wit—those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

ARTICLE III.

OF THE LEGISLATIVE DEPARTMENT.

Legislative powers vested in two houses.—General Assembly.

Sect. 1. The legislative power of this state shall be vested in two distinct houses or branches; the one to be styled THE SENATE, the other THE HOUSE OF REPRESENTATIVES, and both together THE GENERAL ASSEMBLY. The style of their laws shall be, *Be it enacted by the Senate and House of Representatives, in General Assembly convened.*

Stated annual session.—Special session.—A different place of meeting, when, and how, to be designated.

Sect. 2. There shall be one stated session of the general assembly, to be holden in each year, alternately at Hartford and New-Haven, on the first Wednesday of May, and at such other times as the general assembly shall judge necessary; the first session to be holden at Hartford: but the person administering the office of governor, may, on special emergencies, convene the general assembly at either of said places, at any other time. And in case of danger from the prevalence of contagious diseases, in either of said places, or other circumstances, the person administering the office of governor may, by proclamation, convene said assembly at any other place in this state.

House of Representatives.—Number of Repreventatives.—Restriction as to new towns.—Right of the towns from which new ones are made.

Sect. 3. The house of representatives shall consist of electors residing in towns from which they are elected. The number of representatives from each town shall be the same as at present practised and allowed. In case a new town shall hereafter be incorporated, such new town shall be entitled to one representative only; and if such new town shall be made from one or more towns, the town or towns from which the same shall be made, shall be entitled to the same number of representatives as at present allowed unless the number shall be reduced by the consent of such town or towns.

Senate.

Sect. 4. The Senate shall consist of twelve members, to be chosen annually by the electors.

Election of Senators.—Duplicate lists.—Return of votes.

Sect. 5. At the meeting of electors, held in the several towns in this state, in April annually, after the election of representatives, the electors present shall be called upon to bring in their *written* ballots for senators. The presiding officer shall receive the votes of the electors, and count and declare them in open meeting. The presiding officer shall also make duplicate lists of the persons voted for, and of the number of votes for each, which shall be certified by the presiding officer; one of which lists shall be delivered to the town clerk, and the other within ten days after said meeting, shall be delivered under seal, either to the secretary, or to the sheriff of the county in which said town is situated; which list shall be directed to the secretary, with a superscription expressing the purport of the contents thereof. And each sheriff, who shall receive such votes, shall within fifteen days after such meeting, deliver them, or cause them to be delivered, to the secretary.

Canvass of votes.—Declaration.—Equality of votes.—Return of votes, and result to be submitted to both houses.

Sect. 6. The treasurer, secretary, and comptroller, for the time being, shall canvass the votes publicly. The twelve persons having the greatest number of votes for senators, shall be declared to be elected. But in cases where no choice is made by the electors, in consequence of an equality of votes, the house of representatives shall designate, by ballot, which of the candidates having such equal number of votes, shall be declared to be elected. The return of votes, and the result of the canvass, shall be submitted to the house of representatives, and also to the senate, on the first day of the session of the general assembly; and each

and highest number of votes, so returned as aforesaid. The general assembly shall, by law, prescribe the manner in which all questions concerning the election of governor, or lieutenant-governor, shall be determined.

Lieutenant-governor.

Sect. 3. At the annual meetings of the electors, immediately after the election of governor, there shall also be chosen, in the same manner as is herein before provided for the election of governor, a lieutenant-governor, who shall continue in office for the same time and possess the same qualifications.

Compensation to governor, &c.

Sect. 4. The compensations of the governor, lieutenant-governor, senators, and representatives, shall be established by law, and shall not be varied so as to take effect until after an election, which shall next succeed the passage of the law establishing said compensations.

Captain-general.

Sect. 5. The governor shall be captain-general of the militia of the state, except when called into the service of the United States.

Governor may require information, &c.

Sect. 6. He may require information in writing from the officers in the executive department, on any subject relating to the duties of their respective offices.

Power as to adjournment of general assembly.

Sect. 7. The governor, in case of a disagreement between the two houses of the general assembly, respecting the time of adjournment, may adjourn them to such time as he shall think proper, not beyond the day of the next stated session.

Duty of governor.

Sect. 8. He shall, from time to time, give to the general assembly, information of the state of the government, and recommend to their consideration such measures as he shall deem expedient.

Sect. 9. He shall take care that the laws be faithfully executed.

Power to grant reprieves. Exception.

Sect. 10. The governor shall have power to grant reprieves after conviction, in all cases, except those of impeachment, until the end of the next session of the general assembly, and no longer.

Commissions.

Sect. 11. All commissions shall be in the name, and by authority of, the State of Connecticut; shall be sealed with the state seal, signed by the governor, and attested by the secretary.

Power and duty of governor in relation to bills.—Proceedings on bills returned by the governor.

Sect. 12 Every bill, which shall have passed both houses of the general assembly, shall be presented to the governor. If he approves, he shall sign and transmit it to the secretary; but if not, he shall return it to the house in which it originated, with his objections, which shall be entered on the journals of the house; who shall proceed to reconsider the bill. If, after such reconsideration, that house shall again pass it, it shall be sent with the objections, to the other house, which shall also reconsider it. If approved, it shall become a law. But in such cases, the votes of both houses shall be determined by yeas and nays; and the names of the members voting for and against the bill, shall be entered on the journals of each house respectively. If the bill shall not be returned, by the governor, within three days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it; unless the general assembly, by their adjournment prevents its return, in which case it shall not be a law.

President of the Senate.

Sect. 13. The lieutenant-governor shall, by virtue of his office, be president of the senate, and have, when in committee of the whole, a right to debate, and when the senate is equally divided to give the casting vote.

In what cases, the powers of the governor shall devolve upon the lieutenant-governor.

Sect. 14. In case of the death, resignation, refusal to serve, or removal from office of the governor, or of his impeachment, or absence from the state, the lieutenant-governor shall exercise the powers and authority appertaining to the office of governor, until another be chosen at the next periodical election for governor, and be duly qualified; or until the governor impeached or absent, shall be acquitted or return.

President of the senate pro tempore.

Sect. 15. When the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their members, as president *pro tempore*. And if, during the vacancy of the office of governor, the lieutenant-governor shall die, resign, refuse to serve, or be removed from office, or if he shall be impeached, or absent from the state, the president of the senate *pro tempore*, shall, in like manner, administer the government, until he be superceded by a governor, or lieutenant-governor.

In what case, senate to be convened, to choose a president pro tempore.

Sect. 16. If the lieutenant-governor shall be required to administer the government, and shall while in such administration, die or resign, during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a president *pro tempore*.

Treasurer.—Canvass of votes.—Duty of Treasurer.

Sect. 17. A treasurer shall annually be chosen, by the electors, at their meeting in April; and the votes shall be returned, counted, canvassed, and declared, in the same manner as is provided for the election of governor and lieutenant-governor;* but the votes for treasurer shall be canvassed by the secretary and comptroller only. He shall receive all monies belonging to the state, and disburse the same only as he may be directed by law. He shall pay no warrant or order for the disbursement of public money, until the same has been registered in the office of the comptroller.

Secretary.—Canvass of votes.—Duty of Secretary.—Keeper of the seal.

Sect. 18. A secretary shall be chosen next after the treasurer, and in the same manner;* and the votes for secretary shall be returned to, and counted, canvassed, and declared by the treasurer and comptroller. He shall have the safe keeping and custody of the public records and documents, and particularly, of the acts, resolutions and orders of the general assembly, and record the same; and perform all such duties as shall be prescribed by law. He shall be the keeper of the seal of the state, which shall not be altered.

Comptroller.—His duty.

Sect. 19. A comptroller of the public accounts shall be annually appointed, by the general assembly.* He shall adjust and settle all public accounts and demands, except grants and orders of the general assembly He shall prescribe the mode of keeping and rendering all public accounts. He shall, *ex officio*, be one of the auditors of the accounts of the treasurer. The general assembly may assign to him other duties in relation to his office, and to that of the treasurer, and shall prescribe the manner in which his duties shall be performed.

Sheriff.—Term of office.—Bond.—Vacancy, how supplied.

Sect. 20. A sheriff shall be appointed in each county, by the general assembly, who shall hold his office for three years, removeable by said assembly, and shall become bound, with sufficient sureties, to the treasurer of the state, for the faithful discharge of the duties of his office, in such manner as shall be prescribed by law. In case the sheriff of any county shall die or resign, the governor may fill the vacancy occasioned thereby, until the same shall be filled by the general assembly.

Statement of funds of the state.

Sect. 21. A statement of all receipts, payments, funds, and debts of the state, shall be published from time to time, in such manner and at such periods, as shall be prescribed by law.

ARTICLE V.

OF THE JUDICIAL DEPARTMENT.

Courts.

Sect. 1. The judicial power of the state shall be

*Amendments 1836.

vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly shall, from time to time, ordain and establish: the powers and jurisdiction of which courts shall be defined by law.

Justices of the peace.

Sect. 2. There shall be appointed, in each county, a sufficient number of justices of the peace, with such jurisdiction in civil and criminal cases as the general assembly may prescribe.

Mode of appointment.—Tenure of office.—Removeable in what manner.—Limitation of term of office.

Sect. 3. The judges of the supreme court of errors, of the superior and inferior courts, and all justices of the peace, shall be appointed by the general assembly, in such manner as shall by law be prescribed. The judges of the supreme court, and of the superior court shall hold their offices during good behaviour; but may be removed by impeachment; and the governor shall also remove them, on the address of two thirds of the members of each house of the general assembly; all other judges and justices of the peace shall be appointed annually. No judge or justice of the peace shall be capable of holding his office, after he shall arrive at the age of seventy years.

ARTICLE VI.

OF THE QUALIFICATIONS OF ELECTORS.

Electors.

Sect. 1. All persons who have been, or shall hereafter, previous to the ratification of this constitution, be admitted freemen, according to the existing laws of this state, shall be electors.

Qualifications necessary to become electors.

Sect. 2. Every white male citizen of the United States, who shall have gained a settlement in this state, attained the age of twenty-one years, and resided in the town in which he may offer himself to be admitted to the privilege of an elector, at least six months preceding; and have a freehold estate of the yearly value of seven dollars in this state; or having been enrolled in the militia, shall have performed military duty therein, for the term of one year next preceding the time he shall offer himself for admission, or being liable thereto, shall have been, by authority of law, excused therefrom; or shall have paid a state tax within the year next preceding the time he shall present himself for such admission; and shall sustain a good moral character; shall, on his taking such oath as may be prescribed by law, be an elector,

Privileges of an elector, how forfeited.

Sect. 3. The privileges of an elector shall be forfeited by a conviction of bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offence for which an infamous punishment is inflicted.

Eligibility of electors.

Sect. 4. Every elector shall be eligible to any office in this state, except in cases provided for in this constitution.

Select-men and town clerk to decide on qualifications.

Sect. 5. The select men and town clerk of the several towns, shall decide on the qualifications of electors, at such times, and in such manner as may be prescribed by law.

Laws to be made in support of free suffrage.

Sect. 6. Laws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult and other improper conduct.

Votes to be given by ballot.

Sect. 7. In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot.

Privilege of electors from arrest.

Sect. 8. At all elections of officers of the state, or members of the general assembly, the electors shall be privileged from arrest, during their attendance upon, and going to, and returning from the same, on any civil process.*

*3 C. R. 537.

Annual meeting of the electors.

Sect. 9. The meetings of the electors for the election of the several state officers by law annually to be elected, and members of the general assembly of this state, shall be holden on the first Monday of April in each year.

ARTICLE VII.

OF RELIGION.

Duty and right of worshipping the Supreme Being.—No legal compulsion.—Equal rights of Christians.

Sect. 1. It being the duty of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and their right to render that worship, in the mode most consistent with the dictates of their consciences; no person shall, by law, be compelled to join or support, nor be classed with, or associated to, any congregation, church, or religious association. But every person now belonging to such congregation, church, or religious association, shall remain a member thereof, until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this state, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship, by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner.

Secession.

Sect. 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

ARTICLE VIII.

OF EDUCATION.

Charter of Yale College, confirmed.

Sect. 1. The charter of Yale College, as modified by agreement with the corporation thereof, in pursuance of an act of the general assembly, passed in May, 1792, is hereby confirmed.

School fund.—Amount to be ascertained; published and recorded.—Never to be diverted.

Sect. 2. The fund, called the School Fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools, throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall, as soon as practicable, be ascertained, in such manner as the general assembly may prescribe, published, and recorded in the comptrollers office; and no law shall ever be made, authorizing said fund to be diverted to any other use than the encouragement and support of public, or common schools, among the several school societies, as justice and equity shall require.

ARTICLE IX.

OF IMPEACHMENTS.

Power of impeachment.

Sect. 1. The house of representatives shall have the sole power of impeaching.

Trial of impeachments.

Sect. 2. All impeachments shall be tried by the senate. When sitting for that purpose, they shall be on oath or affirmation. No person shall be convicted, without the concurrence of two thirds of the members present. When the governor is impeached, the chief justice shall preside

Liability to impeachment.—Limitation of judgment.

Sect. 3. The governor, and all other executive and judicial officers, shall be liable to impeachment; but judgments in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this state. The party convicted, shall, nevertheless, be liable and subject to indictment, trial and punishment according to law.

Treason defined.—Evidence.—Consequences of conviction.

Sect. 4. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason, or attainder, shall work corruption of blood, or forfeiture.

ARTICLE X.

GENERAL PROVISIONS.

Official oath.

Sect. 1. Members of the general assembly, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation, to wit:

[Form.]

You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States and the constitution of the state of Connecticut, so long as you continue a citizen thereof: and that you will faithfully discharge, according to law, the duties of the office of to the best of your abilities.

So help you God.*

Select-men, &c.

Sect. 2. Each town shall, annually, elect select men, and such officers of local police, as the laws may prescribe.

Effect of constitution upon corporations;—judicial and civil officers;—treasurer and secretary;—military officers;—laws.—Bonds, debts, contracts, &c.—General assembly in October, 1818.

Sect. 3. The rights and duties of all corporations shall remain as if this constitution had not been adopted, with the exception of such regulations and restrictions as are contained in this constitution. All judicial and civil officers now in office, who have been appointed by the general assembly, and commissioned according to law, and all such officers as shall be appointed by the said assembly, and commissioned as aforesaid, before the first Wednesday of May next, shall continue to hold their offices until the first day of June next, unless they shall, before that time, resign, or be removed from office according to law. The treasurer and secretary shall continue in office until a treasurer and secretary shall be appointed under this constitution. All military officers shall continue to hold and exercise their respective offices, until they shall resign, or be removed according to law. All laws not contrary to, or inconsistent with the provisions of this constitution, shall remain in force, until they shall expire, by their own limitation, or shall be altered or repealed, by the general assembly, in pursuance of this constitution. The validity of all bonds, debts, contracts, as well of individuals as of bodies corporate, or the state, of all suits, actions, or rights of action, both in law and equity, shall continue as if no change had taken place. The governor, lieutenant-governor, and general assembly, which is to be formed in October next, shall have and possess, all the powers and authorities, not repugnant to, or inconsistent with this constitution, which they now have and possess, until the first Wednesday of May next.

Public officers excluded from general assembly.

Sect 4. No judge of the superior court, or of the supreme court of errors; no member of congress; no person holding any office under the authority of the United States; no person holding the office of treasurer, secretary, or comptroller; no sheriff, or sheriff's deputy, shall be a member of the general assembly.

ARTICLE XI.

OF AMENDMENTS OF THE CONSTITUTION.

Amendments how to be proposed;—continued and published;—approved, by each house;—presented to the inhabitants;—and adopted.

Whenever a majority of the house of representatives shall deem it necessary to alter, or amend this constitution, they may propose such alterations and amendments; which proposed amendments shall be continued to the next general assembly, and be published with the laws which may have been passed at the same session; and if two thirds of each house, at the next session of said assembly, shall approve the amendments proposed, by yeas and nays, said amendments shall, by the secretary, be transmitted to the town clerk in each town in the state; whose duty it shall be to present the same to the inhabitants thereof, for their consideration, at a town meeting, legally

*5 C. R. 278. 1 Root 83.

the persons so voted for, the house of representatives shall in the manner provided for by the constitution, designate which of such person or persons shall be declared to be duly elected.

ARTICLE IV.

ADOPTED NOVEMBER, 1831.

Election of lieutenant-governor, treasurer and secretary.

There shall annually be chosen and appointed a lieutenant-governor, a treasurer, and secretary, in the same manner as is provided in the second section of the fourth article of the constitution of this state for the choice and appointment of a governor.

ARTICLE V.

ADOPTED NOVEMBER, 1836.

Comptroller how chosen.

A comptroller of public accounts, shall be annually chosen by the electors, in their meeting in April, and in the same manner as the treasurer and secretary are chosen; and the votes for comptroller, shall be returned to, and counted, canvassed, and declared by the treasurer and secretary.

ARTICLE VI.

ADOPTED NOVEMBER, 1836.

State officers how voted for.

The electors in the respective towns, on the first Monday of April in each year, may vote for governor, lieutenant governor, treasurer, secretary, senators and representatives in the general assembly, successively, or for any number of said officers at the same time. And the general assembly shall have power to enact laws, regulating and prescribing the order, and manner of voting for said officers; and also providing for the election of representatives, at some time subsequent to the first Monday of April, in all cases when it shall so happen that the electors in any town, shall fail on that day to elect the representative or representatives to which such town shall be by law entitled.

By written or printed ballots.

Provided, that in all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed.

CONNECTICUT WHEN A COLONY.

We copy from Mr. Justice Story's Commentaries on the Constitution of the United States, the following account of Connecticut as a Colony.

"§ 83. In 1685, a *quo warranto*, was issued by king James against the colony for the repeal of the charter. No judgment appears to have been rendered upon it; but the colony offered its submission to the will of the crown; and Sir Edmund Andros, in 1687, went to Hartford, and in the name of the crown declared the government dissolved. They did not, however, surrender the charter; but secreted it in an oak, which is still venerated; and immediately after the revolution of 1688, they resumed the exercise of all its powers. The successors of the Stuarts silently suffered them to retain it until the American Revolution, without any struggle or resistance. The charter continued to be maintained as a fundamental law of the State, until the year 1818, when a new constitution of government was framed and adopted by the people.

"§ 89. The laws of Connecticut were, in many respects, similar to those of Massachusetts. At an early period after the charter they passed an Act, which may be deemed a bill of rights. By it, it was declared, that 'no man's life shall be taken away; no man's honor or good name shall be stained; no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished; no man shall be deprived of his wife or children; no man's goods or estate shall be taken away from him, nor any way endangered under colour of law, or countenance of authority, unless it be by virtue or equity of some express law of this colony, warranting the same, established by the general court, and sufficiently published; or in case of the defects of a law in any particular case, by some clear and plain rule of the word of God, in which the whole court shall concur.' The trial by jury, in civil and criminal cases, was also secured; and if the court were dissatisfied with the verdict, they might send back the jury to consider the same a second and third time, but not further. The governor was to be chosen, as the charter provided, by the freemen. Every town was to send one or two deputies or representatives to the general assembly; but every freeman was to give his voice in the election of assistants and other public officers. No person was entitled to be made a freeman, unless he owned lands in freehold of forty shillings value per annum, or £40 personal estate.

"§ 90. In respect to offences, their criminal code proceeded upon the same general foundation, as that of Massachusetts, declaring those capital, which were so declared in the Holy Scriptures, and citing them as authority for this purpose. Among the capital offences were idolatry, blasphemy of Father, Son, or Holy Ghost, witchcraft, murder, murder through guile by poisoning or other devilish practices, bestiality, sodomy, rape, man-stealing, false witness, conspiracy against the colony, arson, children cursing or smiting father or mother, being a stubborn or rebellious son, and treason.

"§ 91. In respect to religious concerns, their laws provided that all persons should attend public worship, and that the towns should support and pay the ministers of religion. And at first, the choice of the minister was confided to the major part of the house-holders of the town; the church, as such, having nothing to do with the choice. But in 1730, an act was passed (doubtless by the influence of the clergy), by which the choice of ministers was vested in the inhabitants of the town, who were church members; and the same year the celebrated platform, at Saybrook, was approved, which has continued down to our day to regulate, in discipline and doctrine, the ecclesiastical concerns of the State.

"§ 92. The spirit of toleration was not more liberal here, than in most of the other colonies. No persons were allowed to embody themselves into church estate without the consent of the general assembly, and the approbation of the neighbouring churches, and no ministry or church administration was entertained or authorized separate from, and in opposition to that openly and publicly observed and dispensed by the approved minister of the place, except with the approbation and consent aforesaid. Quakers, Ranters, Adamites, and other notorious heretics (as they were called) were to be committed to prison or sent out of the colony by order of the governor and assistants. Nor does the zeal of persecution appear at all to have abated until, in pursuance of the statutes of I. William and Mary, dissenters were allowed the liberty of conscience without molestation.

"§ 93. In respect to real estate, the descent and distribution was directed to be among all the children, giving the eldest son a double share; conveyances in fraud of creditors were declared void; lands were made liable to be set off to creditors on executions by the appraisement of three appraisers.

"The process in courts of justice was required to be in the name of the reigning king. Persons having no estate might be relieved from prison by two assistants; but if the creditor required it, he should satisfy the debt by service. Depositions were allowed as evidence in civil suits. No person was permitted to plead in behalf of another person on trial for delinquency, except directly to matter of law, a provision somewhat singular in our annals, though in entire conformity to the English law in capital felonies. Bills and bonds were made assignable, and suits allowed in the name of the assignees.

"Magistrates, justices of the peace, and ministers were authorized to many persons; and divorces *a vinculo*, allowed for adultery, fraudulent contract, or desertion for three years. Men and women, having a husband or wife in foreign parts, were not allowed to abide in the colony so separated above two years without liberty from the general court.

"Towns were required to support public schools under regulations similar, for the most part, to those of Massachusetts; and an especial maritime code was enacted, regulating the rights and duties, and authorities, of ship owners, seamen and of others concerned in navigation.

"Such are the principal provisions of the colonial legislation of Connecticut."

☞ **We give next in order the CONSTITUTION OF VERMONT, containing a valuable provision for the preservation of the Constitution by "THE COUNCIL OF CENSORS."**

CONSTITUTION OF VERMONT.

Adapted by the Convention holden at Windsor, July 4th. 1793.

CHAP. I.

A Declaration of Rights of the Inhabitants of the State of Vermont.

ARTICLE 1.

That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety; therefore, no male person, born in this country, or brought from over sea, ought to be holden by law to serve any person as a servant, slave, or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives to the age of eighteen years unless they are bound by their own consent, after they arrive to such age, or bound by law for the payment of debts, damages, fines, costs or the like.

ARTICLE 2.

That private property ought to be subservient to public uses when necessity requires it; nevertheless, when any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

ARTICLE 3.

That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can, be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship; and no authority can or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship. Nevertheless, every sect or denomination ought to observe the Sabbath, or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

ARTICLE 4.

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character: he ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the law.

ARTICLE 5.

That the people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.

ARTICLE 6.

That all power being originally inherent in, and consequently derived from, the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times, in a legal way, accountable to them.

ARTICLE 7.

That government is, or ought to be instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

ARTICLE 8.

That all elections ought to be free and without corruption, and that all freemen having a sufficient evidence, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution.

ARTICLE 9.

That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto: but no part of any person's property can be justly taken from him, or applied to public uses, without his consent, or that of the representative body of freemen; nor can any man, who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law but such as they have in like manner assented to, for their common good; and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the legislature to be of more service to the community than the money would be if not collected.

ARTICLE 10.

That, in all prosecutions for criminal offences, a person hath a right to be heard by himself and his counsel; to demand the cause and nature of his accusation; to be confronted with the witnesses; to call for evidence in his favour, and a speedy public trial, by an impartial jury of his country; without the unanimous consent of which jury, he cannot be found guilty: nor can he be compelled to give evidence against himself; nor can any person be justly deprived of his liberty; except by the laws of the land, or the judgment of his peers.

ARTICLE 11.

That the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure; and, therefore, warrants without oath or affirmation first made, affording sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places; or to seize any person or persons, his, her, or their property, not particularly described, are contrary to that right, and ought not be granted.

ARTICLE 12.

That when any issue in fact, proper for the cognizance of jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred.

ARTICLE 13.

That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained.

ARTICLE 14.

The freedom of deliberation, speech, and debate, in the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation, or prosecution, action, or complaint, in any other court or place whatsoever.

ARTICLE 15.

The power of suspending laws, or the execution of laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases as this constitution, or the legislature shall provide for.

ARTICLE 16.

That the people have a right to bear arms for the defence of themselves and the state; and, as standing armies in time of peace are dangerous to liberty, they ought not to be kept up, and that the military should be kept under strict subordination to, and governed by, the civil power.

ARTICLE 17.

That no person in this state can, in any case, be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army, and the militia in actual service.

ARTICLE 18.

The frequent recurrence to fundamental principles, and firm adherence to justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right, in a legal way to exact a due and constant regard to them, from their legislators and magistrates, in making and executing such laws as are necessary for the good government of the state.

ARTICLE 19.

That all people have a natural and inherent right to emigrate from one state to another that will receive them.

ARTICLE 20.

That the people have a right to assemble together to consult for their common good: to instruct their representatives: and to apply to the legislature for redress of grievances by address, petition, or remonstrance.

ARTICLE 21.

That no person shall be liable to be transported out of this state for trial for any offence committed within the same.

CHAP. 2.

Plan or Form of Government.

§ 1. The commonwealth or state of Vermont shall be governed hereafter by a governor or lieutenant governor, council, and assembly of the representatives of the freemen of the same in manner and form following:

§ 2. The supreme legislative power shall be vested in a house of representatives, of the freemen of the commonwealth or state of Vermont.

§ 3. The supreme executive power shall be vested in a governor, or, in his absence, a lieutenant governor, and council.

§ 4. Courts of justice shall be maintained in every county in this state, and also in new counties, when formed; which courts shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay. The judges of the supreme court shall be justices of the peace throughout the state; and the several judges of the county courts in their respective counties, by virtue of their office, except in the trial of such causes as may be appealed to the county court.

§ 5. A future legislature may, when they shall conceive the same to be expedient and necessary, erect a court of chancery, with such powers as are usually exercised by that court, or as shall appear for the interest of the commonwealth: Provided, they do not constitute themselves the judges of the said court.

§ 6. The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

§ 7. In order that the freemen of this state might enjoy the benefit of election, as equally as may be, each town within this state, that consists or may consist of eighty taxable inhabitants within one septenary, or seven years next after the establishing this constitution, may hold elections therein, and choose each two representatives; and each other inhabited town in this state may, in like manner, choose each one representative to represent them in general assembly, during the said septenary, or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose each one representative, for ever thereafter.

§ 8. The house of representatives of the freemen of this state shall consist of persons most noted for wisdom and virtue, to be chosen by ballot, by the freemen of every town in this state, respectively, on the first Tuesday in September annually for ever.

§ 9. The representatives so chosen, a majority of whom shall constitute a quorum for transacting any other business than raising a state tax, for which two-thirds of the members elected shall be present, shall meet on the second Thursday of the succeeding October, and shall be styled *The General Assembly of the State of Vermont:* they shall have power to choose their speaker, secretary of state, their clerk, and other necessary officers of the house—sit on their own adjournments—prepare bills, and enact them into laws—judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their own constituents antecedent to their own elections; they may admister oaths and affirmations in matters depending before them, redress grievances, impeach state criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties; they may, annually, on their first session after their election, in conjunction with the council, or oftener if need be, elect judges of the supreme and several county and probate courts, sheriffs, and justices of the peace; and also with the council may elect major generals and brigadier generals, from time to

their having heretofore taken and subscribed the same, as the following oath or affirmation, viz.

"You, ———, do solemnly swear (or affirm) that, as a member of this assembly, you will not propose or assent to any bill, vote or resolution, which shall appear to you injurious to the people, nor do or consent to any act or thing whatsoever that shall have a tendency to lessen or abridge their rights and privileges, as declared by the constitution of this state; but will in all things, conduct yourself as a faithful, honest representative, and guardian of the people, according to the best of your judgment and abilities: *(in case of an oath)* so help you God. *(And in case of affirmation)* under the pains and penalties of perjury."

§ 13. The doors of the house in which the general assembly of this commonwealth shall sit, shall be be open for the admission of all persons who behave decently; except only when the welfare of the state may require them to be shut.

§ 14. The votes and proceedings of the general assembly shall be printed, when one-third of the members think it necessary, as soon as convenient after the end of each session, with the yeas and nays on any question, when required by any member, except where the votes shall be taken by ballot, in which case every member shall have a right to insert the reasons of his vote upon the minutes.

§ 15. The style of the laws of this state, in future to be passed, shall be: *It is hereby enacted by the general assembly of the State of Vermont.*

§ 16. To the end that laws, before they are enacted, may be more naturally considered, and the inconvenience of hasty determination, as much as possible, prevented, all bills which originate in the assembly shall be laid down before the governor and council for their revision and concurrence, or proposals of amendment; who shall return the same to the assembly, with their proposals of amendment, if any, in writing; and if the same are not agreed to by the assembly, it shall be in the power of the governor and council to suspend the passing of such bill until the next session of the legislature: Provided, that if the governor and council shall neglect or refuse to return any such bill to the assembly, with written proposal of amendment, within five days, or before the rising of the legislature, the same shall become a law.

§ 17. No money shall be drawn out of the treasury, unless first appropriated by act of legislation.

§ 18. No person shall be elected a representative until he has resided two years in this state; the last of which shall be in the town for which he is elected.

§ 19. No member of the council or house of representatives shall, directly or indirectly, receive any fee or reward to bring forward or advocate any bill, petition, or other business to be transacted in the legislature; or advocate any cause, as counsel, in either house of legislation, except when employed in behalf of the state.

§ 20. No person ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

§ 21. Every man, of the full age of twenty-one years, having resided in this state for the space of one whole year next before the election of representatives, and is of a quiet and peaceable behaviour, and will take the following oath or affirmation, shall be entitled to all the privileges of a freeman of this state.

"You solemnly swear (or affirm) that whenever you give your vote or suffrage touching any matter that concerns the state of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favour of any man."

§ 22. The inhabitants of this state shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as congress, agreeably to the constitution of the United States, and the legislature of this state, shall direct. The several companies of militia shall, as often as vacancies happen, elect their captain and other officers, and the captains and subalterns shall nominate and recommend the field officers of their respective regiments, who shall appoint their staff officers.

§ 23. All commissions shall be in the name of the freemen of the state of Vermont, sealed with the state seal, signed by the governor, and in his absence the lieutenant governor, and attested by the secretary; which seal shall be kept by the governor.

§ 24. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for maladministration. All impeachments shall be before the governor, or lieutenant governor, and council, who shall hear and determine the same, and may award costs; and no trial or impeachment shall be a bar to a prosecution at law.

§ 25. As every freeman, to preserve his independence, if without a sufficient estate, ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for, nor use in establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants, and faction, contention and discord among the people. But, if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature. And if any officer shall wittingly and wilfully take greater fees than the law allows him, it shall ever after disqualify him from holding any office in this state, until he shall be restored by act of legislation.

§ 26. No person in this state shall be capable of holding or exercising more than one of the following offices at the same time, viz. governor, lieutenant governor, judge of the supreme court, treasurer of the state, member of the council, member of the general assembly, surveyor general, or sheriff. Nor shall any person, holding any office of profit or trust under the authority of congress, be eligible to any appointment in the legislature, or of holding any executive or judiciary office under this state.

§ 27. The treasurer of the state shall, before the governor and council, give sufficient security to the secretary of the state, in behalf of the general assembly; and each high sheriff, before the first judge of the county court to the treasurer of their respective counties, previous to their respectively entering upon the execution of their offices, in such manner, and in such sums, as shall be directed by the legislature.

§ 28. The treasurer's accounts shall be annually audited, and a fair state thereof laid before the general assembly at their session in October.

§ 29. Every officer, whether judicial, executive, or military, in authority under this state, before he enters upon the execution of his office, shall take and subscribe the following oath or affirmation of allegiance to this state, unless he shall produce evidence that he has before taken the same; and also the following oath or affirmation of office, except military officers, and such as shall be exempted by the legislature.

The oath or affirmation of office.

"You do solemnly swear (or affirm) that you will be true and faithful to the state of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the constitution or government thereof, as established by convention: *(If an oath)* so help you God. *(If an affirmation)* under the pains and penalties of perjury.

The oath or affirmation of office.

"You, ————, do solemnly swear (or affirm) that you will faithfully execute the office of ——— for the ——— of ———; and will therein do equal right and justice to all men, to the best of your judgment and abilities, according to law: *(If an oath)* so help you God. *(If an affirmation)* under the pains and penalties of perjury."

§ 30. No person shall be eligible to the office of governor or lieutenant governor, until he shall have resided in this state four years next preceding the day of his election.

§ 31. Trials of issues, proper for the cognizance of a jury, in the supreme and county courts, shall be by jury, except where parties otherwise agree; and great care ought to be taken to prevent corruption or partiality in the choice and return or appointment of juries.

§ 32. All prosecutions shall commence, *by the authority of the state of Vermont*; all indictments shall conclude with these words; *against the peace and dignity of the state,* And all fines shall be proportioned to the offences.

§ 33. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up and assigning over, *bona fide,* all his estate, real and personal, in possession, reversion

or remainder, for the use of his creditors, in such manner as shall be hereafter regulated by law. And all prisoners, unless in execution, or committed for capital offences, when the proof is evident or presumption great, shall be bailable by sufficient sureties; nor shall excessive bail be exacted for bailable offences.

§ 34. All elections, whether by the people or the legislature, shall be free and voluntary: and any elector who shall receive any gift or reward for his vote, in meat, drink, moneys, or otherwise, shall forfeit his right to elect at that time, and suffer such other penalty as the law shall direct; and any person who shall, directly or indirectly, give, promise, or bestow, any such rewards, to be elected, shall thereby be rendered incapable to serve for the ensuing year, and be subject to such further punishment as a future legislature shall direct.

§ 35. All deeds and conveyances of land shall be recorded in the town clerk's office in their respective towns; and for want thereof, in the county clerk's office of the same county.

§ 36. The legislature shall regulate entails in such manner as to prevent perpetuities.

§ 37. To deter more effectually from the commission of crimes, by continued visible punishments of long duration, and to make sanguinary punishments less necessary, means ought to be provided for punishing by hard labour those who shall be convicted of crimes not capital, whereby the criminal shall be employed for the benefit of the public, or for the reparation of injuries done to private persons: and all persons, at proper times, ought to be permitted to see them at their labor.

§ 38. The estates of such persons as may destroy their own lives shall not for that offence be forfeited, but descend or ascend in the same manner as if such persons had died in a natural way. Nor shall any article, which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in any wise forfeited, on account of such misfortune.

§ 39. Every person of good character, who comes to settle in this state, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and, after one year's residence shall be deemed a free denizen thereof, and entitled to all rights of a natural born subject of this state, except that he shall not be capable of being elected governor, lieutenant governor, treasurer, counsellor, or representative in assembly until after two year's residence.

§ 40. The inhabitants of this state shall have liberty, in seasonable times, to hunt and fowl on the lands they hold, and on other lands not enclosed; and in like manner to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the general assembly.

§ 41. Laws for the encouragement of virtue and prevention of vice and immorality, ought to be constantly kept in force, and duly executed: and a competent number of schools ought to be maintained in each town, for the convenient instruction of youth; and one or more grammar schools be incorporated, and properly supported, in each county in this state. And all religious societies or bodies of men, that may be hereafter united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.

§ 42. The declaration of the political rights and privileges of the inhabitants of this state, is hereby declared to be a part of the constitution of this commonwealth, and ought not to be violated on any pretence whatsoever.

§ 43. In order that the freedom of this commonwealth may be preserved inviolate for ever, there shall be chosen, by ballot, by the freemen of this state on the last Wednesday in March, in the year one thousand seven hundred and ninety-nine, and on the last Wednesday in March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chose, except they shall not be out of the council or general assembly, to be called the council of censors: who shall meet together on the first Wednesday in June next ensuing their election, the majority of whom shall be a quorum, in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree, and whose duty it shall be to inquire, whether the constitution has been preserved inviolate in every part during the last septenary, including the year of their service, and whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution: They are also to inquire, whether the public taxes have been justly laid and collected in all parts of this commonwealth; in what manner the public moneys have been disposed of; and whether the laws have been duly executed. For these purposes, they shall have power to send for persons, papers, and records: they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as shall appear to them to have been passed contrary to the principles of the constitution: These powers they shall continue to have for and during the space of one year from the day of their election, and no longer. The said council of censors, shall also have power to call a convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this constitution, which may be defective: explaining such as may be thought not clearly expressed: and of adding such as are necessary for the preservation of the rights and happiness of the people: but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they might have an opportunity of instructing their delegates on the subject.

By order of Convention, July 9th, 1793.

THOMAS CHITTENDEN, *President.*

Attest, LEWIS R. MORRIS, *Secretary.*

EXTRACTS FROM THE CONSTITUTION OF NEW-HAMPSHIRE.

Article 1. All men are born equally free and independent: Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good.

2. All men have certain natural, essential, and inherent rights—among which are, the enjoying and defending life and liberty, acquiring, possessing, and protecting property; and, in a word, of seeking and obtaining happiness.

3. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and without such an equivalent the surrender is void.

4. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the *rights of conscience.*

5. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason: and no person shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace, or disturb others in their religious worship.

6. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote these important purposes, the people of this state have a right to empower, and do hereby fully empower, the legislature, to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of public protestant teachers of piety, religion, and morality:

Provided, notwithstanding, That the several towns, parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance: and no person, of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of Christians, demeaning themselves quietly, and as good citizens of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state, as if this constitution had not been made.

7. The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and for ever hereafter shall, exercise and enjoy every power, jurisdiction and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.

8. All power residing originally in, and being derived from, the people, all the magistrates and officers of government, are their substitutes and agents, and at all times accountable to them.

9. No office or place whatsoever, in government, shall be hereditary—the abilities and integrity requisite in all, not being transmissible to posterity or relations.

10. Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore whenever the ends of government are perverted, or public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old, or establish a new government.

35. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well: subject, however, to such limitations, on account of age as may be provided by the constitution of the state; and that they should have honourable salaries, ascertained and established by standing laws.

36. Economy being a most essential virtue in all states, especially in a young one; no pension shall be granted but in consideration of actual services; and such pensions ought to be granted with great caution by the legislature, and never for more than one year at a time.

37. In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connexion that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.

38. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives: And they have a right to require of their lawgivers and magistrates an exact and constant observance of them in the formation and execution of the laws necessary for the good administration of the government.

We have no room for further extracts from the constitution of New-Hampshire, and besides, the constitution of Massachusetts, Connecticut, and Vermont, which we give in full, in the present number of our series, contain substantially all that is omitted in the Constitution of New-Hampshire. The Constitution of Vermont was proposed to be amended and a convention elected for that purpose.

From the Cleveland Herald: The mast of a British vessel in port has been struck by lightning, but no great damage was done. The electric fluid also struck three times on one farm in Brooklyn.

Bristol, R. I. Steam mill was struck by lightning and set on fire. Mr. Wilmarth the night watch of the factory, immediately on the lightning striking, ran to the upper story of the building, and was instantly prostrated to the floor, as is supposed from the effects of the sulphurous air. He was taken up insensible, and shortly recovered his senses.—June 12.

During the severe storm on Saturday week, a man and his wife, residing in Lycoming Creek, Pa., were struck by lightning and instantly killed. The lightning struck a tree adjoining a dwelling in Peekskill, N. Y., on Friday, and passing through the house, killed three women and an infant.—June 14.

The Palmyra (Mo.) Courier of the 1st inst., says: On Saturday last, a small boy about 3 years old and a negro woman were struck by lightning while standing near the kitchen fire of Mr. Briscoe, of Lewis county.—June 15.

We hear that a severe thunder storm passed over Danbury Ct., on Monday afternoon, and that the lightning struck the lumber yard of Messrs. Wildman and Gilbert, and prostrated four persons in the vicinity. A cow belonging to Mr. Samuel Morris, was also killed in the eastern part of the town by another bolt, and a barn in the northern section, owned by Mr. Philo White, was struck and much injured.

On Monday of last week, there was a severe thunder storm in Westfield Society, in this town, accompanied with lightning. Just as a shower came up, Mr. Wm. F. Boardman, while hurrying from one of his barns to the house, felt a smart blow across the small of his back, (as though he had been struck with a cart whip,) accompanied with a slight sensation on one arm and leg. Immediately after, he heard the clap of thunder. The next day he felt sore, the one foot being slightly numb; and there was a red streak across his back. In a shop a few rods N. W. a shoemaker's lapstone was indented about the size of a cent, and a stone in that spot was converted into fine powder, smelling strong of sulphur. In another shop, a boy whittling with a penknife, uttered an exclamation of pain, and on taking the knife, it was found quite warm. A polishing tool lying on a bench in the same shop, emitted electric sparks. Two ladies sitting in a room felt electric shocks. The cattle and other animals exhibited signs of great uneasiness. No one, we believe, was injured.—Middleton (Conn.) Sentinel, June 16th.

Missouri Territory, May 17.—The other night a man was killed by lightning in an encampment of Oregon settlers, a few miles from here.

A man named Poor, residing in the upper part of Queen Anne Co., was recently killed by lightning. The fluid passed down the chimney and killed him.—June 17.

A Mrs. Evelne Feazel of Lacon, Ill., was killed by lightning on the 13th ult., while in the act of setting her dinner table. Three small children were in the room at the time, but they sustained no injury.—June 19.

The dwelling of Hylas T. Currier, Esq., of Fairfield, Kane Co., Ill., was struck by lightning on the evening of the 30th ult., and Mr. Currier instantly killed.

A serious accident occurred during the thunder storm on Saturday last, to Mr. R. Jackson, a farmer of this vicinity, while he, with some others in his employ, was gathering hay to save it from being wet by the rain, they were struck by lightning and all stunned. Mr. Jackson fell between a horse rake and the horse which was attached to it. At the same moment the horse took fright and started off, dragging Mr. Jackson after him in a most perilous situation, being partly in front of the rake and in imminent danger of being impaled by every prong. One prong did pass through his leg below the knee, but before further injury was received he recovered from the shock, and with admirable presence of mind, seized the reins and stopped the horse.—Wilmington (Del.) Journal, May 30.

On Saturday evening, a negro man belonging to Dr. W. W. Wilson, of Springfield, was instantly killed by lightning.—Savannah Republican, June 26.

We regret to learn that during the storm of Wednesday evening, Col. Reid, the stage proprietor, had four valuable horses killed by lightning at his farm at Pittstown.

The wife and child of Henry Bell, of Clay Co., Missouri, were killed by lightning on the morning of the second inst.—July 3.

Two young men were killed by lightning in Caldwell Co., Mo. They were riding over the prairie at the time. Names not known.

At Amboy, near Syracuse, two lads took shelter under a tree which was struck by lightning, and one of them was instantly killed. The dwelling of Gen. J. R. Lawrence, at Syracuse, was struck, and somewhat injured.—June 28.

At Salina, a house, store and salt block, were severally struck: a colored woman had the clothes stripped from her side, and was severely scorched by the lightning, and another woman was rendered insensible for half an hour.

A building was struck at Lafayette, in the same county, two houses at Weedsport, and a house at Cato four corners in Cayuga county.—July 4.

Two houses in the Third Municipality were struck by lightning on Sunday. No personal injury fortunately was sustained.—N. O. June 27.

The Episcopal church at Belvidere, in this State, was considerably injured during a shower on Thursday afternoon. The fluid entered the cupola, passing down the end of the building fronting the public square, tearing off the boards and shattering the timber from top to bottom.—Newark D. Adv. July 6.

There was a severe thunder storm in Plymouth county, Mass., on Saturday night, about 11 o'clock. At Kingston the lightning struck in five different places, but no person was killed.—July 7.

A severe thunder storm was experienced at Quebec and its vicinity on Sunday afternoon, July 2d. At St. Rock the lightning struck the church, while the people were at vespers, and created a great deal of alarm. Fortunately no one experienced injury.

Kingston, Mass., Monday morning, July 3d.—At a quarter before three yesterday morning, our town was visited by a most terrible thunder and lightning squall, which though continuing only 30 minutes, struck in four different places, within the distance of a mile and a half. The first flash struck the house of Mr. Ezra Perkins, and demolishing the chimney on the N. W. side of the house descended to the second story, throwing the plastering over the fire place with great violence to the opposite wall, and cutting off the leg of a dressing table, split off a part of the mantel, threw it round quarterly, and nailed it fast to the table;—and then making its way through the hearth, split the rising of the chimney and distributed an iron fire frame into half a dozen pieces about the room, and dashing in a dozen lights of one window, breaking a looking glass into many pieces—it demolished three glass lamps setting on the mantel piece, and left one on the hearth full of oil untouched, and rolled thunderingly heavy along the floor, cutting through the carpets and shattering the boards; it tore off the casing and descended to the cellar, opening a gap in the wall tumbled into a water hogshead, and driving out the bung, disappeared with the water. Though some half dozen of persons were in the house, in bed, at the time, no one was hurt.

About half an hour afterwards, the house of Mr. Joseph Lovering, Jr., about 20 rods from the former, was struck, the fluid descending the S. E. chimney, shattering the same till it came to the second story, where Mr. L., wife and youngest child were sleeping, the crib touching the chimney wall; and the little one had just, of its own accord, crept into the bed as the whole plastering over the crib was dashed into it, and the bed coverlet set fire to in several places, and one of Mr. L's hands slightly scorched, when it descended to the room below, carrying all the soot in the chimney with it, melting two Brittania lamps on the mantel piece, and giving the fire frame a wrenching, and demolishing a looking glass, took its departuae without any further ceremony. Three other children were sleeping in the house at the time. It also struck a pig stye of Mr. Robert Cushman, in which were two clever sized pigs, and killing one of them, disappeared. A duck pen of Capt. E. Fuller was also struck, and eleven young ducks, intended for the next Thanksgiving, were found dead in the morning. The two last are about a mile and a half from the first, and about the same distance from each other.

During the shower of last Wednesday, a colored man was killed by lightning, in the vicinity of Willow Point, in this county. He was standing near a tree at the moment, and the fluid passed down his back, completely shivering the spine.—Broome Repub.

We regret to learn that during the shower on Sunday afternoon last, the barn of Mr. Jacob F. Cunningham, of Rhinebeck, was struck by lightning and entirely consumed with its contents, together with the building attached.—Poughkeepsie Eagle.

During the thunder storm of the 23th June, a fine pair of oxen, belonging to Mr. Charles Comstock, of this town, were killed by lightning.—Newport N. H.

At Norridgewock, Me., on the 29th June, there was a violent thunderstorm, which struck in several places.

We are informed that during the heavy storm on the evening of the 28th June, a barn belonging to Mr. John Wells, situated in the north part of the town of Schuyler, was struck by lightning and wholly consumed.

In Charleston on Sunday night, St. Paul's church was struck by lightning, but not seriously injured.—July 10.

We learn that Mr. John A. Cook, formerly a clerk in the Post office in this place, was recently killed by lightning in Orange Co. He had been at work in his field, when seeing a storm coming up, he took shelter under a tree. The tree was struck by lightning, a part of the fluid passing down the body of Mr. Cook, and causing his death immediately.—Fayetteville, N. C. July 1st.

During the storm on Sunday the 2d inst., the Sunderland bridge across the Connecticut river, was struck by lightning. No injury was done, however, otherwise than tearing off a few shingles, displacing a number of planks, &c., rendering it impassable on one side at the time. The pig stie adjoining the barn of S. D. Crocker, of the same town, was also struck, killing three out of four swine. It is somewhat remarkable, that the fluid should descend to the ground directly between the barn and a large tree, without touching either, they only 15 or 20 fee t apart.—Northampton (Mass.) Gaz. July 13.

The storm in Adams county, Miss., on the 1st inst., was very severe in the neighborhood of the town of Washington. One gentleman was killed by lightning, and several negroes more or less injured.—July 17.

The following deaths by lightning occurred in Canada, during the shower of the 2d inst. At Sherrington three men were killed on the spot, and the other seriously injured. At St. Antonio, five children were gathering strawberries in a field about half a league from the village, when they were struck by lightning and two of them killed, one of them the son of Mr. Lapierre, aged 10 years, the other a little girl of five years, the daughter of Mr. Archambault. Their clothes were much burned. The three others were struck to the ground, but not seriously injured. They had taken refuge from the storm near a fence where they were struck.

We learn from Mr. Nelson, the proprietor of the Telegraph, that the mast of that establishment was struck by lightning during the thunder gust, on Saturday. In consequence of the mast being protected by a lightning rod, but little damage was done, though the fluid passed through the roof of the telegraph house, tearing away parts of the floor.—Baltimore Patriot, July 19.

A young man by the name of Wm. Nelson Colburn, 22 years of age from Collier Centre, Erie county, was killed by lightning about two miles west of this village. A brother who was sitting near him at the time, was severely stunned, but is recovering.—Geneva Courier, July 21.

On Tuesday forenoon, about 11 o'clock, a severe thunder storm passed over Kingston in this State. A dwelling house was struck by lightning and tore entirely to pieces. A cat which was lying on the door step, was killed. A child 14 months old, was knocked down, but its father having the presence of mind to throw a pail of water upon it, it was immediately resuscitated. There were ten other persons in the house.

LAWS OF MAN AT VARIANCE WITH THE LAWS OF NATURE.

The following extrordinary act is now in force upon the statute books of the State of Connecticut:

BARBERRY BUSHES.

An Act for destroying Barberry Bushes.

Sect. I. Be *it enacted by the Senate and House of Representatives in General Assembly convened*, That any person or persons, with the advice and consent of the civil authority, and select-men of any town, where any *barberry bushes* are, or may be growing, or in pursuance of the vote of such town, passed in legal town meeting, may, at any season of the year, enter on lands on which barberry bushes shall be growing, and dig them up and destroy them, without being liable to an action therefor.

Sec. 2. The select-men of any town, in which such bushes are, or shall be growing, may, in pursuance of a vote of the town, passed in legal meeting, employ any suitable person or persons, to dig up and destroy such bushes, and defray the expense thereof from the treasury of the town.

The objection to Barberry Bushes, we understand to be, that they are destructive to the growth of wheat, and it is said by some persons that wheat will not mature in the same or adjoining field, in which Barberry Bushes are growing, hence this provision of law in Connecticut.

CONSTITUTION
OF
MASSACHUSETTS.

The Constitution of Massachusetts was framed at a time when men's minds were in a suitable condition for such a work. The revolution had brought with it numerous trials and hardships which served to teach the inhabitants of the infant Commonwealth their entire dependence upon the GREAT GOVERNOR OF THE UNIVERSE, and led them to seek that guidance in the framing of a fundamental law which should secure to themselves and their posterity the blessing of civil liberty.

Mankind are creatures of circumstances, and it is often that the human mind is under influences that are produced by the occurrence of important events which abundantly qualify it for usefulness, events which tend to discipline the mind and to exert an influence which spreads from mind to mind until the public mind is formed as the mind of one man.

The individuals who formed the Convention which was entrusted with this important work, have all ceased from their labors and passed to that change which awaits every human being—their labor, and their work, in this, is left behind, a valuable bequest to their posterity, and a rich legacy to millions yet unborn.

The Constitution of Massachusetts, goes much into detail—an important requisite in an act of this description—its language is plain, and of easy construction.

Constitutional law as distinguished from Statute law, presents, among other characteristics, this difference—the former is intended as a more permanent enactment while the latter is subject to alteration by the Legislature, which is annually convened. It is important therefore, that whatever laws are designed to be permanent should be incorporated in the Constitution, hence the greater detail is a matter of great importance.

The Constitution of Massachusetts has been in operation 66 years, and the people of that Commonwealth have been satisfied with its provisions for we find that but few amendments have been made to that instrument.

In presenting a copy of the Constitution of Massachusetts, we have premised it with some extracts from Mr. Justice Story's Commentaries on the Constitution, as follows:

"In the establishment of a free government, the division of the three great powers of government, the executive, the legislative, and the judicial, among different functionaries, has been a favorite policy with patriots and statesmen. It has by many been deemed a maxim of vital importance, that these powers should forever be kept separate and distinct. And accordingly we find it laid down with emphatic care in the bill of rights of several of the State Constitutions. In the Constitution of Massachusetts, for example, it is declared, that in the Government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative or judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men. Other declarations of a similar character are to be found in other State Constitutions."

"Montesquieu seems to have been the first, who, with a truly philosophical eye, surveyed the political truth involved in the maxim, in its full extent and gave to it a permanent importance and value. As it is tacitly assumed, as a fundamental basis in the Constitution of the United States, in the distribution of its powers, it may be worth enquiry, what is the true nature, object and extent of the maxim, and of the reasoning by which it is supported. The remarks of Montesquieu on this subject will be found in a professed commentary upon the constitution of England, "When," says he, "the legislature and executive powers are vested in the same person, or in the same body of magistrates there can be no public liberty, if the judiciary power be not separated from the legislative and executive. Were it joined to the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same men, or the same body, whether of nobles or of the people, to exercise these three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

"The same reasoning is adopted by Mr. Justice Blackstone, in his commentaries. "In all tyrannical governments," says he, "the supreme magistracy, or the right of both making and enforcing the laws, is vested in the same man, or in one and the same body of men; and wherever these two powers are united together there can be no public liberty. The magistrate may enact tyrannical laws, and execute them in a tyrannical manner, since he is possessed in quality of dispenser of justice, with all the power, which he, as legislator, thinks proper to give himself. But where the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power, as may tend to the subversion of its own independence, and therewith of the liberty of the subject;" again, "in this distinct and separate existence of the judicial power in a peculiar body of men, nominated, indeed, by, but not removeable at, the pleasure of the crown, consists of one main preservation of public liberty; which cannot long subsist in any state, unless the administration of common justice be in some degree separated from the legislative, and also the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions, would then be regulated only by their opinions, and not by any fundamental principles of law, which though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative.

"Dr. Paley's remarks on this subject are not the least valuable of his excellent writings. The next security for the impartial administration of justice, especially in decisions, to which government is a party, is the independency of the judges. As protection against every illegal attack upon the rights of the subject by the servants of the crown, is to be sought for from these tribunals, the judges of the land become not unfrequently the arbitrators between the king and the people; on which account they ought to be independent of either; or, what is the same thing equally dependent upon both; that is, if they be appointed by the one, they should be removeable only by the other. This was the policy, which dictated the memorable improvement in our constitution, by which the judges, who before the revolution held their offices during the pleasure of the king, can now be deprived of them only by an address from both houses of parliament; as the most regular, solemn and authentic way, by which the dissatisfaction of the people can be expressed, To make this independency of the judges complete, the public salaries of their office ought not only to be certain both in amount and continuance, but so liberal as to secure their integrity from the temptation of secret bribes; which liberality will answer, also, the further purpose of preserving their jurisdiction from contempt, and their characters from suspicion; as well as of rendering the office worthy of ambition of men of eminence in their profession.

Copy of a letter from PRESIDENT WASHINGTON *to the Chief Justice and Associate Justices of the Supreme Court of the United States.*

UNITED STATES, April 3d, 1790.

"GENTLEMEN:—I have always been persuaded, that the stability and success of the national government, and consequently the happiness of the people of the United States, would depend, in a considerable degree, on the interpretation of its laws. In my opinion, therefore, it is important, that the judiciary system should not only be independent in its operations, but as perfect as possible, in its formation.

"As you are about to commence your first circuit, and many things may occur in such an unexplored field, which it would be useful should be known, I think it proper to acquaint you, that it will be agreeable to me to receive such information and remarks on this subject as you shall from time to time judge it expedient to make.

GEO. WASHINGTON."

"*To the Chief Justice and Associate Justices of the United States.*

societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Option as to whom parochial taxes may be paid, unless, &c.

And all monies, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

All denominations equally protected. Subordination of one sect to another prohibited.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

Right of self government secured.

IV. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in congress assembled.

Accountability of all officers, &c.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Services rendered to the public, being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

Objects of government; right of people to institute and change it.

VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Right of people to secure rotation in office.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

All, having the qualifications prescribed, equally elegible to office.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

Right of protection and duty of contribution, correlative. Taxation, founded on consent. Private property not to be taken for public uses, without, &c.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection: to give his personal service, or an equivalent, when necessary; but no part of the property of any individual, can, with justice, be taken from him or applied to public uses without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Remedies, by recourse to the law, to be free, complete and prompt.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly and without delay; conformably to the laws.

Prosecutions regulated.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself: and every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel at his election: and no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

Right to trial by jury, in criminal cases, except, &c.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Crimes to be proved in the vicinity.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Right of search and seizure regulated.

XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

Right to trial by jury sacred, except, &c.

XV In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

Liberty of the press.

XVI. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

Right to keep and bear arms. Standing armies, dangerous. Military power subordinate to civil.

XVII. The people have a right to keep and to bear arms for the common defence: and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

Moral qualifications for office. Moral obligations of lawgivers and magistrates.

XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

Right of people to instruct representatives and petition legislature.

The people have a right, in an orderly and peace-

able manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Power to suspend the laws or their execution.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

Freedom of debate, &c., and reason thereof.

XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Frequent sessions, and objects thereof.

XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Taxation founded on consent.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

Ex post facto laws prohibited.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Legislature not to convict of treason, &c.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Excessive bail or fines and cruel punishments, prohibited.

XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

No soldier to be quartered in any house, unless, &c.

XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Citizens exempt from law-martial, unless, &c.

XXVIII. No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

Judges of supreme judicial courts. Tenure of their office. Salaries.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

Separation of executive, judicial and legislative departments.

XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

PART THE SECOND.

The Frame of Government.

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER I.

THE LEGISLATIVE POWER.

SECTION I.

The General Court.

Legislative department.

Art. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

See amendments, Art. X.

The legislative body shall assemble every year, on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, THE GENERAL COURT OF MASSACHUSETTS.

Governor's veto. Bill may be passed by two thirds of each house notwithstanding.

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal: and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

See amendments, Art. I.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor, within five days after it shall have been presented, the same shall have the force of a law.

General court may constitute judicatories, courts of record, &c. Courts, &c., may administer oaths.

III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

General court may enact laws, &c. not repugnant to the constitution; may provide for the election or appointment of officers; prescribe their duties; impose taxes; duties and excises; to be disposed of for defence, protection, &c.

IV. And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose, and levy reasonable duties and excises, upon any produce, goods, wares, merchandize, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this Commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

Valuation of estates, once in ten years, at least, while, &c.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the general court shall order.

CHAPTER I,

SECTION II.

Senate.

Senate, number of, and by whom elected.

Art. I. There shall be annually elected, by the freeholders and other inhabitants of this Commonwealth, qualified as in this constitution is provided, forty persons to be counsellors and senators, for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the Commonwealth may from time to time be divided by the general court for that purpose: and the general court, in assigning the numbers to be elected by the respective districts shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known, to the inhabitants of the Commonwealth, the limits of each district, and the number of counsellors and senators to be chosen therein; provided, that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

Counties to be districts until, &c.

And the several counties in this Commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of counsellors and senators, (except that the counties of Dukes county and Nantucket shall form one district for that purpose) and shall elect the following number for counsellors and senators, viz:

Suffolk	six	York	two
Essex	six	Dukes county and Nantucket	one
Middlesex	five		
Hampshire	four	Worcester	five
Plymouth	three	Cumberland	one
Barnstable	one	Lincoln	one
Bristol	three	Berkshire	two

Manner and time of choosing senators and counsellors. See amendments, art. II. and X. See amendments, art. III. Word "inhabitant" defined.

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz: there shall be a meeting on the first Monday in April annually, forever, of the inhabitants of each town in the several counties of this Commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and counsellors; and at such meetings every male inhabitant of twenty one years of age and upwards, having a freehold estate, within the Commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant," in this constitution, every person shall be considered as an inhabitant, for the purpose of electing

every district of the Commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be after such vacancies shall happen.

Qualifications of a senator.

V. Provided, nevertheless, that no person shall be capable of being elected as a senator, who is not seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this Commonwealth for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district, for which he shall be chosen.

Senate not to adjourn more than two days.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

Shall choose its officers and establish its rules.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceeding.

Shall try all impeachments. Oath. Limitation of sentence.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the Commonwealth, for misconduct and mal-administration in their offices: but, previous to the trial of every impeachment, the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party, so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

Quorum.

IX. Not less than sixteen members of the senate shall constitute a quorum for doing business.

CHAPTER I.

SECTION III.

House of Representatives.

Representation of the people.

Article I. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Representatives by whom chosen.

II. And in order to provide for a representation of the citizens of this Commonwealth founded upon the principle of equality, every corporate town, containing one hundred and fifty ratable polls, may elect one representative; every corporate town, containing three hundred and seventy five ratable polls, may elect two representatives; every corporate town, containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty five ratable polls the mean increasing number for every additional representative.

Proviso as to towns having less than 150 ratable polls.

Provided, nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

Towns liable to fine in case, &c.

And the house of representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

Expense of travelling to and from the general court, how paid.

The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can in the judgment of the house, and does not depart without leave.

Qualifications of a representative.

III. Every member of the house of representatives shall be chosen by written votes; and for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of, a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town, immediately on his ceasing to be qualified as aforesaid.

Qualifications of a voter. See amendments, Art. III.

IV. Every male person, being twenty one years of age, and resident in any particular town in this Commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.

Representatives, when chosen. See amendment, Art. X.

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

House alone can impeach.

VI. The house of representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the senate.

House to originate all money bills.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Not to adjourn more than two days.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

Quorum.

IX. Not less than sixty members of the house of representatives shall constitute a quorum for doing business.

House to judge of returns, &c. of its own members. To choose its officers, &c. May punish for certain offences.

X. The house of representatives shall be judge of the returns, elections, and qualifications of its own members as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house, by any disorderly, or contemptuous behaviour, in its presence; or who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for anything said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person ordered to attend the house, in his way in going, or returning; or who shall rescue any person arrested by the order of the house.

Privileges of members.

And no member of the house of representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending, the general assembly.

Governor and council may punish. General limitation.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided, that no imprisonment, on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

Trial may be by committee, or otherwise.

And the senate and house of representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

CHAPTER II.

EXECUTIVE POWER.

SECTION I.

Governor.

Governor. His title.

Art. I. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be—HIS EXCELLENCY.

To be chosen annually. Qualifications. See amendments, Art. VII.

II. The governor shall be chosen annually; and no person shall be elegible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding, and unless he shall, at the same time, be seized, in his own right, of a freehold within the Commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the christian religion.

By whom chosen, if he have a majority of votes. See amendments, Art. II. and X. How chosen when no person has a majority.

III. Those persons, who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting, to be called for that purpose, on the first Monday of April annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at least before the said day; and the secretary shall lay the same before the senate and house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes the house of representatives shall, by ballot, elect two out of four persons, who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which, the senate shall proceed, by ballot, to elect one, who shall be declared governor.

Power of governor, and of governor and council.

IV. The governor shall have authority, from time to time, at his discretion, to assemble and call together the counsellors of this Commonwealth for the time being; and the governor, with the said counsellors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, agreeably to the constitution and the laws of the land.

Same subject. See amendments, art. X.

V. The Governor, with advice of council, shall have full power and authority, during the session of the general court, to adjourn or prorogue the same to any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess: and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the state.

See amendments, Art. X.

And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.

Governor and council may adjourn general court, in cases, &c., but not exceeding 90 days.

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Governor to be commander in chief.

VII. The governor of this Commonwealth, for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the state by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprizes and means whatsoever, all and every such person, and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprize by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain general and commander in chief, and admiral to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Limitation.

Provided, that the said governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access.

Governor and council may pardon offences, except, &c. But not before conviction.

VIII. The power of pardoning offences, except such as persons may be convicted of before the senate, by an impeachment of the house, shall be in the governor, by and with the advice of council: but no charter of pardon, granted by the governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence, or offences intended to be pardoned.

All judicial officers, &c. how nominated and appointed.

IX. All judicial officers, the attorney general, the solicitor general, all sheriffs, coroners, and registers of probate, shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

Militia officers, how elected. See amendments, Art. V. How commissioned.

X. The captains and subalterns of the militia shall be elected by the written votes of the train band and alarm list of their respective companies, of twenty-one years of age and upwards; the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

The Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor the officers elected.

Major Generals, how appointed and commissioned.

The major generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

Vacancies how filled, in case, &c.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

Officers duly commissioned, how removed. See amendments, Art. IV.

And no officer, duly commissioned to command in the militia shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court martial, pursuant to the laws of the Commonwealth for the time being.

Adjutants, &c. how appointed.

The commanding officers of regiments shall appoint their adjutants and quarter masters; the brigadiers their brigade majors; and the major generals their aids; and the governor shall appoint the adjutant general.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this Commonwealth shall appoint,—as also all officers of forts and garrisons.

Organization of militia.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law.

Money, how drawn from the treasury, except, &c.

XI. No monies shall be issued out of the treasury of this Commonwealth and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

All public boards, &c. to make quarterly returns.

XII. All public boards, the commissary general, all superintending officers of public magazines and stores belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, dispatches, and intelligences of a public nature, which shall be directed to them respectively.

Salary of governor.

XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Salaries of justices of supreme judicial court.

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

Salaries to be enlarged, if insufficient.

And if it shall be found, that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the general court shall judge proper.

power and authority, to do, and execute, all and every such acts, matters and things, as the governor, or the lieutenant governor, might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Elections, may be adjourned, until, &c. Order thereof.

VII. And whereas the elections appointed to be made by this constitution, on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed; And the order of elections shall be as follows; the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant governor shall then be elected, provided there should be no choice of them by the people; and afterwards the two houses shall proceed to the election of the council.

CHAPTER II.

SECTION IV.

Secretary, Treasurer, Commissary, &c.

Secretary, &c. by whom and how chosen. See amendments, Art. IV. Treasurer ineligible for more than five successive years.

Art. I. The secretary, treasurer and receiver general, and the commissary general, notaries public, and naval officers, shall be chosen annually by joint ballot of the senators and representatives in one room; and, that the citizens of this Commonwealth may be assured, from time to time, that the monies remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be elegible as treasurer and receiver general more than five years successively.

Secretary to keep records, to attend the governor and council, &c.

II. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable, and he shall attend the governor and council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

CHAPTER III.

JUDICIARY POWER.

Tenure of all commissioned officers to be expressed. Judicial officers to hold office during good behavior, except, &c. But may be removed on address.

Art. I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

Justices of supreme judicial court to give opinions when required.

II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

Justices of the peace; tenure of their office.

III. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth.

Provisions for holding probate courts.

IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the legislature shall from time to time, hereafter appoint such times and places; until which appointments, the said courts shall be holden at the time and places which the respective judges shall direct.

Provisions for determining causes of marriage, divorce, &c.

V. All causes of marriage, divorce and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

CHAPTER IV.

DELEGATES TO CONGRESS.

The delegates of this Commonwealth to the congress of the United States shall, some time in the month of June annually, be elected by the joint ballot of the senate and house of representatives, assembled together in one room; to serve in congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

CHAPTER V.

THE UNIVERSITY AT CAMBRIDGE, AND THE ENCOURAGEMENT OF LITERATURE, &c.

SECTION I.

The University.

Harvard-College. Powers, privileges, &c. of the president and fellows confirmed.

Art. I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of GOD, the advantage of the christian religion, and the great benefit of this, and the other United States of America—it is declared, that the PRESIDENT and FELLOWS of HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have or are entitled to have, hold, use exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

All gifts, grants, &c. confirmed.

II. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New-England, or to the president and fellows of Harvard College, or to the said college, by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed upon the president and fellows of Harvard College and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

Who shall be overseers, Power of alteration, reserved to the legislature.

III. And whereas by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy governor, and magistrates; it is declared, that the governor, lieutenant governor, council and senate of this Commonwealth, are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College; provided, that nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said university,

at shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of Massachusetts Bay.

CHAPTER V.

SECTION II.

The encouragement of literature, &c.

Duty of legislature and magistrates in all future periods.

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all the seminaries of them; especially the university at Cambridge, public schools, and grammar schools in the towns; to encourage private societies, and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES: PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &C.

Art. I. Any person chosen governor, lieutenant governor, counsellor, senator or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz:

See amendments, Art. VII.

"I, A. B. do declare, that I believe the christian religion and have a firm persuasion of its truth; and that I am seized and possessed in my own right, of the property required by the constitution, as one qualification for the office or place to which I am elected."

And the governor, lieutenant governor, and counsellors shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives, first elected under this constitution, before the president and five of the council of the former constitution, and, forever afterwards, before the governor and council for the time being.

And every person, chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.—

See amendments, art. VI.

"I, A. B. do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent state; and I do swear, that I will bear true faith and allegiance to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever; and that I do renounce and abjure all allegiance, subjection and obedience to the king, queen or government of Great Britain, (as the case may be) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state or potentate, hath or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is or may be vested by their constituents in the congress of the United States; and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgement, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words without any equivocation, mental evasion, or secret reservation whatsoever. So help me GOD."

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as

; according to the best of my abilities and understanding, agreeably to the rules and regulations, of the constitution and the laws of the Commonwealth." "So help me GOD."

Provided always, that when any person, chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words "*I do swear*," "*and abjure*," "*oath or*," "*and abjuration*," in the first oath; and in the second oath, the words "*swear and;*" and in each of them the words "*So help me GOD;*" subjoining instead thereof, "*This I do under the pains and penalties of perjury.*"

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant governor, and counsellors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons, and in such manner, as from time to time shall be prescribed by the legislature.

Plurality of offices prohibited to governor, &c., except, &c.

II. No governor, lieutenant governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

Same subject.

No person shall be capable of holding or exercising at the same time, within this state more than one of the following offices, viz: judge of probate—sheriff—register of probate—or register of deeds; and never more than any two offices, which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the state at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

Incompatible offices. See amendments, Art. VIII.

No person holding the office of judge of the supreme judicial court—secretary—attorney general—solicitor general—treasurer or receiver general—judge of probate—commissary general—president, professor, or instructor of Harvard College—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—clerk of the inferior court of common pleas—or officer of the customs, including in this description naval officers—shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

Same subject.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any counsellor shall accept of either of those offices or places.

Bribery, &c., operates disqualification.

And no person shall ever be admitted to hold a seat in the legislature or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

Value of money ascertained. Property qualifications may be increased.

III. In all cases, where sums of money are mentioned in this constitution, the value thereof shall be computed in silver at six shillings and eight pence per ounce; and it shall be in the power of the legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

Provisions respecting commissions.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

Provisions respecting writs.

V. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

Continuation of former laws, except, &c.

VI. All the laws, which have heretofore been adopted, used, and approved in the province, colony or state of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Benefit of habeas corpus secured, except, &c.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

The enacting style.

VIII. The enacting style, in making and passing all acts, statutes and laws, shall be—"Be it enacted by the senate and house of representatives, in general court assembled, and by the authority of the same."

Officers of former government continued until, &c.

IX. To the end there may be no failure of justice, or danger arise to the Commonwealth, from a change of the form of government—all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise and enjoy all the powers and authority to them granted or committed, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority, until the general court and the supreme and executive officers under this constitution are designated and invested with their respective trusts, powers and authority.

Provision for revising constitution.

X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary—the general court, which shall be in the year of our Lord one thousand seven hundred and ninety five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

Same subject.

And if it shall appear by the returns made, that two thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office to the several towns, to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

Provision for preserving and publishing this constitution.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed

panies, as well those under, as those above the age of twenty one years, shall have a right to vote.

Oath to be taken by all officers; or affirmation in case, &c.

Art. 6. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit:

"I, A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me God."

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear," and inserting, instead thereof, the word "affirm," and omitting the words "so help me God," and subjoining, instead thereof, the words "this I do under the pains and penalties of perjury."

Tests abolished.

Art. 7. No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant governor, counsellors, senators or representatives, to qualify them to perform the duties of their respective offices.

Incompatibility of offices.

Art. 8. No judge of any court of this Commonwealth, (except the court of sessions,) and no person holding any office under the authority of the United States, (postmasters excepted,) shall, at the same time, hold the office of governor, lieutenant governor or counsellor, or have a seat in the senate or house of representatives of this Commonwealth; and no judge of any court in this Commonwealth (except the court of sessions,) nor the attorney general, solicitor general, county attorney, clerk of any court, sheriff, treasurer and receiver general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted.

Amendments to constitution, how made.

Art. 9. If, at any time hereafter, any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if in the general court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting theron, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this Commonwealth.

Commencement of political year, and termination.

Art. 10. The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the general court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant governor, and counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

Meetings for choice of governor, lieutenant governor, &c. when to be held.

The meeting for the choice of governor, lieutenant governor, senators and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the constitution, respecting the elections and proceedings of the members of the general court, or of any other officers or persons whatever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered, as to have like reference to the first Wednesday of January.

Article when to go into operation.

This article shall go into operation on the first day of October, next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant governor, counsellors, senators, representatives, and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the governor, lieutenant governor, senators and representatives, to be had in virtue of this article, shall be had conformably thereunto, in the month of November following the day on which the same shall be in force and go into operation, pursuant to the foregoing provision.

Inconsistent provisions, anuulled.

All the provisions of the existing constitution, inconsistent with the provisions herein contained, are hereby wholly annulled.

Religious freedom established.

Art. 11. Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted.

As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

[Note.—The constitution of Massachusetts was agreed upon by delegates of the people, in convention, begun and held at Cambridge on the first day of September, 1779, and continued by adjournments to the second day of March, 1780, when the convention adjourned to meet on the first Wednesday of the ensuing June. In the meantime the constitution was submitted to the people, to be adopted by them, provided two thirds of the votes given thould be in the affirmative. When the convention assembled, it was found that the constitution had been adopted by the requisite number of votes, and the convention accordingly resolved, "that the said Constitution or Frame of government shall take place on the last Wednesday of October next, and not before, for any purpose save only for that of making elections agreeable to this resolution." The first legislature assembled at Boston on the twenty fifth day of October, 1780.

The first nine articles of amendment were submitted, by delegates in Convention, assembled, November 15, 1820, to the people and by them approved and adopted, April 9, 1821.

The tenth article of amendment was adopted by the legislatures of the political years 1829—30, and 1830—31, and was approved and ratified by the people, May 11, 1831.

The eleventh article of amendment was adopted by the legislatures of the political years 1832 and 1833, and was approved and ratified by the people, November 11, 1833.]

WILLS OF REAL ESTATE.

We give below the opinion of JUDGE SAVAGE upon that provision of the Revised Statutes which authorize the creation of trusts in real estate by last will and testament. This opinion is highly important coming as it does from one of the ablest jurists in our country, and upon a provision of our Statutes which has excited a great deal of interest. We consider this opinion so valuable that we have felt it our duty to give it to the public. This opinion was written in 1838.

OPINION

Of JOHN SAVAGE *late Chief Justice of the Supreme Court of the State of New-York, touching the validity of a devise to Executors and Trustees to receive the rents and profits of lands and pay over to the* cestui que trust.

"I insist that so much of the will is void as purports to convey certain portions of his estate to his executors in trust to receive the rents and profits *and pay them over.*

"On this point I had occasion to express my views in Lorrilard's case.

"When we approach the doctrine of uses and trusts, we must begin by reading the 45th section 1 R. Stat. 727, the article entitled "of uses and trusts." By that section uses and trusts are abolished. The legislature must have intended that those who were to administer the law should expel from their minds, the abstruse learning found in the books on the subject of uses and trusts—and take the system from the statute which they were about to enact.—We must go back in idea to a period beyond the introduction of uses, when "the original simplicity of the common law admitted of no immediate estate in lands which was not clothed with the legal seizin and possession."

"§ 46. Every estate which is now held as an use, executed under any former statute of this state is confirmed as a legal estate."

"An use at common law consisted in a right to the rents and profits of lands, of which the seizin and possession were in another.

"The former statute of this State, 1 R. L. 72, declared with much circumlocution, that the person entitled to the use should have the possession and seizin. The revised statutes say in plain language that whoever is entitled to the possession and profits shall have the legal estate. § 47 and § 48 declares that in the then existing trusts, trustees who have the power of actual disposition shall not be ousted of their power by the preceding sections.

"The legislature having thus guarded all previous trusts, proceed to lay down rules for future cases and in §49 it is declared that every future disposition of lands shall be made to the person in whom the right to the possession and profits is intended to be invested; and not to any other to the use of, or in trust for, such person; and if made to a trustee he shall take no estate.

"The object of this section was 'the entire abolition of uses and formal trusts.' (See Revisors Notes to this section.)

"The only express trusts authorized are those contained in the 55th section, and the only one there contained is that authorized by the third subdivision, under which there be any pretence of sustaining the trust in question—and before this trust can be supported it must be shown that *paying over money* to a person is *applying it to his use.*

"Now it is perfectly clear that the only reason why this trust was ever authorized to wit, *to apply to the use of any person* was, that the money was to be appropriated to the use of a person who either from minority or coverture, or lunacy, or want of discretion, as a spendthrift, was incapable of applying the money to his or her own use. The revisers have told us so in so many words, and such have been the views of most of the judicial officers who have spoken of the object of this section. The Chancellor, Vice Chancellor, Senators Maisen and Young all agree in this. Mr. Justice Nelson is of opinion that a trust to pay over is a trust to apply, and so I believe the Chancellor has decided. Let me state a case. I lay down the broad proposition that a trust to apply is a trust to pay over. Property is conveyed to a trustee to receive the rents and profits and apply them to the use of a spendthrift: the trustee receives a year's rents and pays them over at once, and they are dissipated in a week, I ask, has that trustee performed his trust? Take the case of a lunatic or even of a *feme covert* who has a wicked husband who takes by force or fraud the money thus paid into the hands of the wife. Yet it is said the trustee has performed his trust. Would not such a proposition in such a case be the heighth of absurdity? And yet if a trust to apply is performed by paying over in one case, is it not in another? Much of our difficulty arises from judicial legislation—from the courts putting a construction upon statutes different from that intended by the Legislature. Let the statute be fairly construed according to its terms.—If other cases of trusts ought to be created, let the legislature authorize it.

In my opinion a trust to pay over is a mere evasion of the statute. The spirit of the statute is, that he who has the beneficial interest in lands, has the legal title. It is against the intention of the legislature that the legal and equitable title shall be separated; the reason is to prevent fraud, every person capable of managing his own property is expected to do so—and the legal and equitable titles are to be separated in such cases only where there exists an actual incompetency for the management of property. If the trust to pay over is lawful the door is as wide open to frauds as it ever was. If a grantor now conveys land to A. in trust or for the use of B., the title vests in B., and the land is liable to B.'s debts So if the land is conveyed to the trustee A. to the intent that B. shall have the possession and profits, the legal title follows the possession and profits: But if the grantor conveys to A. in trust to receive the rents and profits and pay them over to B. then it is said the trust is valid—the legal estate is in A., B.'s creditors cannot touch it. B. receives the rents and profits from the hand of A. and sets his creditors at defiance. Let us see the operation in practice. A., the trustee wishes to avoid the trouble of collecting B.'s rents, and gives B a power as an attorney to receive the rents and profits—the trust becomes a mere formal trust in substance; to wit: a trust to A. to permit B. to receive the rents and profits; or A. may put B. in possession where he enjoys the profits. If such were the trust in terms it would be void, and B, would have the legal estate, but by this contrivance of *nominally* receiving the rents and profits and paying them over, when the cestui que trust does the whole of it himself the statute is evaded. In this way favors may be reciprocated. A. and B. may be trustees for each other, and frauds innumerable may be perpetrated with impunity, and with equal ease as before formal trusts were abolished.

"The case is precisely parallel with the former evasion of the old statute as stated by Mr. Brougham, and quoted by the revisors, thus: 'By the old statute of uses, if land were given to A. for the use of B. the latter was deemed the legal owner. This was evaded by adding *three* words, for it was adjudged by the court of Chancery, that the statute did not apply when land was given to A. for the use of B. *in trust for* C!

"So in this case, I repeat it, if land be given to A. to the use of B. or which is the same thing, in trust that B. may receive the rents and profits, B. has a legal estate. § 49. But now add but little more than three words—land is given to A. in trust, to receive the rents and profits and pay them over to B., and the statute is completely evaded. B. under an authority from A. takes possession and laughs at his creditors, as well as at your laws, and those who administer them. Thus it will be if such a trust shall be declared legal. The only safe course is to adhere to the letter of the statute. I repeat, that it was never intended that a trust should be created for any person who was capable of managing property himself; or of applying money to his own use with discretion.

"This is as explicity declared in the notes of the revisors as any thing can be—and it is the only consistent construction which can be given to the statute.

"On the trust *to pay over* and the trust *to apply* in continuation of §5 of this opinion, p. 18.

"I have previovsly quoted the revised statutes "of uses and trusts." 1 R. Stat. 727. 1 ed. § 46 is as follows: "every estate which is now held as an use, executed under any former statute of this state, is confirmed as a legal estate." An use is said to be executed when three things concur; but before I mention them I will refer to the former statute of uses, 1 R. Laws, 72. By that statute, when any person is seized of any lands, rents, &c., to the use, confidence or trust of any other person, the person entitled to the use, shall be deemed seized of the land; and to have the like estate in the land as he had in the use. Three things were necessary to the operation of the statute;

"1. A person seized to the use of another.

"2. A cestui que use in esse.

"3. A use in esse.

"When these three circumstances concurred, the legal estate and possession of the lands, out of which the use was created, was immediately transferred by force of the statute, from the trustee to the cestui que trust. The estate which was in form a mere equitable estate, thus became a legal estate; and in such case the use or trust was said to be executed under the statute; By the section above quoted all such estates were confirmed as legal estates. The statute of 1813 is precisely similar to the 27th of Henry the 8th, ch. 10. Under that statute there have been many adjudications as to what estates were or were not executed under the statute. In the case of Jones vs. Lord Say and Side, 8 viner. 262, the testator devised lands to trustees: out of the rents and profits to pay several legacies and annuities, and to pay all the rest and residue (after reimbursing their own costs and charges) to her daughter C. F. for life, and after her decease the trustees to be seized to the use of the heirs of her said daughter. Chancellor King was of opinion that the use was executed in the trustees during the life of C. F. and she had only a trust in the surplus of the rents and profits.—Of course this was a trust which was not executed by the statute, in the cestui que trust; as the legal estate was held to remain in the trustees, and not to vest in the cestui que trust. In other words, that a trust to receive the rents and profits and pay them over was a valid trust.

"In South vs. Allaire, in 1 Selk. 228, the testator devised all the rents and profits of certain lands to S. B. during her natural life, to be paid by his executors into her own hands without the intermeddling of her husband.

"The question was, whether by this devise, S. B. had the lands themselves—it was agreed that by the words rents and profits, the lands themselves would pass; but the quere was, whether the words *to be paid by the executors* did not restrain the former words.

"And such was the opinion of Holt, Chief Justice but the other judges were of a different opinion and gave judgment for the Defendant.

In Broughton vs. Langley 2 Ld. Ray 873, the testator devised certain lands to trustees for certain uses, viz. that they should permit G. R. to take the rents and profits during the term of his natural life; and after his death the trustees should stand seized to the use of the heirs of the body of the said G. R. &c.

The court held this to be an use executed by the statute in G. R. and decided in favor of the Defendant who held under G. R. who had suffered a common recovery in favor of himself, and then conveyed to the Defendant. The court said that if a man makes a feoffment in fee to A., in trust to permit B. to take the rents. issues and profits, this will be an use executed, as well as if A. had made use of the word *use*,

"In Shapland vs. Smith, 1 Br. c. c. 75, the devise was to trustees, that they should by quarterly payments, out of the rents and profits, after deducting taxes, repairs and expenses, pay the surplus to C. S. during his natural life, and after his death to the heirs male of his body, &c. Baron Eyre said, "a devise to trustees to permit A. to receive, or to pay profits to A., amounts to a disposition of the land, but one of the masters who sat with him, being of a different opinion, the case stood over to be heard by the chancellor; and he was of opinion that the trustees being to pay the taxes and repairs, must have an interest in the premises, and that the legal estate was in them, and the equitable in C. S. Of course the statute was not executed in this case, because the trustee were to pay the taxes and repairs.

not contain a power to make the application of the money. The cestui que trust in that case makes the application himself, and disburses the money according to his own discretion. I think I have also shown that a trust *to apply* does not contain a power to pay over,—because the person who makes the application exercises *his* discretion in the expenditure, and I further think that I have shown authority as well as reason for the distinction.

"What trusts then have the legislature authorized? We look in vain for any trust *to pay over*, but there is a trust authorised *to apply* the rents and profits of lands to the use of any person during the life of such person. In addition to what has been said to show that *the application* of the money belongs to the trustees, I further remark that by the gramatical construction of the sentence, the same person or persons who are to *receive*, are also to *apply* the rents and profits.

"Besides, the revisors have expressly declared in their note to this section, that the persons intended to be provided for, are such as have no legal or actual discretion of their own to be exercised in the *application* or *expenditure* which terms in this case I consider as synonimous.

"Suppose now that I am right in saying that *application* means *expenditure*; and surely there is no mode by which rents and profits can *be applied* to the use of any person but by expenditure; rents and profits as used here, mean money, and that money must be expended before its equivalent can be applied to any use. Suppose again that the statute read thus: "Express trusts may be created to receive the rents and profits of land and *expend* the same to the use of any person," &c., would a payment over of the money be a compliance with the duty of the trustee? Suppose the cestui que trust to be a spendthrift and a gambler, and to be indebted to various persons for sustenance and clothing and other necessaries furnished him; and the trustee were to pay over the money to the cestui que trust, with the certain knowledge that the money would be squandered in the gratification of his vicious propensities, and the honest creditors defrauded; would such a trustee perform his duty? On the contrary would not a court of equity compel such a trustee to pay the honest debts of his cestui que trust and hold him, the trustee, responsible for the proper expenditure of the money? I cannot doubt that such would be the direction of the court, nor that such is the true meaning of the trust *to apply*. It is sufficient for my present purposes that the trust *to pay over* and the trust *to apply* are and have been considered distinct trusts, the one vests the power and supposes discretion as to expenditure in the cestui que trust:—the other gives the power of expenditure to the trustee and supposes the absence of discretion in the cestui que trust. That both were abolished by the revised statutes, and the trust to *apply only* was subsequently authorized. A trust to pay over is therefore not a valid trust."

WILLS OF PERSONAL ESTATE.

We here give the opinion of JUDGE SAVAGE *upon the existing Statutes, as to the creation of trusts by last Will and Testament, to receive the interest and income of personal property and pay over to the person for whose benefit the trust was created, as follows:*

TRUST OF PERSONAL ESTATE.

"As to trust created of the personal estate.

"The subject of trusts in personal property seems to have escaped the attention of the revisors and the legislature; at the time when trusts of real estate was limited and defined; as they were intended to be kept distinct from trusts of real estate for we find that by an act passed Dec. 10, 1828, the subject was brought before the legislature and passed upon. By that act the ownership of personal property shall not be suspended beyond the termination of two lives in being at the date of the instrument containing the suspension, and if such instrument be a will for not more than two lives in being at the death of the testator. In all other respects limitations of future or contingent interests in personal property shall be subject to the rules prescribed in the first chapter of this act in relation to future estates in land. § 2 above cited.

"Title 4, of chap. 4, of part 2d, of the revised statutes 1 R. Stat. 773, which treats of accumulations of personal property and of expectant estates in such property," does not directly and affirmatively authorize the conveyance of personal property to trustees, such authority seems to be implied: otherwise the ownership of such property could not be limited, so as, with certainty to prevent its alienation until the termination of two lives.

"I think it fair therefore to assume that personal property may be conveyed to trustees for the same period, during which the rents and profits of land may be received and applied under the 55th section sub. 3 of title, "uses and trusts."

"The statute is silent as to the use or benefit of such property, or the disposition to be made of the interest arising from it, on the supposition that it may be money, stocks or other securities for money. The first section merely limits the duration of the suspension of absolute ownership; which is in other words the termination of the trust; and the second section says that in all other respects, such limitations, which, I assume, means trust, shall be governed by the rules in relation to future estates in lands. The subsequent sections of this title relate to the accumulation of the interest or profits arising from personal property; and can only be permitted for the benefit of minors during their minority. As the suspension of absolute ownership mentioned in the first and second sections is evidently not intended to be confined to the accumulation of the interest nor directed to be applied to the use of any cestui que trust, it seems to follow that the interest may be paid over to those intended to be benefitted by it. According to the second section of this title, several successive estates may be created in personal property, viz. a precedent estate, and any number of remainders, either vested or contingent, which may be executed during the two lives for which the absolute ownership may be suspended.

If personal property like real property may pass into the possession of the person who is to have the benefit of it, the purposes of the limitation may be defeated. The person who should be first put in possession of $1000 or any other sum of money, might spend it, and those in remainder would be deprived of their interests or estates therin. I confess, I am unable to devise any mode by which the absolute ownership of personal property can be certainly suspended so as to secure the interest of all parties, without the intervention of trustees, or third persons acting in a fidiciary character.

"I am of opinion, therefore that the trusts of personal property created by the will of * * * * * * * with direction to the executors to pay over the interest, are good. Such trusts were valid before the adoption of the revised statutes, and are not necessarily repealed by the 45th section under the article of "uses and trusts." I say not neccessarily repealed, because in construing statutes we must look particularly at the subject which the legislature were then passing upon—and that subject was "of the nature and qualities of estates in real property, and the alienation thereof."

"In the 45th section uses and trusts are abolished except as authorized and modified in that article, which relates entirely to real property and the same section goes on to declare that "every estate and interest in lands shall be deemed a legal right cognizable in a court of law, except when otherwise provided in this chapter:" That chapter was ch. 1, part 2, Title 2, ar.t 2. The whole of chapter 1, treats "of real property, and of the nature, qualities and alienation of estates therein." The title which treats "of accumulations of personal property and expectant estates in such property is title 4 in chapter 4," which treats "of title to personal property in certain cases." The provisions found here which seem to recognize a trust in personal property ought not to be considered as prohibited by, or inconsistent with the previous enactments relating exclusively to real property: and it may be added, that all the objections to a trust to receive the rents and profits of lands and pay them over, do not apply to a trust to pay over the interest of money. It is unnecessary, however, to discuss that subject, because trusts of personal property as they existed before the revised statutes have not been abolished, if I have rightly construed the section abolishing trusts in relation to lands.

"In answer to the enquiry whether this subject can be raised before the chancellor; or whether proceedings must be instituted before the surrogate? I am of opinion that the jurisdiction of the subject of trusts in relation to personal property belongs to the

chancellor and not to the surrogate. The jurisdiction of surrogate's courts is conferred in 2 R. S. 220. The third subdivision is "to direct and control the conduct and settle the accounts of executors and administrators." This relates to the duties of executors as executors and not to any acts of theirs as trustees. It is not the duty of the office of executor to make investments of money for the benefit of third persons and to receive the interest and pay over.

"The revised statutes, 2 R. St. 91, treat of the duties of executors and administrators in rendering an account and making distribution to the next of kin—and it is therein provided that under certain circumstances an executor or administrator may be required to render an account of his proceedings. He shall produce vouchers for all debts, legacies and funeral charges. He may receive certain allowances—and the final settlement shall be deemed conclusive upon all persons interested in the estate who shall have been cited, as to the correctness of his amount in the particulars specified in § 65, 2 R. St. 94. The 66th section declares that the last preceding section shall not extend to any case where an executor is liable to account to a court of equity by reason of any trust expressly created by any last will or testament."

"There can be no doubt therefore that executors are liable to account in chancery as trustees where they are created trustees by the will.

"These executors may no doubt be called to account generally before the surrogate at the proper time; and it will be a sufficient accounting before the surrogate, as against the next of kin, for the executors to show, that they have paid the debts legacies and funeral charges, and have appropriated the residue as the will directs in the creation of the trusts therein authorized—but if it is alleged that they have failed in their duty as trustees, a court of equity is the proper tribunal to determine that matter.

TRUSTS,

Created by last will and testament, coupled with a power to sell and dispose of real estate and invest the proceeds in stocks and pay over the interest and income to the person or persons for whose benefit the trust was created;

In the matter of the Last Will and Testament of S. S.

"In 1837, S. S. made his Last Will and Testament, as follows:—

"He appoints A. B. his executor and trustee, and directs his trustee to sell, dispose of and convey all his estate, real and personal, at such time and in such manner as the trustee may think proper, and to invest the proceeds in the funded debt of the United States, or other stock or good security, as he may deem advisable.

"That he shall set apart $15,000 in trust for certain specific purposes—and divide the residue into three equal parts, and hold the same separately in trust for certain purposes to be mentioned.

"The testator left five children—three daughters and two sons. His daughters are C. the wife of D.; E. wife of F., and G. wife of A. B. The sons are I. and K. The principal division of the estate is into five parts. The sum of $15,000 into two parts, one of $5,000 the other of $10,000.

"The residue is divided into three parts—the income of one-third is to be applied by the trustee to the use of E. for life—remainder to his lawful issue. If he should die without lawful issue, then remainder to his sisters E. and G., for their lives, each one-half, and remainder over to their lawful issue respectively. The income of the other third of the residue is to be applied to the use of G. for life, and then the principal to her lawful issue.

"The sum of 215,000 is thus disposed of—the income of $5,000 is to be paid to C. for life, provided she survives her husband; and the income of $10,000 is to be paid to I. for life. After their deaths respectively, the sums of which they will have received the income, are to be divided into three parts, and the income to be applied to E. G. and K. severally for life; and at the death of each the principal is to be distributed equally among their respective lawful issue. Should K, die without issue his third of the $15,000 is left undevised, but his third of the residue of the estate is given to his sisters E. and G. for life, with remainder over of one half to their respective issue, severally.

"The question is, whether these devises are in conformity with the "Revised Statutes?"

"It is to be observed here that this will does not create any trust in real estate; nor in the rents and profits of lands. The executors and trustee is authorised to sell all the estate of the testator, and to invest the proceeds; the trustee, however, takes no estate in the realty—his authority to sell is a mere power; and until the power shall be executed, the estate vests in the heirs at law. There is no attempt in this case to render real estate inalienable. The real estate is all to be converted into personal, and as such is devised in trust.

"The provisions of the revised statutes applicable to this case are found in part 2, ch. 4, tit. 4, 1 R. S. 773 sec. 1.

"§ 1. The absolute ownership of personal property shall not be suspended by any limitation or condition whatever for a longer period, than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than two lives in being at the death of the testator.

"§ 2. In all other respects, limitations of future or contingent interests in personal property shall be subject to the rules prescribed in the first chapter of this act, in relation to future estates in lands.

"The principal, if not the only difference, therefore, between the law relating to future estates in lands, and trusts of personal property, is this:—In respect to future estates in lands, the two lives, during whose continuance the power of alienation may be suspended, must be in being at the creation of the estate.—Part 2, ch. 1, tit. 2, art. 1, § 15. But in respect to personal property, if the instrument containing the limitation be a will, the power of alienation, or as the statute expresses it, the absolute ownership may be suspended for the continuance of two lives, in being at the death of the testator; in all other respects they are subject to the same rules. As all the persons upon the continuance of whose lives, the power of alienation is suspended by the will of S S. appear to have been in being when the will was executed, there is in this case no difference between the rules by which it is to be determined, and those applicable to future estates in lands.

"I will proceed therefore to test the different devises in his will by those rules.

"The first devise to C., or rather to the trustee to pay over to her during her life the interest of $5,000 upon the contingency of her surviving husband; after her death the principal is to be divided into three parts, and the interest paid upon the three several parts to E. G. and K. severally, during their several lives; and upon their respective deaths, such third of the principal is devised absolutely to their lawful issue severally.

"Assuming for the present, that there is no objection to the trust, simply as a trust, there seems to be no objection to the validity of this devise.

"The absolute ownership of the property devised, or any part of it, is not suspended for a longer period than until the termination of two lives in being at the death of the testator—as well as at the creation of the estates. One-third of the $5,000 is suspended during the lives of C. and E.; another third during the lives of C. and G., and the other third during the lives of C. and K. The interest of C. is contingent, depending on the fact of her surviving her husband—and the interests of E. G. and K. contingent, depending on their severally surviving C. But the fact of contingency is no objection. "Future estates are either vested or contingent," part 3, R. S. 723, § 13. "Successive estates for life shall not be limited unless to persons in being *at the creation thereof*," § 17. As regards personal property devised by will, this is to be read, instead of persons in being at the creation thereof, it should be persons in being *at the death of the testator*. But in this case it makes no difference the persons who take successively are all named in the will, and were therefore in being at the creation of the estate.

"I do not perceive that this devise violates any rule prescribed in relation to future estates in lands.

"2. The devise to I. is not distinguishable from that to C., except that it is not contingent but absolute; the income is payable to him at all events.

"3. As to the residue of his estate, after taking out the $15,000 for C. and I., it is to be divided into three parts, and the income of one-third to *be applied to the use* of E. G. and K. respectively for their lives, and after their deaths respectively, the principal of which they have severally received the income is to be divided absolutely between the lawful issue of each. So that the absolute ownership of this part of the estate is suspended for one life only. In the case of K., however, it is directed that, if he should die without lawful issue, then his share of the residue of the estate (but not his interest in the $15,000) shall be divided equally between E. and G. for their several lives, with remainder over to their lawful issue respectively. The absolute ownership is not suspended in any contemplated event, for more than two lives.

"For the purpose of comparing the devises in this will with the rules regulating future estates in lands, I have assumed, that the trusts were valid as trusts—it is proper however to consider that question.

"Previous to the revised statutes, there was no difference between trusts of real and personal estates, so far as respects the period for which they might lawfully be continued—the limit in both cases was that they could not amount to a perpetuity—and a limitation to any number of lives in being at the creation of the trust, was within the line of a perpetuity. In the celebrated case of Thellusion *vs.* Woodford, 4 Vesey, jr. 227, the personal property conveyed to the trustees was estimated at 600,000*l.*, and both real and personal was rendered inalienable and directed to accumulate during the lives of nine persons. The courts in England said that it was immaterial how many lives were inserted, for it was for the life of the survivor, and so for one life only. It was often remarked by the judges that "the candles were all lighted and burning at the same time." Such was the law here before the operation of the revised statutes; and such is the law still, unless such trusts are limited by those statutes.

"In revising the statutes, the Legislature treated of real and personal estates separately. Part 2, ch. 2, tit. 2, treats, "Of the nature and qualities of estates in real property, and the alienation thereof." And the second article of this title treats "Of uses and trusts." The first section of this article, which is § 45, declares that "Uses and trusts, except as authorised and modified in this article, are abolished"—and as a consequence of that enactment, it is added, "And every estate and interest in lands shall be deemed a legal right, &c." Every subsequent section of this article which speaks of the estate which may be held in trust, speaks of the estate in lands, or the possession of lands—and the word "assignment" in the 47th section, was probably inserted to embrace terms for years. The 55th section which enumerates the express trusts authorized by law, speaks only of trusts relating to lanks, viz:—to sell or mortgage or lease lands, and to receive the rents and profits of lands for the purposes specified. If it should be adjudged that by the 45th section, all trusts were abolised as well of personal as of real estate, it would follow that as no trust of personal property has been expressly authorised, all such trusts are void. I, however, cannot so construe the statute. The legislature were regulating real estate, and limiting the period beyond which such estate should not be rendered inalienable. This appears from the language of the statute itself, as well as from the notes of the revisors.

"Had the legislature omitted to limit the inalienability of personal estate it must have been left to the limit of the common law. They were not guilty of such omission, but made the enactment which I have first quoted above, The fact that they have done so is an additional argument in favor of the position assumed by me to wit—that in the article of uses and truts it was not intended to embrace personal estates.

"By the common law the absolute ownership of personal property might be suspended during the continuance of any number of lives in being at the date of the instrument directing such suspension; but by the first section of tit. 4 of ch. 4 of part 2, the suspension of the absolute ownership is limited to two such lives, instead of an indefinite number; and by the second section in all other respects, the limitations of future or contingent interest in personal property are subject to the rules prescribed in relation to future estates in lands.

"It is well understood that limitations of future or

such considerations should have weight with those whose business it is to make laws: but they should not control the opinions of those whose business it is to expound the laws. JOHN SAVAGE."

OWNERSHIP OF THE FEE OF HIGHWAY.

We give the following brief opinion of Judge SAVAGE *as to the right of property in land which has been used as an highway where the highway was subsequently discontinued. In the city of New-York many public roads have been discontinued and the ownership of these lands thus relieved of the public easement is a matter of great importance.*

"Another question arises out of the following facts. When Cornelius Cozine the elder, devised the several parcels of his estate to his several children, he bounded them upon the Bloomingdale road; when that road shall be closed in consequence of opening the several avenues and streets which must be eventually opened, to whom does the land belong, which is now occupied as the Bloomingdale road? It appears that Cornelius Cozine the elder had five children, to wit: Garret Cozine, Cornelius Cozine and Balm Johnson Cozine, sons, Margaret, married to Nicholas Fletcher, and Sarah, married to William Swanzee.

"The testator in his will describes his real estate rather loosely. He gives Garret "one-fifth part of my farm at Bloomingdale, which said fifth part joins on Hans Hopper; thence running down, joins on the north river." Afterwards he gives to each of his children, one-fifth of his farm running to the north river.—He adds after the devise to his daughters, "M. that part of the said farm over the road which joins to the commons is excepted." He then gives to his three sons as follows "all that part of my farm at Bloomingdale which joins on the road and Commons which part is excepted as above from my daughters Margaret and Sarah." He then devises all the rest of his estate to his five children to be equally divided. It is to be observed, that there is no exception in the devises to his sons:—their parts extend the whole length of the farm, and of course include the road. The road is not mentioned in the devise to the daughters only by way of exception of that part *over the road.* The devise of that part to the sons is described as "that part of my farm at Bloomingdale which *joins on the road* and commons, which said part is excepted as above," &c.

"The general rule here is," says Thompson. justice, "that the fee of a highway belongs to the owner of the adjoining ground, and that the sovereign has only a right of passage." 2 John. 363.

"In Jackson vs. Hathaway, 15 John. 447, the defendant claimed to own the road, by showing that he owned the land on both sides of it. Mr. Justice Platt delivered the opinion of the court, and states the facts more particularly than the reporter.

"The defendants deed described a piece of land, beginning at a certain stake by the side of the road; and thence by specified courses and distances, to the place of beginning without crossing the road. The road was afterwards discontinued, and the defendant owning the land on both sides, enclosed it in his fence. The learned judge said that it was perfectly clear that the fee of the land did not pass from the patentee who had given the defendants conveyance—that there was nothing conveyed but the land embraced within the courses and distances, and it was admitted that the road was not embraced. He recognized the common law doctrine, that the public had only an easement, or right of passage upon the road, but the original owner retained the fee. He added that where a farm is bounded upon an highway, or along a highway or running to an highway, there is reason to intend that the parties intended the middle of the highway. This same principle has been often recognized as the general rule, to wit, that the fee of an highway belongs to the owner of the adjoining ground—and that the land bounded upon an highway in general carries the fee to the centre of the highway, if such fee was previously in the grantor. The case of Jackson vs. Hathaway was decided upon the peculiar expressions of the deed describing the boundaries. There is, however, nothing peculiar in the description in the will of Cornelius Cozine the elder: nothing which excludes the road from the conveyance. The general rule therefore governs in this case, and the owners on either side own to the middle of the road: and when the road shall be closed, the ground now covered by it will belong to the owners of the adjoin ground on either side.

BOUNDARIES UPON NAVIGABLE WATERS.

The following is an extract from a written opinion of Judge SAVAGE *as to the ownership of land which has been worn away by the water or which has accrued therefrom:*

"Another question which I am desired to answer arises thus. The land owned by Cornelius Cozine, the elder and of which the property in question is part and parcel, was bounded on the west by the Hudson river (the river being an arm of the sea); the river has encroached upon the land, and worn away the bank by imperceptible degrees to a considerable extent: Can the proprietors claim their length of chain from the present bank of the river eastward; the grounds on the east being commons belonging to the corporation of the city of New-York?

"I have no hesitation in answering this question in the negative. The western boundary was at the date of the grant, a natural object, and the grant was located upon it—that boundary cannot be altered; and it makes no difference that the eastern boundary has never been ascertained. That is to be ascertained by measurement; but the place of beginning must be the bank of the river at high water mark as it was at the date of the grant. If any loss has been sustained by the earth being washed away by the current of the river, it must be sustained by the owner of the bank; and if any addition had been made by alluvion, it would have been the gain of such owner.

"Blackstone in his commentaries says, "and as to the lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make *terra firma;* or by dereliction, as where the sea shrinks back, below the usual water mark; in these cases, the law is held to be, that if this gain be by little and little, and by small and imperceptible degrees, it shall go to the owner of the land adjoining, for *de minimus non curat lex;* and besides, these owners being often losers, by the breaking in of the sea or at charges to keep it out, this possible gain is therefore a reciprocal consideration for such possible charge or loss. But if the alluvion or dereliction be sudden and considerable it belongs to the King—for as the King is lord of the sea, and so owner of the soil, while it is covered with water, it is but reasonable, he should have the soil when the water has left it dry." 2 Black. com. 261-2.

Chancellor Kent says, "If soil be formed out of the sea or river by slow and imperceptible alluvion and accretion it belongs to the owner of the adjoining land." 3 Kent, 428.

"All writers on this subject and courts in their decisions refer to Sir Mathew Hale's treatise, "Dejure Maius," which may therefore be considered an established text book. In chapter 4, part 1, among other things is the following, "If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that there be reasonable marks to continue the notice of it; or though the marks be defaced; yet if by situation and extent of quantity, and bounding upon the firm land, the same can be known, though the sea leave the land again, or it be by art and industry regained, the subject doth not lose his property: and accordingly it was held by Cooke and Foster, M. 7, jur. C. B., though the inundation continue 40 years. If the mark remain or continue, or extent can reasonably be certain, the case is clear." I cite from 6 Cowan 542. I am fully justified therefore in saying that there can be no extension eastward; but the owners may reclaim what has been worn away by the river, if the farm can be duly ascertained.

REMARKS.

The reader will notice on page 97, at the foot of the second column, that Judge Savage refers to so much of the opinion as relates to trusts in real property as was commenced on page 18 of the manuscript, the residue of the opinion commences on page 79 of the manuscript copy and is a further discussion of the same question.

Many of our readers are interested in the question here so ably discussed, and it is therefore that we place these able opinions before them for their examination. Much anxiety has been felt in reference to existing provisions of our Statutes as to the disposition of property in trust—these opinions from the pen of Judge Savage make the whole plain and easy of comprehension by every man of business.

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TAXATION.

BANKS AND OTHER INCORPORATED INSTITUTIONS.

The Corporation of the City of New-York, at the last Session of the Legislature, and near its close, applied for the passage of a law in relation to taxing incorporated institutions in the city of New-York, as contra distinguished from other incorporated institutions, in all other counties in his State.

They presented with their memorial, a bill, which was referred to the Committee on the Judiciary, in the Senate, which Committee, on the 10th of April, eight days before the termination of the session, reported in its favor, and it was ordered to be printed. Its passage was opposed, and for that reason it did not become a law at the last session, but will no doubt, be called up early at the approaching session, and an attempt made to pass it.

There is a great principle involved in the application for the passage of this bill, which arises from the fact, that the application was made without any notice whatever to the institutions to be effected by it, and the bill is, in its practical effects, an alteration of the Charter of every incorporated Company in the city of New-York.

The bill as reprinted shows the contemplated change, in the words which are printed in italics, in the Sections from 1 to 15 inclusive, of the existing law, which is contained in the Revised Statutes, and which is republished in pages 239 and 240 of this volume, which pages each incorporated company in this city has been furnished with a copy of. The new bill repeals the 8th and 9th sections of the present law, which sections are of the greatest importance.

This bill is to be found in the printed Senate Bills of 1843, and designated as No. No. 66, and is in the words following:

"TITLE II.

Of the Assessment of Taxes on Incorporated Companies, and the commutation or collection thereof.

SECTION 1. All moneyed or stock corporations, deriving an income or profit from their capital, or otherwise, *the principal office or place of business whereof, shall be situated in the city of New York, or the operations of which shall be carried on therein, under which denomination shall be included all persons or associations of persons, formed for the purpose of banking, under the provisions of the act entitled "An act to authorize the business of banking," passed April 13, 1838, and the acts amendatory thereof, and all associations or companies formed, under any general or special law, for the purpose of mutual insurance,* shall be liable to taxation on their capital, in the manner hereinafter prescribed.

§ 2. The president, cashier, secretary, treasurer or other proper officer, of every such company, shall, on or before the first day of *June*, in each year, make and deliver to the assessors, or one of them, of the ward in which such company is liable to be taxed, according to the provisions of the *seventh* section of the *first* title of this *act*, a written statement, specifying,

1st. The real estate, if any, owned by such company, the towns or wards in which the same is situated, and the sums actually paid therefor;

2d. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the State, and by any incorporated literary or charitable institution; and,

3d. The ward in which the principal office or place of transacting the financial business of such company is situated; or if there be no principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed, under the provisions of this *act*.

§ 3. The president, or other proper officer of every such company, shall also deliver to the Comptroller, on or before the first day of *June*, in each year, a written statement, containing the same matters required by the foregoing section, to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this title, shall be certified, under the oath of the said president or other proper officer, to be in all respects, just and true.

§ 4. If the statements above required, or either of them, shall not be furnished by any company to the assessors, and to the Comptroller *of this State*, within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this State, for each statement omitted to be furnished, the sum of two hundred and fifty dollars; and it shall be the duty of the *said* Comptroller, to furnish the Attorney General with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties hereby imposed.

§ 5. If any company, that shall be prosecuted for any such penalty, shall pay the costs of prosecution, and furnish the statement required, the Comptroller *of the State*, if he shall be satisfied that the omission was not wilful, may, in his discretion, discontinue such suit.

§ 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies, liable to taxation in their respective *wards*, in their assessment rolls, in the following manner:

1st. They shall insert in the first column of their assessment rolls, the name of each incorporated company in their respective wards, liable to taxation on its capital, or otherwise; and under its name they shall specify the amount of its capital stock paid in, and secured to be paid in; the amount paid by such company for real estate, then belonging to such company, wherever the same may be situated; and the amount of its stock, if any, belonging to the State, and to incorporated literary and charitable institutions,

2d. In the second column they shall enter the quantity of real estate owned by such company, and situated within their ward; and in the third column, the actual value thereof, estimated as in other cases.

3d. In the fourth column, they shall enter the capital stock of every incorporated company, excepting manufacturing and turnpike corporations, and marine insurance companies, paid in, and secured to be paid in, after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of this State, and to incorporated literary and charitable institutions.

§ 7. The assessors shall insert in the column mentioned in the preceding section, the cash value of the stock of all manufacturing and turnpike corporations, (to be ascertained by the assessor, by the sales of the stock, or in any other manner,) deducting therefrom the items mentioned in the preceding section; which value, thus ascertained, together with the value of the real estate of such corporations, shall constitute the amount on which the tax of such corporations shall be levied.

§ 8. If any such company shall neglect or omit to furnish such statement, within the time and in the manner above prescribed, the assessors shall proceed to estimate, according to the best information which they shall be able to obtain, the capital stock of the said company, paid in or secured to be paid in, and shall assess the said company therefore, which assessment shall be final and conclusive.

§ 9. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, and by the previous sections of this title, shall be assessed and taxed in the same

The object of the change in substituting the word *June* for "July," in the 2d and 3d sections, is to throw the taxes backward, and make two taxes payable in one year, for to pay off the delinquencies of the Corporation which are now afloat in the shape of unauthorised Corporation Bonds.

The New-York Citizens' Committee, deputed by the meeting at the Merchant's Exchange, held on the 6th of March, 1843, on their arrival at Albany, found a bill had been reported in the Senate, by the Committee on Finance, of which the following is a copy:

—

IN SENATE.

MARCH 21, 1843.

'An act to amend the Revised Statutes in relation to the exemption of incorporated companies from taxation, and for other purposes.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 9, of Title 4, of Chapter 13, of Part 1, of the Revised Statutes, which authorises the exemption of incorporated companies in certain cases from taxation, is hereby repealed.

§ 2. All banks established under the act entitled 'An Act to authorize the business of banking," passed April 18, 1838, shall be subject to taxation on the amount of capital paid in, or secured to be paid in, in the same manner as incorporated banks. And the proper officer or officers of such banks, shall make an annual statement to the Comptroller and the assessors, in the manner provided by the second Section, Title 4, Chapter 13, of the first Part of the Revised Statutes.

§ 3. The act entitled 'An act authorising mortgagees to redeem real estate sold for taxes and assessments," passed May 14, 1840, is hereby repealed.'

REMARKS.

This bill was considered by the Citizens' Committee objectionable, in two of its provisions.

First, In making no provision for the abatement of tax on the lost capital of incorporated companies.

Second, containing the third Section as above, as a rider, which repealed a most salutary law of the State, as to mortgage securities, a provision important to every body but '*Land Sharks.*' To this latter class of persons it was obnoxious, as they could not get the land from the honest owner at an assessment or tax sale, without first giving the mortgagee six months notice, and also the right to redeem.

The Citizens Committee drew up a memorial on the subject of this bill and placed it in the hands of the Hon. E. RHOADES, from Syracuse, which he presented, and moved that the bill be recommitted to the Committee on Finance, and it was so recommitted.

The Committee on Finance, of which Judge Bockee is chairman, was at once convened. Judge Bockee and Judge Porter, present. The Citizens Committee appeared before these two intelligent senators and stated their objections to the details of the bill and proposed two entire new bills as substitutes. The Committee on Finance approved of both these bills, aud after giving the Citizens Committee another hearing, reported both bills to the Senate, and both would undoubtedly have been passed but for the necessary absence of Judge Bockee in consequence of domestic afflictions.

—

IN SENATE,

MARCH 29, 1843.

Brought in by Mr. BOCKEE.

"An act to amend the Revised Statutes in relation to the exemption of incorporated companies from taxation, and for other purposes.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"Sec. 1. Section 9 of Title 4 of Chapter 13 of Part 1 of the Revised Statutes, which authorizes the exemption of incorporated companies in certain cases from taxation, is hereby repealed.

"§ 2. All banks established under the act entitled "An act to authorise the business of banking," passed April 18, 1838, shall be subject to taxation on the amount of capital paid in, or secured to be paid, in the same manner as incorporated banks.—And the proper officer or officers of such banks shall make an annual statement to the Comptroller and the assessors in the manner provided by the second section, Title 4, Chapter 13, of the first Part of the Revised Statutes.

"3. The provisions of the 15th section of the 2d Title of the 13th Chapter of the first Part of the Revised Statutes shall be extended to all incorporated companies and other associations subject to taxation; and the affidavit in such case may be made by the president, cashier, secretary or treasurer thereof: and such companies or associations shall be assessed on the actual value of their real and personal estate existing at the time the assessment may be made.

"§ 4. This act shall take effect immediately.

—

REMARKS.

The other bill we have loaned the copy of and it cannot be found. We will obtain another copy from Albany and insert in the after pages.

—

The provisions of these bills are argumentative, yet notwithstanding this we will add a few remarks.

First, The bill recommitted contained a a provision for repealing the act requiring notice to mortgagees.

Previous to the passage of this ast requiring notice to mortgagees there was no security in a mortgage against an assessment or tax sale, and a mortgage of one hundred thousand dollars might have been defeated and rendered worthless by a tax or

assessment sale for a few shillings. No good citizen could desire to favor a class of *land-sharks* who seek to get *acres* for *cents*, and thus deprive the honest owner of his habitation and his home. There are two classes of bidders at these sales, one class called "*Shylocks*," who are for getting large interest for their money; another class who hope from the poverty or misfortune of the owner, or from his being ignorant of the sale to get the land or compel him to redeem it at a price equal to a second purchase.—This latter class have been numerous in New-York.

In discussing this subject, before the committee on Finance they became satisfied that there was necessity of reinforcing this act in reference to mortgagees, and to extend the same protection to owners and persons otherwise interested in lands and also to protect them from the rapacious fees of public officers.

It was fortunate that this important subject fell into the hands of the committee on Finance which is composed of able practical men.

Second, The Taxing of Institutions, for capital irretrievably lost is unjust, inequitable and absurd. Such a tax is not contemplated by the existing laws, but some judicial officers think they find an obscurity on this head in the existing statutes. It was therefore deemed important to make the matter so plain that it could not be misunderstood. If the present law had been repealed, a bank with an original capital of one million of dollars that should loose nine hundred ninety nine thousand dollars of its capital would be obliged to pay a tax on the remaining thousand sufficient at once to exhaust the remnant.

The provision which taxes Banking Associations, is objected to by the officers of these institutions, but we cannot agree with them in the conclusion they come to. If they are not already taxable, they should be, for their actual capital existing in stocks or money. Those whose stocks are in bonds and mortgages and the stockholder indebted to the association for the amount of such mortgages, present a question of equitable consideration.

Mutual Insurance Companies it is urged by intelligent business men, should not be taxed. We addressed a letter to the Hon. M. Brimmer, Mayor of Boston on the subject of taxation in that city. In his reply, he states, that mutual Insurance companies are not taxed in Boston.

With respect to such companies, it would seem that if the associations have capital, that capital should be taxed.

Banks are taxable by the existing law, for capital paid in, aud *secured to be paid in.* It would seem from the wording of the law that if a stockholder had subscribed for a hundred shares of Bank Stock, and given his note to the institution, instead of money, that such stock would be taxable as capital stock, "paid in, and *secured to be paid in.*"

The monied institutions of our city, have the whole matter placed before them and when their officers shall have examined the subject the draft of a memorial to the Legislature will be submitted to them to sustain the last bills reported by Judge Bockee in the Senate, and a Remonstrance against the application of the corporation.

This sheet will be sent to all the monied corporations and associations in this State that each may take such action upon the subject as may be deemed by them needful and proper.

DOUBLE TAX,

Or, two taxes to be collected in one and the same year.

It is a matter of very great importance and one that should come to the knowledge of the people, that the public officers are afraid to have the extent of their extravagance known by the Tax payers, hence they contrive every possible way to cover up the waste gates, through which the public money finds an outlet.

During the session of the State Legislature of 1842, the Common Council applied to that body for the passage of a law to authorise the raising of two million and some thousands of dollars by tax, and the application was granted, and an act passed.—This tax was payable on the 10th day of February, 1843.

The Citizens had on the 10th of *February* 1842, paid a tax, of about one million four hundred thousand.

On the 18th March, 1842, Mr. Varian presented in the Senate a memorial from the Mayor, Aldermen and Commonalty, asking for a law to provide for "the earlier collection of taxes."

This application, upon the face of it, appeared plausible enough, but there was concealed beneath the cloak of "*an earlier collection*" a deep and matured plan of laying a double tax, and but for the well timed opposition and exposure, it would have succeeded.

We have only to look back to the message of Mayor Varian to the Common Council in 1839, for the unriddling of the mystery, and follow it down a little while, until we come to the application for the "*earlier collection of the tax.*"

Mr. Varians message was made in May 1839, in which he uses this language:

"The practice which has *within a few years* grown up in the Common Council, of borrowing large sums of money under that provision of the Charter which authorises temporary loans in anticipation of the annual tax, I consider injurious to the financial interests of the City, and not contemplated by provisions of the Charter under which it is done. By a reference to the Comptroller's report, it will be seen that during the year 1838, temporary loans, amounting to Eight Hundred Thousand Dollars were made by him, in addition to the sum of *Four Hundred and Eleven Thousand Nine Hundred and seventy-five dollars and thirty-eight cents borrowed from the City Aqueduct Loans, &c.*"

"*These loans could, by the Charter, only be made in anticipation* of the tax of 1838, as the tax of 1839 was not authorised by the Legislature, and the amount so borrowed was more than the whole tax levied. Of this amount so borrowed in 1838, there still remains unpaid the sum of $204,271.27, and since the commencement of 1839 the borrowing of $300,000 has been authorized by resolution, as a temporary loan, while there remains unpaid of the tax of 1838 comparatively a small amount. Such a system, if continued, must eventually end in direct violation of the provisions of the charter, and in the accumulation of a debt which is paid from one year to another by temporary loans, and which will always be a heavy burden upon the financial department of the city.

"The provision of the charter was expressly intended to *prevent* the Common Council from incurring snch debt, and to confine the expenditures of the city to its annual income; and the authority then given to borrow money in anticipation of the tax, was only intended to defray the *ordinary expenses* of the city, in cases when, from unforseen occurrences, the ordinary collection of taxes had not been made to a sufficient amount."

It will be borne in mind that Mr. Varian is a Democrat and it is the extravagance of the **Whigs** he is taking to task.

The Whigs were in debt when he entered the Mayoralty $504,271.27 as appears from his statement above quoted.

Now on the 14th of January 1840, about eight months after, Mr. Varian, states to the Legislature under his official name and seal, the amount, increased to the enormous sum of **$1,700,460,00.**

The memorial is now on file in the archives of the Senate and contains as follows:

"To the Honorable the Legislature of the State of New York.

"The memorial of the Mayor, Aldermen and Commonalty of New York, *respectfully represent*,

"That by reason of the great expenses which they have incurred in consequence of the various improvements in the said city, they have found the ordinary revenues of the Corporation altogether inadequate to meet the demands which these expenses have produced, and that they have therefore, from time to time, been obliged to issue their bonds under their Corporate Seal, to defray some of these expenses, as a mere means of temporary relief. The amount of this floating debt on the 31st of December last, amounted to *One Million Seven Hundred Thousand Four Hundred and Sixty Dollars*, and can probably be reduced from anticipated sources of revenue to *One Million Three Hundred Thousand.*

"The amount to be raised by the annual tax bill will be required for the ordinaty expenses that will accrue pending its collection, and will therefore furnish no relief in liquidation of the floating debt.

Mr. Franklin, from the Select Committee to whom was referred the memorial of the Mayor, Aldermen and Commonalty of the City of New York, praying for a law for the earlier collection of taxes within the city of New-York,

REPORT:

That they have had the matter set forth in the said memorial under consideration, and have agreed to report a bill pursuant to the prayer thereof. It seems to your committee that the city of New York has very unnecessarily, for many years, labored under great inconvenience arising from the want of any provision of law to compel the payment of taxes within the fiscal year for which they are levied. The taxes for any particular year are not confirmed by the board of Supervisors until about the middle of October, and are placed in the collector's hands in the early part of November.

The law, however, fixes no penalty or charge of interest for any delay in the payment of tax, until the tenth of February in the following year. The consequence is that the wealthiest citizens avail themselves of the longest time which is allowed; and but a very small proportion of the tax is paid until nearly a year after the same is authorised by the Legislature. The city, being thus destitute of the means of defraying its ordinary expenses by its legitimate means, is obliged to resort to its credit for such purpose; and thus becoming a borrower, by temporary loans from the banks, not only descends from the station to which her natural resources entitle her, but materially interferes with the intesests of the trading community, by pre-occupying the means of their accustomed facilities. The city of New-York has, in this way, accumulated a considerable floating debt.

Your committee recommend, as a means of relief, an amendment to the present law, so that the books shall remain in the hands of the assessors, for the inspection of the public, for twenty days after the 20th day of August, and shall be returned to the board of Supervisors on or before the 20th day of September following. The books may thus be placed in the collectors hands by the early part of October.

Your Committee also recommend an amendment in the law, so that the one per cent interest now established by law, should commence on the last day of November, upon all taxes then unpaid. These alterations will enable the city government to effect a much earlier collection of taxes, and within the fiscal year in which the disbursements are made for which the tax is intended to provide. While this change cannot but be regarded as of great importance to the city of New York, your committee are not insensible of the advantages which may shortly accrue to the State, should its own necessities require that it should itself resort to taxation, the proportion of which to be contributed by the city of New York being 5-12 of the whole sum to be raised,

In accordance with the above views, your committee report to the Senate the accompanying bill:

"*An act respecting the Collection of Taxes in the City and County of New York.*

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The assessors annually chosen in each ward of the city of New York, shall on or before the fifth day of June next, after being chosen, proceed to assess the property in their respective wards according to law, and shall complete the assessment according to law on or before the fifteenth day of August next following, and make out one fair copy thereof to be left with one of their number on or before the twentieth day of August next following, and shall thereupon according to law give notice of having completed such assessment. and that a copy thereof is left with one of such Assessors, (naming him,) where the same may be seen and examined by any of the inhabitants from the said twentieth day of August to the tenth day of September following both inclusive; that they will meet at the expiration of the said tenth day of September at a place in said notice to be specified to review their assessment on the application of any person conceiving himself aggrieved, and such proceedings shall thereupon take place as is by law provided. And such assessors shall sign the said assessment roll, and deliver the same on or before the twentieth day of September next ensuing to the Comptroller of the said city, who shall deliver the same to the Supervisors of the said city at their next meeting, and that for any neglect omission or refusal to perform the requirements of this section, the parties offending shall be liable to the penalties mentioned in the eleventh section of the Act, April 23d, 1823, "Entitled An Act for the assessment and collection of Taxes."

§ 2. The first section of the act entitled an act authorising a per centage to be added to unpaid taxes in the city of New York, passed April 13, 1835, is hereby amended, so that the said section shall read asfollows: Whenever any tax of any description of the estates real or personal, of the freeholders and inhabitants of, and situated in the city of New York, shall remain unpaid on the *first day of February* next ensuing, the time prescribed by law for the delivery of the assessment roll to the collectors in said city, it shall be lawful for the collectors whose duty it may be to collect such tax, to charge, receive, and collect in addition to the amount of such tax, one per cent. on the amount thereof, and to charge, receive, and collect upon such tax so remaining unpaid on the last day of each month, between the month of November and the time prescribed by law for the collectors in the said city to make their returns to the chamberlain or treasurer thereof, a further addition or increase of one per cent, on the amount of such tax, and such increase or per centage shall be paid over and accounted for by such collector as a part of the tax collected by him.

§ 3. The act entitled "an act to amend the acts respecting the collection of taxes in the city of New-York, passed April 3d, 1839 is hereby repealed."

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Page 268.

MONDAY, 10 o'clock, A.M., March 21, 1842.

The bill entled "An act respecting the collection of taxes in the city and county of New York," was read the third time.

On motion of Mr. Scott,

Ordered, That said bill be referred to the committee on the judiciary to report to the Senate whether in the opinion of said committee, the votes of two thirds of all the members elected to the Senate are required to pass the said bill.

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Page 278.

WEDNESDAY, 10 o'clock A.M. March 23, 1842.

'Mr. Strong from the Committee on the Judiciary, to which was referred the bill entitled "An act respecting the collection of taxes in the city and county of New-York," to report to the Senate whether in the opinion of said committee, the votes of two thirds of all the members elected to the Senate are required to pass the said bill, reported that in the opinion of the committee, the votes of two thirds of all the members elected to the Senate are required to pass the same; which was agreed to by the Senate.

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"Page 310.

SATURDAY, 10 o'clock, A.M. March 26, 1842.

'The bill entitled an "An act respecting the collection of taxes in the city and county of New-York," was passed; two thirds of all the members elected to the Senate voting in favor thereof, as follows, to wit:

FOR THE AFFIRMATIVE.

Messrs. Bartlit, Bockee, Corning, Denniston, Dixon, Faulkner, Foster, Franklin, Hard, Hawkins, Hunter, Johnson, Nicholas, Paige, Platt, Rhoades, Ruger, Scott, Sherwood, Strong, Varian, Varney.—22.

FOR THE NEGATIVE.

Messrs. DICKINSON, HUNT, ROOT.

Ordered, That the Clerk deliver said bill to the Assembly, and request their concurrence in the same.

—

ASSEMBLY JOURNAL.

Page 661.

SATURDAY, March 26, 1842.

The Senate sent for concurrence, the bill entitled, "An act respecting the collection of taxes in the city and county of New-York," which was read the first time, and by unanimous consent was also read a second time, and referred to the committee on the internal affairs of towns and counties.

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Page 839.

THURSDAY, April 7, 1842. Half-past 3 o'clock, P.M.

On motion of Mr. D. R. F. Jones, and by unanimous consent,

Resolved, That the engrossed bill from the Senate, entitled "An act respecting the collection of taxes in the city and county of New-York," be taken from the general orders, and ordered to a third reading.

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Page 941.

MONDAY, April 11, 1842.

The engrossed bill from the Senate, entitled "An act respecting the collection of taxes in the city of New-York," was read the third time.

Mr. Townsend moved that the said bill be recommitted to the committee on the internal affairs of towns and counties, with instructions to report instanter.

'Mr. Speaker put the question, whether the House would agree to the said motion of Mr. Townsend, and it was determined in the affirmative.'

Here commenced an important movement of the Anti-Assessment Committee, in reference to the Ward Collectors. The Corporation had thus far progressed in this sliding tax bill, to saddle the citizens with two taxes in one year, by moving the pay day from 1843 to 1842, under the specious pretext of an earlier collection of taxes; a pretty move this to cover up their wasteful expenditures, but they were caught in the act, and plainly told that the Executive would return the bill, and the manœuvre would be blown.

Mr. Solomon Townsend, of the House of Assembly, a member from the city of New-York, was at once applied to by a delegate of the Anti-Assessment Committee, to arrest this bill, authorising a double tax upon the people of that city, and that indefatigable and uncompromising member, with his characteristic promptness, at once laid hold of the subject, and moved that the bill, which had gone through the Senate with rail road speed, had been in the House by *hocus pocus*, moved out of its place, and ordered to a third reading, be re-committed, and that the committee be required to report again *instanter*.

Mr. ————, from Franklin County, a leading member of the Whig side of the House, sustained Mr. Townsend, and the bill was recommitted, and the following amendment, proposed by the Anti-Assessment Committee, added to the bill:

'§ 4. Any person who may be desirous of paying his tax or taxes, previous to the first of February, shall, on paying the amount thereof, to the Comptroller of the City of New-York, be allowed a deduction therefrom, at the rate of six per cent. per annum.'

Another amendment, proposed by the Anti-Assessment Committee, viz: to substitute 11th of February for 1st of November, was rejected by the Standing Committee!

Page 942.

"Mr. D. R. F. Jones, from the Committee on the internal affairs of towns and counties, to which was re-committed the engrossed bill from the Senate, entitled 'An act respecting the collection of taxes in the City of New York,' reported that the Committee had examined the said bill, and made sundry amendments thereto; with which amendments they saw no reason why the said bill should not be passed into a law.

Ordered that the bill do have its third reading."

Mr. Townsend here moved to strike out the words, 'November first,' and insert in place 'February first.' His motion was sustained by the House, and the bill was thus amended.

"Thereupon,

The said engrossed bill from the Senate, entitled 'An act respecting the collection of taxes, in the city of New York,' having been amended by striking out of the third section the words 'NOVEMBER FIRST,' and inserting 'FEBRUARY FIRST,' was read the third time.

Resolved, That the bill and amendments do pass.

Ordered, That the Clerk return the said bill to the Senate, and inform them that the Assembly have passed the same, with the amendments thereto, therewith delivered.

SENATE JOURNAL,

Page 511.

MONDAY, Half-past three o'clock, P. M. April 11, 1842.

The bill entitled "An act respecting the collection of taxes, in the City and County of New York,' was received from the Assembly, with a message informing that they had passed the same with the amendments therewith delivered.

Resolved, That the Senate do concur in the said amendment; two thirds of all the members elected to the Senate voting in favor thereof, as follows; to wit:

For the AFFIRMATIVE, Messrs. Bartlett, Bockee, Corning, Deniston, Dixon, Faulkner, Foster Franklin, Hard, Hawkins, Hunt, Hunter, Nicholas, Johnson, Paige, Peck, Platt, Root, Ruger, Scott, Sherwood, Strong, Varian, Works, 24.

NEGATIVE, none.

Ordered, That the Clerk return the same to the Assembly."

—

ASSEMBLY JOURNAL.

"Page 949.

Half-past three o'clock, P. M.

A message from the Senate, with the bill and amendments therein mentioned, was received and read, informing that they had concurred with the Assembly in their amendments to the bill entitled 'An act respecting the collection of taxes in the City and County of New York,' and amended the said bill accordingly.

The said amended bill having been examined,

Ordered, That the Clerk return the same to the Senate."

SENATE JOURNAL.

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"Page 517.

Seven o'clock, P. M.

The Assembly examined and returned the bill, entitled 'An act respecting the collection of taxes in the City and County of New York.'

rested in real estate, who will file the memorandum required. This bill needs no argument to sustain it, it is of itself argumentative throughout.

As to limiting charges for advertisements, certificates and lease, to the rates charged by the State Comptroller, we will remark: that the expense made by the State Comptroller, for advertising sales, giving certificates, and advertising for redemption, is but 30 cents, while, for advertising sale, giving certificate, advertising to redeem, and granting lease, the officers of the Corporation of the City of New York, charged for about two and a quarter acres of pasture land, which is in one piece, and which they, for the sake of making fees, subdivided on paper into 36 lots, advertised them as 36 distinct pieces, sold it as 36 distinct pieces, give 36 distinct certificates, and 36 distinct leases; there were 36 distinct charges, $16.80 each, making an expense of $604.80 for the services for which Comptroller FLAGG would have charged in all, but EIGHTY CENTS. What a contrast!

"IN SENATE,

MARCH 29, 1843.

Brought in by Mr. BOCKEE.

An act, to amend an act entitled 'An act authorizing mortgagees to redeem real estate sold for taxes and assessments,' passed May 14th, 1840.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Sec. 1. The first section of the act entitled 'An act authorizing mortgagees to redeem real estate sold for taxes and assessments,' passed May 14th, 1840, is hereby amended so as to read as follows:

No sale of real estate for the non-payment of any tax or assessment shall destroy or in any manner affect the lien of any mortgage thereon duly recorded or registered, in any case where the mortgagee shall have filed a written memorandum of his mortgage, with a definite or particular description of the mortgaged premises, in the office of register of deeds, or clerk of the county in which the premises are situate; which memorandum shall also state the residence of such mortgagee or his place of business, and specify where notices shall be directed to him. And it shall be, and is hereby made the duty of the register of deeds and clerk of the county, to prepare and keep in his office, a book in which he shall record such memorandums; and he shall be entitled to six cents per folio for registering and filing such memorandum, and no more; and such book shall contain an index, alphabetically arranged, and shall be subject to the inspection of any person, during office hours, free of charge.

§ 2. In all cases of sale of land for any tax or assessment imposed thereon, in any city or village within the bounds of this State, the charge for advertising notice of sale and notice of redemption, for making and delivering a certificate of sale, and for executing and delivering a lease or deed therefor, shall be the same that is made by the State Comptroller, for advertising and selling lands for taxes, and no more.

§ 3, Owners, lessees, assignees, or persons otherwise interested in land situate within the bounds of this State, who shall file in the office of register of deeds, or in the office of clerk of the county where such land is situate, a written memorandum, stating his place of residence or place of business, and a particular and definite description of his land and where situate, shall be entitled to the same notice as provided in the act entitled 'An act authorizing mortgagees to redeem real estate sold for taxes and assessments,' passed May 14th, 1840, and shall have the same right and privilege to redeem such land from any tax or assessment sale, as is in said act allowed to mortgagees.

§ 4. The memorandums to be filed in pursuance of this act, shall be filed prior to the expiration of the two years allowed by law for the redemption of lands sold for taxes or assessments."

COLLECTION OF TAXES,

FROM BANKS AND OTHER INCORPORATED INSTITUTIONS, IN THE CITY OF NEW YORK.

The Legislature, at the last session, on the application of the Corporation of the city of New York, altered the law as to the collection of taxes from Banks and incorporated Companies. It will be borne in mind that we have been treating of the assessment of taxes upon incorporated Companies. We are now treating of the *collection* of taxes from such institutions.

It will probably be most useful and convenient, to the Banks and other Institutions, to give a full copy of the present law, which is as follows:

"CHAPTER 230.

Passed April 18th, 1843.

ART. 2.

§ 18. The *said receiver* shall demand payment of all taxes assessed on incorporated companies *in the said city*, from the president or other proper officer of such companies, and if not paid, shall proceed in the collection and payment thereof, in the same manner as in other cases, and *his* receipt shall be evidence of the payment of such tax.

§ 19. Such taxes shall be paid out of the funds of the company, and shall be rateably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

§ 20. If the *said receiver* shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the *chamberlain*, and at the same time make affidavit before him, or some other officer authorized to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the com-

pany, and that such officer had refused to pay the same, or that he had not been able to make such demand, as the case may be; and that such company had no personal property from which he could levy such tax.

§ 21. The *chamberlain* shall thereupon certify such facts to the Comptroller *of this State*, who shall pass to the credit of such *chamberlain*, the amount of all taxes so returned and certified, as in the cases of taxes on the lands of non-residents.

§ 22. The Comptroller *of the State* shall furnish the Attorney General with the names of all companies refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively; and the Attorney General shall thereupon file a bill in the Court of Chancery against every such company, for the discovery and sequestration of its property.

§ 23. The Chancellor, on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company, and the officers thereof, from any other proceedings under their act of incorporation, and may order and direct such other proceedings as he shall deem necessary to compel the payment of such tax and costs.

§ 24. The Attorney General may also recover such tax, with costs, from such delinquent company, by action in any Court of record in this State."

"ARTICLE 4.

Repeal of other provisions, and time when this act shall take effect.

SEC. 1. The provisions of Chapter XIII, of the first Part of the Revised Statutes, regulating the collection of taxes, shall hereafter be inapplicable to the City and County of New York.

§ 2. All former laws, acts and parts of acts, relating to the collection of taxes in the City of New York, or to the officers by whom the same shall be collected, and to the sale of property, real or personal, therefor, or to the redemption of real estate sold for taxes in the said city, and all other acts or parts of acts inconsistent herewith, are hereby repealed.

§ 3. Neither of the two preceding sections, shall in any manner be construed to affect any act done or right accrued, or any proceeding, or any suit of prosecution, for any offence, or for the recovery of any penalty or forfeiture, commenced or pending, under any of the provisions, acts, or parts of acts, thereby repealed, or declared inapplicable to the City and County of New York.

§ 4. This act shall take effect immediately, except the provision to abolish the office of collector of taxes, which provision shall take effect on the first day of April, 1844."

REMARKS.

The above is the only law now in force, for collecting taxes from Banks and other incorporated Companies, in the City of New York. All other laws are repealed.

The interests of incorporated Companies, have not been injured by this new law. As to collecting the tax, it was a necessary change in doing away with the duties of ward collectors and substituting a general receiver.

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REVIEW OF THE PROPOSED LAW

AS TO INCORPORATED INSTITUTIONS, INCLUDING INCOPORATIONS AND ASSOCIATIONS.

The first section on the title page of this number contains all the words of the first section of Title 2 of Vol. 1 of the Revised Statutes, pg. 403 new edition, and an addition thereto of all the words which are in italic. The bill reported by Judge Bockee on the 24th March, on page 102 of this number covers all the ground which is needful in this, and besides that, the bill reported by Judge Bockee, puts all the institutions throughout the state upon the same footing, whereas the New York city corporation bill, singles out the institutions on this island as to be extra burdened. This is all wrong.

The second section requires the return to be made before the first of *June*, instead of July, with a view to lay a double tax by sliding the tax one year back in the order of time, by which means the Banks and other institutions would be required to pay two annual taxes out of two semi-annual dividends!!

The words '*seventh*,' '*first*,' '*act*,' '*act*,' in section are inserted to make the provision of the particular section apply to this particular bill, instead of the general law, as now existing.

In the third section the word "June" is substituted in the bill for the word "*July*," in the present law, for the reasons stated as to section two as above.

In section 4 and 5 the words "*of this state*,"—"*said*"—"*of the State*"—were inserted to designate the State Comptroller from the City Fiscal.

In section 6 the word "*Ward*" in the proposed bill is substituted for word "*town*" in the existing law.

Sections 7, 8, 9, 10, and 11, in the proposed bill are exact copies of Section 7, 10, 11, 12, and 13 of the present law, omitting and repealing section 8 and 9 of the existing law.

In sec. 12, the word "*ward*" in the proposed bill is substituted for word "*town*," in the existing law.

In sec. 13. The words "*on the third Wednesday of August in each year, accompanied by the receipts of the Chamberlain*," in the proposed bill, are substituted for the words "*annual*" meeting "*within two days from the commencement thereof accompanied with the receipt of the county Treasurer*," in the present law.

The Revised Statutes already require the city Chamberlain to perform the duties of county Treasurer. The substituting the 3d Wednesday in August for the annual meeting of the Board of Supervisors late in October, is for the purpose of sliding back the tax, and collecting two annual taxes from the banks, &c., from the proceeds of two semi-annual dividends. It would be far more creditable to the Corporation to come out at once and ask a tax of Four Million of dollars, than to try thus underhandedly to slip out a couple of millions under the specious pretext of "*an earlier collection of the tax.*

The 142d section, in the proposed bill, corresponds with section 15, in the existing law.

Section 15 of the proposed bill corresponds with section 16 of the existing law, with these exceptions, viz: words "*of this state*" are added to distingnish the state Comptroller from the City Fiscal, and words "*the said City*" are substituted in the bill for words "such County" in the present law.

The proposed Bill also contains these provisions,

"Title 1—Sec. 13. The term incorporated company in this act shall be construed to include all the Banking and other associations having capital stock."

The two sections 8 and 9 of the existing law, proposed to be repealed by this bill are as follows:

"8. The provisions of the 15th section, of the second title of this chapter, shall be, and are hereby extended to the incorporated companies in the two preceding sections named; and the president or other proper officers, may make the affidavit required by said section."

The two preceding sections refered to are sections 6 and 7 on the title page of this number.

§ 9. "If the President or other proper officers of any incorporated company named in the assessment roll, shall show to the satisfaction of the Board of Supervisors, at their annual meeting, within two days from the commencement thereof, by the affidavits of such officer, to be filed with the clerk of the Board, that such company is not in the receipt of any profits or income, the name of such company shall be stricken out of the assessment roll, and no tax shall be imposed upon it. And the assessment of every monied or stock corporation, authorised to make dividends or its capital, from which no such affidavit shall be received, shall be conclusive evidence, that such corporation was liable to taxation and was duly assessed."

Section 15, of title 2, referred to in the above quoted section 8,—allows institutions to be taxed on their actual, instead of their nominal capital. The courts are disposed to think its provisions obscure. Mr. Bockee's bill, on page 10, of this number is declaratory, and to carry out the equity of the provision but the corporation seek to abrogate it altogether, and to collect a tax on sunken capital.

The third section of Mr. Bockee's bill, on page 102 of this number, was substituted by the finance committee for the following section proposed by the Citizens' Committee.

Upon this house I pay the following taxes :

State Tax, 20-100 on the $100, amounting to . . .			$24.00
County Tax, 50-100	do.	do.	60.00
City Tax, 36-100	do.	do.	43.20
Poor Tax, 18-100	do.	do.	21.60
			$148.80
If I use the Schuylkill water in my house, as I do, I pay for household purposes and bath,			8.00
			$156.80

These constitute all the taxes assessed upon that piece of property.

I pay also to the City, to the County, and to the Poor Tax, what is called a personal tax, $2 to each fund ; this is not rated upon personal property, but strictly upon the person, rated I believe upon the trade or occupation, the lowest rate being 20-100, the highest $2.

To the State I pay a tax upon personal property, emoluments of office, &c., which you could not understand without an accurate examination of the law.

These taxes upon my house, are, as I have said, *all* that it pays for the year 1843.

The City Tax pays for watching, lighting, paving, police, City government, cleansing, &c. &c. &c., in fact for all City expenses.

The City is included in, and forms part of the County, and therefore pays a County Tax. This fund pays for roads, bridges, courts, (not including salaries of Judges,) damages, &c.

Poor Tax pays for the support of the poor.

These are the Taxes of the City proper. But the City proper is but a small portion of the City apparent. That includes Corporations called Southwark, Moyamensing, Spring Garden, Penn township, Kensington, each of which sustains its own local operations by its own taxes.

Thus Spring Garden—there a house, value $12.000 would pay the same state tax, county tax, and poor tax, that is paid on my house. It would not pay a *City tax*, but it would pay a Spring Garden tax, laid by the authorities of the district, probably *less* than a city tax. The state of advancement of each district being the indication of the magnitude of the tax.

In some of the districts they *pave* by assessments—upon the holders of the property in front of which the pavement is made—not so in the city.

If you would pay us a visit, and pass an hour with me I would give you more information than by writing a volume.

Very respectfully,
Your ob't servant,
J. M. Scott.

E. Meriam, Esq."

—

Copy of a Letter from Hon. M. Brimmer, Mayor of the City of Boston to E. Meriam.

"Boston, Oct, 23d, 1843.

Sir—I have to acknowledge the receipt of your favor of 17th of Oct., and I now enclose answers to your several inquiries. In answer to the 6th interrogatory I would add, that in building sewers and drains one fourth of the expense is paid by the city; paving is done at the expense of the city. The City own two wharves, all other wharves are private property. I send you the last annual report of the receipts and expenditures of the city of Boston, from which you will gain much information in relation to the taxes of the city.

Respectfully your ob't. s't.
M. Brimmer.

E. Meriam, Esq.

Answers enclosed referred to above.

The questions were drawn by ourselves, the answers written by His Honor the Mayor of Boston.

Question 1st.—Is the tax of the City, and also the tax of the County imposed upon Real and Personal Estate blended together, constitute one tax : or are these imposed separately—if the latter what is the relative proportion of the county, to that of the City tax ?

Answer.—The City ot Boston and the small town of Chelsea, constitute the county of Suffolk, and the taxes are blended together and constitute one tax, of which $56,000 is appropriated to expenses of Courts, repairs &c., constituting about 1-14th of the annual appropriations.

Q. 2d.—Are your Banks and incorporated Companies, taxed upon original nominal capital, paid in, or upon the capital existing at the time the tax is laid ?

A.—The tax assessed by the State on Bank capital, is levied upon the capital as chartered. A Bank with a chartered capital of one million, pays one per cent on that amount without regard to losses.

Q. 3.—Is the State tax an annual imposition of *one per cent.*

A.—The State Tax on the Banks is annual imposition, stockholders *also* pay the city and county tax.

Q. 4th.—Have you Poll tax, how is it imposed, what rate, and is it easy of collection ?

A.—A poll tax of $1.50 is levied upon "every Male inhabitant between the ages of 20 and 70 years, whether a citizen of the U. States or an alien. The poll tax of Minors is assessed to the parent, guardian or Master. It is as easily collected as any other tax.—It gives all persons paying such tax within 2 years, except aliens, a right to vote.

Q. 5th,—Have you any data, by which you can easily determine what the aggregate amount of the tax upon "capacity or income" amounts to annually, or what proportion it bears to the aggregate tax ?

A.—We have no means of ascertaining.

Q. 6th.—Does the expense of building Sewers, Drains, paving Streets and building Wharves, constitute any part of your City tax ?

A.—See letter.

Q. 7th.—Have you any local assessment

for opening, widening, extending or straightening streets, if so, how imposed?

A.—A certain amount is annually appropriated for the widening of streets, and included iu the annual tax like any other appropriation. There is no betterment law in this State.

Q. 8th.—If a merchant engaged in business in your city and having his counting room on one of your wharves, resides with his family at Watham where would he be taxed for his personal property which consisted in debts receivable?

A.—He would be taxed where he resided on the first day of May; a tax must be paid either in Boston or Waltham.

Q. 9th.—If a person owning a house in the city of Boston, and also a house in the town of Waltham, residing in the warm season at Waltham, and in the cold season at Boston, in which place would he be taxed for personal property?

Answered as above in No. 8.

Q. 10th.—What constitutes a residence in your city for the purpose of taxation?

A.—Being in the city on the first day of May and previously with *intention* to reside.

Q. 11th.—In the valuation of real estate, is the opinion of the assessors as to the value of a house and lot, *absolute* and without repeal or review?

A.—The valuation of the Assessors and Assistant Assessors is not final. After Six months an appeal lies to the Mayor and Aldermen. An application of this kind is very unusual and it is not known that they ever granted relief.

Q. 12th.—By what officer is your tax collected; and when unpaid upon real estate, do you sell so much of the real estate as will pay the tax, or how otherwise?

A.—Taxes are collected by the city and county treasurer. So much of real estate as is necessary to pay the tax imposed may be sold at public auction, after being advertised three weeks. The lien on the estate continues two years, even if sold; if not sold, there seems to be no termination to the lien.

Q. 13th.—What provision of law exists in your city to enable your assessors to ascertain persons liable to taxation who reside in hotels?

A.—All Innholders and keepers of boarding houses are required by law to make returns, on application of any assessor, of permanent boarders, under a penalty of twenty dollars for refusing or giving false information. Transient persons are not liable.

Q. 14th.—If a foreign Banker, resident of any of the cities of Europe has funds on deposite in your Banks, or balances in the hands of your Merchants, would such be liable to taxation under your laws?

A.—Funds in Banks or in the hands of Bankers or Commission Merchants belonging to Foreigners are not subject to taxation.

Q. 15th—If a subject or other person, residing in Europe, holds stock in your city debt, standing in the name of a citizen of Boston, on which such citizen receives the interest, to remit the non resident, would that stock be taxed, and to whom?

A.—Persons not resident in the State, holding stock in Banks, city debt, &c., are not liable to be taxed therefor.

Q. 16th.—Does your city pay the salaries of any judicial officers who may be called upon to adjudicate upon matters of a pecuniary character arising between the city corporation and a citizen?

A.—It does not. If questions of dispute be referred to referees the fees of reference are paid as said referees shall direct.

Q. 17th.—If the agent of a foreign manufacturer receiving goods and doing business in your city sells a million of dollars annually of merchandise on which he receives a commission of five per cent. How would he be taxed in Boston?

A.—The facts being satisfactorily established, the merchant would be taxed on an income of $50,000.

If A owns a house worth $12,000 and B has a mortgage on it for $12.000, both A and B are taxed; one for real, the other for personal estate.

—

"Boston, Nov. 4th 1843.

"Sir,

Your favor of first instant is received and I beg to return you my thanks for the documents you have sent me.

The following is the query you have put and the answer.

Q.—When you tax "income," how do you rate it in comparison with real estate or personol property? Suppose for example, A has a house and lot worth $10.000 and debts due him $10.000, making $20,000, and B has an income of $1.000 nett on sales by commission, what would the tax of B amount to at 60 cents on the $100 for A's property!

A.—A's house and lot $10.000 at 60 cts. $60.00
" Debt receivable 10.000 being personal property, 60 cts. $60.00

$120.00

B. Income by commission of $1000, 60 cts. $6.00

B would also be taxed for any capital he might possess at the same rate.

Valuation and Tax of the city of Boston. 1843.

Real Estate,	$67.673.400,	6.20	419.575.08
Personal,	42.372.600,	6.20	262.710.12
	110.046.000		$682.285.20
Polls,	20.063,	1.50,	30.094.50
			$712.379.70

Your ob't servant,
M. Brimmer, Mayor.

E. Meriam Esq."

Early in October, we received a letter from the Hon. M Brimmer, Mayor of the City of Boston, in reply to a letter we addressed to that gentleman, making certain inquiries as to the mode of assessing taxes in that city, and as to what species of property the tax is imposed upon. This letter, we have had the misfortune to lose. We have, however, a recollection of the contents, in general, which are substantially, as follows:

The tax is assessed by three permanent assessors, with salaries, and two assistant assessors in each ward, without salaries, all of which are appointed by the mayor and aldermen.

The tax, is assessed upon real and personal estate.

If A owns a house and lot in Boston, worth, $12,000, and furniture worth $12,000 A would be taxed upon the house and lot, for $12,000, real estate, and for the furniture, (all over 1000) would be legally taxable, but the practice of the assessors is to rate furniture at one-fourth its cost in the tax rolls.—Furniture not exceeding $1000, is exempt from taxation.

Mutual insurance Companies, are not taxed in Boston.

Stocks in incorporated institutions located in other states, owned by inhabitants of Boston, are taxable as personal estate to such stockholder. Also, all goods, merchandize, ships at home and abroad. Debts receivable and income, as personal estate.

Debts payable may be deducted from debts receivable, but from no other personal estate. This is in accordance with the decision of the Supreme Court of Massachusetts.

There is, also a faculty tax, imposed upon capacity or income, from business &c.

Income is taxed as personal estate.

We have obtained from Gerard F. Hallock, Esq, one of the Editors of the Jour. of Commerce, a statement of the system of taxation in the city of New Haven, Connecticut, and that gentleman has also furnished us with an examination of his tax bill.

Real Estate, is estimated in New Haven for the purpose of taxation, at what is supposed to be the fair valuation.

It is there assessed as the basis of estimate for taxation that it yields 3 per cent income per annum.

Money at interest is put down at 6 per cent income per annum. A person who owns real estate $10,000, money at interest $10,000, would be rated for 1843 as follows:

Real estate	10,000	3 per cent,	300.00
Money at inter.	15.000	6 "	900.00
Upon this sum total			1200.00
State tax 1 per cent. on		$1200	12.00
Town do. 3 " "		1200	36.00
City do. 7 " "		1200	84.00
Total tax on income of		$25,000	$132.00

In connecticut the owners of real estate which is encumbered by mortgage pays a tax on the value of such real estate after deducting the mortgage, to be computed the same as above. The mortgagee pays the tax on his mortgage.

In the city of New York the tax is imposed upon real and personal estate.

For example, if A owns a house worth $12.000, and furniture worth $130 00, situ-

value of, and the same as to his personal estate.

The assessors have no discretion as to refusing to accept the oath, but must receive such affidavit, and reduce the assessed value, according to the value fixed in the affidavit.

Persons who are assessed, are allowed twenty days to make objections, viz: from 20th August to the 10th of September, but no proper means are provided for giving the persons assessed, personal notice; and besides, the particular time selected, is a bad one. At that season of the year, very many of our citizens are absent from the city.

Bank stock, and stock in other incorporated companies, in the city of New York, is taxed to the institutions, and is paid out of the earnings of the institutions, and consequently lessens the annual dividend, equal to the amount of such tax.

The Safety Fund Banks, also pay a safety fund tax to the State, which is equal to one half of one per cent. on their capital stock paid in, without regard to losses.

Under the act of April, 1843, the Banks also pay the State Comptroller for registering notes.

The stockholders are allowed by law, to deduct out of their personal estate, the amount of stock they may hold in any incorporated company, for which the institution pays the tax.

In the City of New York, there are a species of local taxes, called ASSESSMENTS. These are imposed on the owners and occupants of houses and lands, for paving streets, opening new streets, widening, straightening, and lengthening old streets; making fancy squares and parks; building riddling sewers and drains; for wells and pumps; fencing vacant lots, and filling up uneven ground. These assessments are vast in amount, and most oppressive and burdensome, and more abuses and corruptions have been practised in the imposition of some of these assessments, than has ever been practised in all the local assessments and general taxes in all the world besides.

In most of the other counties in the State of New York, real estate is assessed at from one quarter to one half its real value, while in the City and County of New York, real estate is generally valued by the assessors at more than its intrinsic worth.

EXTRACTS FROM THE TAX LAWS OF THE STATE OF MASSACHUSETTS.

OF PERSONS AND PROPERTY SUBJECT TO TAXATION.

"§ 1. A poll tax shall be assessed upon every male inhabitant of the Commonwealth, between the ages of sixteen and seventy years, whether a citizen of the United States or an alien, in the manner hereinafter provided, in this chapter.

§ 2. All property, real and personal, of the inhabitants of this State, not expressly exempted by law, shall be subject to taxation, in the manner provided in this chapter.

§ 3. Real Estate shall, for the purposes of taxation, be construed to include all lands within this State, and all buildings and other things erected on or affixed to the same.

§ 4. Personal Estate shall, for the purposes of taxation, be construed to include all goods, chattels, moneys and effects, wheresoever they may be; all ships, and vessels, whether at home or abroad; all moneys at interest, due the persons to be taxed, more than they pay interest for, and all other debts due to them more than they are indebted for; all public stocks and securities, stocks in turnpikes, bridges and all monied corporations, whether within or without the State, and also income from any profession, trade or employment, or from any annuity, unless the capital of such annuity shall be taxed in this State; and all other property returned in the last preceding valuation, for the purpose of taxation."

OF PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

"SEC. 5. The following property and poles shall be exempted from taxation, namely:

Firstly, The property of the United States and of the Commonwealth.

Secondly, The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Commonwealth; and such real estate, belonging to such institutions, as shall actually be occupied by them, or by the officers of said institutions, for the purposes for which they were incorporated.

Thirdly, The Bunker Hill Monument.

Fourthly, The household furniture of every person, not exceeding one thousand dollars in value; and also his wearing apparel, farming utensils, and mechanics tools, necessary for carrying on his business.

Fifthly, All houses of religious worship, and the pews and furniture within the same, (except for parochial purposes,) and all tombs and rights of burial.

Sixthly, All mules, horses, and neat cattle, less than one year old; and all swine and sheep less than six months old.

Seventhly, The polls and estates of all Indians.

Eighthly, The polls and estates of persons, who by reason of age, infirmity and poverty, may, in the judgment of the assessors, be unable to contribute towards the public charges."

OF THE TOWNS OR PLACES WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

"SEC. 6. The poll tax shall be assessed upon each taxable person, in the town where he shall be an inhabitant, on the 1st day of May in each year, &c.

§ 7. All taxes on real estate, shall be assessed in the town where the estate lies, to the person who shall be either the owner or in possession thereof, on the 1st day of May; and in cases of mortgaged real estate, the mortgagor shall, for the purposes of taxation, be deemed the owner, until the mortgagee shall take possession, after which, the mortgagee shall be deemed the owner.

§ 9. All personal estate, whether within or without this State, shall, except in the cases enumerated in the following section, be assessed to the owner in the town where he shall be an inhabitant, on the 1st day of May.

§ 10. The excepted cases mentioned in the preceding section, are the following, namely:

Firstly, All goods, wares and merchandize, or any other stock in trade, including stock employed in the business of any of the mechanic arts, in towns within the State, other than where the owners reside, shall be taxed in those towns, if the owners hire or occupy stores, shops or wharves therein, and shall not be taxable where the owners reside.

Secondly, All machinery employed in any branch of manufactures, and belonging to any corporation, shall be assessed to such corporation, in the town or other place where such machinery may be situated or employed; and in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted, from the value thereof, the value of the machinery and real estate, belonging to such corporation.

§ 13. Partners in mercantile or other business, whether residing in the same or different towns, may be jointly taxed under their partnership name, in the town where their business is carried on, for all the personal property employed in such business; and if they have places of business in two or more towns, they shall be taxed in those several towns for the proportions of property employed in such towns respectively; and in case of being so jointly taxed, each partner shall be liable for the whole tax."

OF THE MANNER OF ASSESSING TAXES.

"Sec. 35. Any town may, at their annual meeting, allow a discount of such sums as they may think expedient, to those persons who shall make voluntary payment of their taxes, within such periods of time as the town shall prescribe for that purpose; and in such case, the collectors shall make such discount accordingly.

§ 37. Any person aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof; and if he shall make it appear to them that he is taxed at more than his just proportion, they shall make a reasonable abatement to him; and they may, for this purpose, examine upon oath, (which may be administered by either of them,) the person so applying, and any witnesses whom he or they may see fit.

§ 38. If any legal costs shall have accrued before making any such abatement, as is provided for in this chapter, the person applying for the abatement, shall, notwithstanding, pay such costs.

§ 39. If the assessors shall refuse to make an abatement to any person, he may make complaint thereof to the County Commissioners; and if, upon the hearing of such complaint, it shall appear that the complainant is over-rated, the said Commissioners shall make such an abatement of his taxes. as they shall deem reasonable; provided, that the party aggrieved shall, in all cases, file his complaint with the Clerk of the Commissioners, within one month after the refusal of the assessors to allow an abatement.

§ 44. The assessors shall not be responsible for the assessment of any tax, in any town, parish, religious society, or school district, for which they are assessors, when such tax shall have been assessed by them, in pursuance of any vote for that purpose, certified to them by the Clerk or other proper officer of such town, parish, religious society or school district; but they shall, in such case, be responsible only for the want of integrity and fidelity on their own part."

OF THE COLLECTION OF TAXES.

§ 18. Taxes assessed on real estate, shall constitute a lien thereon for two years after they are committed to the collector; and may, together with all incidental costs and expenses, be levied by sale thereof, if the tax is not paid within fourteen days after a demand of payment has been made, either upon the person taxed or upon any person occupying the estate; such sale to be conducted in the manner provided in this chapter, for the sale of lands of non-resident proprietors, for non-payment of taxes: but nothing in this Section shall restrain the Collector from selling any real estate for taxes, after the said term of two years shall have elapsed, unless such estate shall have been alienated in the mean time.

§ 28. If no person shall appear to pay the taxes, at the time and place appointed for the sale of real estate, taken for taxes, the Collector shall sell, by public auction, so much of the real estate as shall be sufficient to discharge such taxes and all necessary intervening charges.

§ 36. Where the inhabitants of a town shall have voted to appoint their Treasurer a Collector, he may issue his warrant to the Sheriff of the County, or his deputy, or any of the constables of the town, returnable in thirty days, requiring them to collect all taxes due; and such warrant shall be in substance the same with that prescribed to be issued by the assessors to the collectors."

OF TAXES ON BANKS.

"Sec. 1. Every Bank which is, or may be, incorporated under the authority of this Commonwealth, shall, within ten days after the first Monday of April and the first Monday of October, in each year, pay to the Treasurer of the Commonwealth, a tax of one half of one per cent. on the amount of its capital stock, actually paid in.

§ 2. If any part of the capital stock of any Bank, shall have been paid in within six months next before either of the said days, the tax on such part shall be paid in proportion to the time that shall have elapsed after such payment.

§ 3. If any Bank shall neglect to make such payment, the Treasurer shall forthwith commence an action of debt, in the name of the Commonwealth, for the recovery of the same with interest."

TAXES.

EXTRACTS FROM THE STATUTES OF CONNECTICUT.

ESTATE TO BE VALUED, DWELLING HOUSES, LANDS, MANUFACTORIES, LANDS SEQUESTERED FOR PUBLIC USE, HORSES AND MULES, STALLIONS, NEAT CATTLE, SHEEP, PLATE AND PLATED WARE, &c.

"Sec. 2. And all real and personal property shall be valued, and set in the list, as follows, to wit: dwelling houses, with the buildings and lots appurtenant thereunto, not exceeding two acres, in any case, shall be valued at the rate which each separate dwelling house and lot, with the appurtenances thereof, are worth in money, and with due regard to the situation, use and income thereof, whether occupied by the owner, or leased; and shall be set in the list of the owner, at three per cent. of such value.

Lands and separate lots, (excepting house lots as aforesaid,) shall be valued and assessed by the acre, at such average rate as each entire tract or lot is worth in money, with reference to the advantages of soil, situation and income; and shall be set in the list, at three per cent. of such value.

Mills, stores, distilleries and buildings, with their improvements, used for manufactories of all kinds, shall be valued with respect to situation and present income; and set in the list, at three per cent of such value.

Lands and dwelling houses, with the appurtenances thereof, which have heretofore been granted or sequestered for the use of schools, or other public or pious uses, and which have been leased or let for terms of time not yet expired, at rents merely nominal, shall be valued and assessed at such rate and proportion, as, regarding the duration of the lease, the rent now actually paid and applied to such public uses, bears to the whole actual value, according to the rules applicable in other cases, as prescribed in this act: and shall be set in the list, at three per cent. of such value.

All horses, asses and mules, one year old, or more, shall be valued, and set in the list at six per cent. of such value. Each stallion, two years old, shall be set in the list at

six per cent.; and each stallion, three years old, or more, shall be set in the list at six per cent.; and neat cattle one year old, or more, shall be valued, and set in the list, at six per cent. of such value; and sheep one year old, and upward, shall be valued and set in the list, at six per cent. of such value.

Silver plate, except spoons, and silver-plated ware, shall be valued, and set in the list, at six per cent. of such value.

Clocks, watches and time-pieces, shall be valued, and set in the list, at six per cent. of such value.

Each coach, chariot, phæton, coachee, curricle, chair, chaise, gig or sulkey, shall be valued, and set in the list, at six per cent. of the value thereof, and every other carriage or waggon, drawn by one or more horses, excepting only such as are exclusively used on farms, or for the transportation of the produce thereof to market, or for the transportation of goods, wares and merchandize, shall be valued, and set in the list, at six per cent. of the value thereof; provided that no carriage or waggon shall be set in the list, which does not exceed twenty dollars in value.

Stock in any turnpike company, shall be set in the list, at six per cent. of the value of such stock in money.

The owner or owners of stock in any bank, or insurance company, in this State, whether such owners reside in this State or elsewhere, and the owner or owners of any stock in any bank or insurance company, in any of the United States, such owner or owners residing in this State, shall be taxed therefor, and such stock shall be valued, and set in the list, at six per cent. of such value; provided it is not taxed in the State where such bank or insurance company is situated. And the cashiers of the several banks, and the secretaries and clerks of the several insurance and turnpike companies, established in this State, shall, by the twelfth day of October, annually, having been previously thereto requested, inform by mail, or otherwise, the assessor or assessors of every town in this State, where the stock in such bank or company may by law be liable to be taxed, the amount of such stock liable to be taxed in such town, with the amount of such stock set to the name of each owner or owners on the books of such bank, or insurance, or turnpike company, on the first day of October, annually; and if any cashier, secretary or clerk, shall neglect or refuse to furnish such information, he shall forfeit and pay to the treasurer of each town where said stock is liable to be taxed, whose assessor or assessors shall not be so informed, the sum of fifty dollars, to be recovered in an action of debt, in the name of the town treasurer. The stock belonging to persons not residing in this State, in any bank, insurance, or turnpike company, shall be taxed as other similar estate; and the amount of all county, town, and society taxes arising on such non-resident's estate, shall be, by the several collectors, paid to the treasurer of this State.

The stock of the United States Bank, and the stock of either of the United States, belonging to residents in this State, shall be assessed at its just value, and set in the list, at six per cent. of such value.

All monies at interest, secured by notes or bonds of responsible persons, resident in this State or elsewhere, except monies loaned to this State, and all monies on interest, secured by mortgage on real estate in this State or elsewhere, more than the owners thereof pay interest for, shall be set in the list at six per cent.

All fisheries, whether appendages of any farm or lot, or block, or wharf made for the purpose of fishing, shall be valued, and set in the list, at three per cent. of such value.

The polls of all white male persons, from twenty-one to seventy years of age, shall be set in the list at twenty dollars each: provided that the assessors and board of relief, may abate the polls of infirm, sick and disabled persons, in their respective towns, not exceeding one tenth part of the number of taxable polls; and they shall give reasonable notice of their time of meeting for that purpose."

PROFESSIONS.

"SEC. 4. Attornies, physicians, surgeons, traders of all kinds, mechanics, taverners, brokers and distillers, shall be assessed, and set in the list of the town where they reside, at the discretion of the assessors, according to the value and income of their business, occupation or profession, and the principles and rules prescribed in this act: provided that attornies, physicians and mechanics shall not be taxed until after two years from the time of commencing such profession or occupation.

§5. All manufacturers, not otherwise assessed by this act, shall be assessed on the same principles, and set in the list in the same manner, as traders and mechanics are, by the preceding section of this act."

NON-RESIDENT PROPRIETORS OF BANK STOCK, &c.

"SEC. 1. *Be it enacted in the Senate and House of Representatives, in General Assembly convened*, That the cashiers of the several banks, and the secretaries or clerks of the several insurance companies established in this State, the stock of which is liable to be taxed, shall annually, on the first day of October, in each year, or within ten days thereafter, make out, under oath, and deliver to the comptroller of public accounts, an accurate list of all persons who were, on the first day of October, or any part of said day, stockholders of their respective companies, residing without this State, together with the number and value of the share or shares, then belonging to each of the said non resident stockholders.

CASHIERS, &c., TO PAY THE TAXES DUE ON STOCK OE NON-RESIDENTS—FINE.

§2. That the said cashiers, or secretaries, or clerks, shall annually, on or before the twentieth day of October, in each year, pay, or cause to be paid, to the treasurer of this State, for the use of the State, a sum equal to two thirds of one per cent. of the value of all the stock of their respective institutions, owned or held on the said first day of October, or on any part of said day, by persons residing without this State, and each institution aforesaid shall have a lien upon the stock of each non-resident stockholder, for the reimbursement of said sum, so required to be paid as aforesaid; and if any such cashier, secretary, or clerk shall neglect or refuse to comply with the requisitions of this act, within the time therein required, he shall forfeit and pay to the treasurer of this State, for the use of the State, one hundred dollars, to be recovered in the name of the treasurer by action on this Statute.

REPEAL.

§3. That so much of an act for the assessment of taxes as provides for the assessment and payment of taxes upon the stock in any bank or insurance company in this State, owned by persons residing without this State, be, and the same is hereby repealed."

PERSONAL ESTATE TAXABLE AT SIX PER CENT.

"SEC. 1. *Be it enacted by the Senate and House of Representatives, in General Assembly convened*, That all personal estate made taxable by virtue of this act, or the act to which this is an addition, shall be valued and set in the list of the owner at six per cent.

WHAT MONIES AND DEBTS SUBJECT TO TAXATION.

§2. That all monies and debts at interest evidenced by bonds, notes or other written obligations of responsible persons resident in this State or elsewhere, except monies loaned to this State, and also all monies on interest secured by mortgage on real estate, in this State or elsewhere: also all monies invested in any stocks issued or created by any city, town or other community; also all stocks in any railroad, canal or bridge incorporation, (except in cases where the charter of said incorporation exempts its stock from taxation,) shall be valued and set in the list of the owner at six per cent."

ABATEMENT ALLOWED TO TOWNS, TO BE APPLIED BY CIVIL AUTHORITY AND SELECT-MEN.

"SEC. 11. On all the warrants issued by the treasurer for the collection of taxes, there shall be allowed to the several towns, an abatement of one eighth part of the amount of the taxes arising on the list of said towns respectively; which eighth part the *civil authority and** select men of the respective towns, shall have power to apply for the relief of the indigent or unfortunate, in the abatement of their particular rates, in whole or in part, in such way and manner as they shall judge most proper, reasonable and just: and on a certificate of such abatement, under the hands of the civil au-

*Repealed by Act of 1828.

thority and select men, the treasurer shall allow the same to the credit of the collector of such tax: and for the residue of the taxes laid on the several town, they shall be holden to pay the full amount, without any further deduction or abatement."

BOARD TO MAKE ABATEMENTS.

"SEC. 2. The select men, or a majority of them, in the several towns, shall constitute a board to make such abatements of State taxes as are allowed by law to be made, by the civil authority and select men."

BOARD OF RELIEF.

"The several towns in the State shall, also, at the town meetings aforesaid, elect a board of relief, to consist of not more than five judicious electors, who shall meet on or before the first Monday of January, in each year, having given ten days notice, at least, of the time and place of such meeting, by posting the same on the public sign-post in such town, or by publishing a notice in some public newspaper, printed in the town to which the said board shall belong; and shall hear and determine all appeals to them made from the doings of the assessors, and shall equalize and adjust the valuations and assessment lists of their respective towns, whether appeals are made, or not, from the doings of said assessors; and said board of relief, in equalizing and adjusting the lists aforesaid, may increase or reduce the list of any person; but before they proceed to increase the list of any person, they shall notify him, or leave a written notice at his last usual place of residence, two days at least, before increasing his list, to appear, and show cause, if any he have, why his list should not be increased."

HOW COLLECTORS SHALL PROCEED IN COLLECTING TAXES, FEES OF COLLECTORS.

"SEC. 19. The constables, appointed to collect the State taxes, and the collectors of town and other taxes, shall appoint a time and place for receiving such taxes, and shall give to every person reasonable warning and opportunity to pay the same; and on failure of payment, they shall make distress therefor; and in case a distress shall be made, such collectors shall distrain goods and chattels, if they can be had, and shall post and sell them, in the same manner as is provided by law in cases of executions; but if no goods or chattels are tendered, or can be found, such collectors may levy their warrants on the real estate, or on the bodies of those against whom they have taxes, and them commit to gaol, there to remain till such taxes and the legal costs are paid, or they are delivered in due course of law; and all collectors of taxes, shall be entitled to the same fees for levying warrants, as sheriffs are by law for levying executions."

MODE OF SELLING LAND.

"SEC. 20. When a collector levies a warrant on real estate, for the payment of taxes, he shall advertise the time and place of sale, three weeks, in some newspaper printed in the county, or an adjoining county, at least six weeks before the time of sale, and then shall sell, at public auction, sufficient to pay the taxes and costs chargeable against the owners, and shall give to the purchaser a deed of warranty thereof, to be lodged in the office of the town clerk, where the land lies, to remain unrecorded twelve months; and if the owner from whom the tax was due, or any purchaser, mortgagee, creditor of such owner, or any person claiming any interest in the land, shall, within twelve months from the time of the sale, pay, or tender to the purchaser from the collector, the purchase money, with twelve per cent. interest, such deed shall be void, and shall be delivered up to the person paying or tendering the money; who shall hold such land or estate as a security, in nature of a mortgage for the money paid, and twelve per cent. interest. But if the purchase money and interest, shall not be paid within such time, then the deed shall be recorded, and title become confirmed in the purchaser, his heirs and assigns, forever."

TAXES A LIEN ON LANDS, FOR ONE YEAR. PROVISO.

"SEC. 21. The real estate, of which any person is seized and possessed, in his own right, in fee, shall stand charged with his lawful taxes, and may be sold for the same, within one year after the taxes become due, notwithstanding any transfer thereof, or attachment thereon: provided, that no real estate, which has been transferred or levied upon as aforesaid, shall be liable to be sold for the payment of any taxes arising upon a list made up after such transfer or levy; nor shall any real estate be liable to be sold for taxes, which has been legally transferred, attached, or taken by execution, where other estate can be found sufficient to pay such taxes, and the legal costs."

EXTRACTS,

FROM THE REVISED STATUTES OF THE STATE OF NEW YORK.

OF PROPERTY LIABLE TO TAXATION.

LAND AND PERSONAL ESTATE.

"SEC. 1. All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified."

LAND DEFINED.

"SEC. 2. The term 'land,' as used in this Chapter, shall be construed to include the land itself, all buildings and other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the State; and the terms 'real estate,' and 'real property,' whenever they occur in this chapter, shall be construed as having the same meaning as the term 'land,' thus defined."

'PERSONAL ERTATE' DEFINED.

"SEC. 3. The terms 'personal estate,' and 'personal property,' whenever they occur in this chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate."

PROPERTY EXEMPT.

"SEC. 4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States.

2. All lands belonging to this State, or the United States.

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them.

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same.

5. The real and personal property of every public library.

6. All stocks owned by the State, or by literary or charitable institutions.

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.

8. The personal property of every minister of the gospel, or priest of any denomination; and the real estate of such minister or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars: and,

9. All property exempted by law from execution."

MINISTER OR PRIEST.

"SEC. 5. If the real and personal estate, or either of them, of any minister or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation."

LAND SOLD BY THE STATE.

"SEC. 6. Lands sold by the State, though not granted, or conveyed, shall be assessed

in the same manner as if actually conveyed."

OWNER OF STOCK.

"SEC. 7. The owner or holder of stock, in any incorporated company liable to taxation on its capital, shall not be taxed as an individual, for such stock."

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OF THE PLACE IN WHICH PROPERTY IS TO BE ASSESSED.

LAND WHERE TAXED.

"SEC. 1. Every person shall be assessed in the town or ward, where he resides when the assessment is made, for all lands, then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

§ 2. Land owned by a person residing in the town or ward where the same is situated, but occupied by another person, may be assessed in the name of the owner, or occupant.

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated 'lands of non-residents," and shall be assessed as hereinafter provided."

HOW, IF DIVIDED BY TOWN LINE.

"SEC. 4. When the line between two towns or wards divides a farm, or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line."

PERSONAL ESTATE WHERE TAXED.

"SEC. 5. Every person shall be assessed in the town or ward where he resides, when the assessment is made, for all personal estate owned by him, including all such personal estate in his possession, or under his control as trustee, guardian, executor, or administrator; and in no case shall property so held, under either of those trusts, be assessed against any other person."

PROPERTY OF CORPORATIONS.

"SEC. 6. The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company, liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge, shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several towns or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorized to pay the last preceding dividend, resides."

—

OF THE MANNER IN WHICH ASSESSMENTS ARE TO BE MADE, AND THE DUTY OF ASSESSORS.

ASSESSMENT DISTRICTS.

"SEC. 7. The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward."

AFFIDAVIT OF VALUE OF PROPERTY.

"SEC. 15. If any person, whose real or personal estate is liable to taxation, shall at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit; or that the value of the personal estate owned by him, after deducting his just debts, and his property invested in the stock of incorporated companies, liable under this chapter to taxation on their capital, does not exceed a certain sum to be specified in the affidavit, it shall be the duty of the assessors to value such real or personal estate, or both, as the case may be, at the sums specified in such affidavit, and no more."

AFFIDAVIT BY TRUSTEES, &c.

"SEC. 16. If any trustee, guardian, executor or administrator, shall specify, by affidavit, the value of the property possessed by him, or under his control, by virtue of such trust, after deducting the just debts due from him, and the stock held by him in incorporated companies liable to taxation, in that capacity, the assessors shall in like manner value the same, at the sum specified in such affidavit."

RULE OF VALUATION.

"SEC. 17. All real and personal estate liable to taxation, the value of which shall not have been specified by the affidavit of the person taxed, shall be estimated by the assessors at its full value, as they would appraise the same in payment of a just debt due from a solvent debtor."

QUALIFICATION.

"SEC. 18. The preceding section shall be followed in all assessments made under this chapter, except where the assessors shall be specially required by law, to observe a different rule."

OBJECTION TO ASSESSMENT.

"SEC. 23. If the person objecting to the assessment, can show, by other proof than his own affidavit, to the satisfaction of the assessors, or of a majority of them, that such assessment is erroneous, the assessors shall review and alter the same, without requiring any such affidavit."

AFFIDAVIT BY AGENT.

"SEC. 24. Where any person, in possession of personal property liable to taxation, shall make affidavit, that such property, or any part thereof, specifying what part, is possessed by him as agent for the owner thereof, and shall disclose in such affidavit the name and residence of the owner, the assessors, if it shall appear that such owner is liable to be taxed under this chapter, shall not include such personal estate in the assessment of the property of such possessor."

AFFIDAVITS, BEFORE WHOM MADE.

"SEC. 25. The affidavits specified in this article, shall be made before the assessors, or one of them, either of whom is hereby authorized to administer an oath for that purpose: and the assessors shall cause all such affidavits to be filed in the office of the town clerk."

The law in relation to the collection of taxes in the City of New York, is to be found on page 259, of this volume.

REMARKS.

We have here placed before the reader, the Laws of New York, Connecticut, and Massachusetts, in reference to the assessment and collection of Taxes. We have added thereto, letters from two distinguished public officers, viz: HON. JOHN M. SCOTT, Mayor of the City of Philadelphia, and HON. MARTIN BRIMMER, Mayor of the City of Boston, as to the practical operation of their Tax Laws, in their respective cities.

We have likewise called upon several gentlemen, residents of the State of Connecticut, as to the practice under the Tax Laws of that State, in the Cities of Hartford and New Haven.

A merchant doing business in the City of New Haven, and owning no real estate, and having no other property but a stock of merchandize, would, if he sold $30,000 worth of goods annually, be set down in the Assessment rolls, as follows:

Profession,	$300.00
Poll Tax,	20.00
	$320.00
State Tax on $320, 1 per cent.,	$3.20
Town Tax on 320, 3 per cent.,	9.60
City Tax on 320, 7 per cent.,	22.40
	$35.20

Attorneys, Physicians, Mechanics, &c., are assessed in the same way.

We have here presented the system of taxation, in four Cities of as many different States. That of New Haven, we think, is the most simple, the most equitable, and even.

The system of taxation in the City of Boston, has, in our view, two defects, viz:

First, Taxing the mortgagor; and also the

mortgagee, when there is in reality but one estate possessed by both. The mortgagor has actually no interest in real estate which is mortgaged for its full value, and if mortgaged for only a portion, he has only that which remains after deducting the mortgage.

Second. Taxing goods and Chattels.—Suppose for illustration, that A. has a stock of goods of $10.000 on the 29th of April, which he sells to B. on that day, and on a credit of six months, for which he takes B's note. The assessors will, under the 4th section, on page 110, rate B. for goods and chattels $10.000 on the 1st of May, and A. for $10.000 debts receivable. Thus this property is twice taxed and involves the same principle, as that in which the mortgagor and mortgagee are both taxed. We have not time to address a letter to his Hon. the Mayor of Boston, and receive a reply before this sheet passes through the press, in relation to this point. A careful reading of the 4th section in the third column of page 110 has led us to infer that the law contemplates a tax upon the income of a merchant; and if he is taxed for that, he should not also be taxed for the capital producing that income. The mode of collecting taxes in Boston is preferable to that of New York. The Boston mode of correcting erroneous assessments is also a most excellent system.

The manner of assessing by three permanent assessors, and assistant assessors is also preferable to the New York system, and also in selling land for the payment of taxes to sell so much only as will pay the tax, and of limiting a tax lien to two years in case of alienation of the property.

A county Treasurer is a very appropriate officer to collect taxes. In New York our Democratic Corporation have hitched a Bank to the City Treasury and its President is made City Chamberlain, and by virtue of such office is made County Treasurer. This doctrine was not orthodox when Gen. Jackson removed the deposites. Thus it is, we often find principles contradicted by practices, as in this instance.

In the state of Connecticut, there is a board of relief to apply to, in case of erroneous assessments. In New York, there is no adequate provision for giving notice to a person who is assessed, and only twenty days allowed to hear objections, and during this short period which is fixed at a season of the year when most tax payers are absent, the tax payer must hunt up the assessor, at an inconvenient hour, and at some remote place, should he perchance happen to know that the term of 20 days has commenced running. A citizen who is not taxable, may be put upon the assessment list, and he has no redress but to prosecute the assessors. In Boston, if the assessors refuse relief, there is an appeal to the County Commissioners. In Philadelphia, we perceive by the printed report of the County Commissioners, which his Hon. Mayor Scott was so kind as to send us, that that there is a deduction made by the tax collectors for abatement, &c., which are no doubt in case of erroneous assessments. In the City, County and poor tax, imposed by the City and County of Philadelphia, personal property is not assessed. Real Estate only, besides this, a poll tax of six dollars, is all that is paid, and in some cases, this poll tax is only 60 cts.

In Connecticut, state bonds are not taxable. In New York this species of property is taxed the same as other personal property. We see no reason why such property should be exempt.

During the present year, some measures were taken in the Legislature of Virginia to exempt Virginia State Bonds and Debts from taxation by that Commonwealth.

Household furniture in Connecticut, and also in Pennsylvania, is free from taxation, and in Massachusetts exempt to the extent of one thousand Dollars.

In New York, household furniture is taxable the same as any other property.

In Boston, and also in Philadelphia, local assessments are included in the general tax, In the city of New York, the assessments are in addition to, and distinct from the general tax.

The tax authorised to be raised in the city and county of New York by the State Legislature in 1820 was two hundred and fifty thousand dollars. The population was then 123,000, the apportionment was, therefore, but a fraction more than two dollars for each inhabitant.

The tax authorised to be raised in 1830 was four hundred and fifty thousand dollars, and the population 203,000, which was a little more than two dollars and twenty cents for each inhabitant.

In 1842 the tax was $2050.000 and the population about 330,000, which is upwards of six dollars for every inhabitant.

In 1819 the corporation received $8.500 per annum for the street manure, from Messrs. Hitchcock's. who contracted to pay that sum, and to sweep the streets and to cart away the dirt. In 1842 near $130.000 was paid for sweeping the streets.

In 1830 the Watchmen's wages were but $86,592,29. In 1842, $225,567,62. The prices of provisions were higher in 1830 than in 1842.

In 1841 the democratic Corporation paid for printing the City Comptrollers report of 131 pages, the enormous sum of $1107.76, which is full seven prices for that work, and in 1842 the Whig Corporation paid $400.00 for printing the tax bill, which is full six prices for that work.

The watchmen's wages for the city of Boston in 1842, was $45.765.36, the Boston Watchmen light the lamps. The Watchmen's wages for the city of Philadelphia, including the expense of police in 1842, was $70.476.97.

The expense of cleaning streets of the city of Philadelphia, in 1842, was $9.559.88.

In Boston, the expense of cleaning the streets, carrying away the offals of the houses, cleaning drains, cess pools, aud sewers, building cess pools and drains, and for the purchase of four horses, was in 1842, $19.-065.12.

The expense of public printing, stationery and book-binding in the city of Boston, in 1842, was but $2765.94, in New York $22.-725.38. In New York in 1830, it was but $2.327.09.

The nett expenses for cleaning streets in New York in 1840 was $127.181.47.

One years interest on that sum of seven per cent. is 8.902.70 which is within six hundred and fifty seven dollars and eighteen cents of as much as the entire charge and cost of cleaning the streets of Philadelphia.

LORD BROUGHAM AND THE CORPORATION OF LONDON.

Though the elaborate report of the Commission issued by the British goverment in 1833, for the purpose of inquiring into the state of the municipal corporations throughout the United Kingdom of Great Britain and Ireland, had especial reference to the affairs of the corporation of the city of London, and in terms of unsparing condemnation exposed the abuses resulting from its continued exercise of the many privileges of jurisdiction, incident to its feudal constitution, and though a bill was enacted in pursuance thereof for the reformation of the country municipalties, and the Government promised to introduce a separate measure having reference to the City, nevertheless, owing to the overwhelming influence of the City corporation, combined with the magnitude of the interests involved in the preservation of its extensive powers on the one hand, and the weakness of the Whig Administration on the other, it has remained unmolested to the present hour. But from the prodeedings in the House of Lords, on the evening of the 2d inst., it may be conjectured that this state of things will not be permitted to continue. From its design of an useful and efficient instrument of local government, the great metropolitan corporation has been perverted to "giant abuse"; and so it is denominated. It has lost the confidence of the people. With a view to remodel it, Lord Brougham has moved an address to the Queen, praying for the consideration of the report above alluded to.

His statement of the grievances of the corporation, and the errors into which it has fallen, so obviously shows the necessity of reform, that it may be presumed some of them, particularly those more immediately operating to pervert the administration of justice, will not outlive their exposure.

The expenditure applied exclusively to the government of the City of London, (which constitutes only one fifteenth part of the great metropolis of the British Empire) containing a population of 122,800, amounts annually to more than three millions of dollars. This is upwards of $24 a head. That of Paris, with a population of a million, is a little over seven dollars a head. The cost of the city government of London is very little less than that of the executive government of the State, with a population of 24,-000,000—excluding in both cases the sala-

ries of the judges and officers of justice.—The whole income of the City including the revenue connected with its charities, is $4.-342.602; a great portion of which is very injudiciously disposed of, in the maintenance of a ridiculous pomp and ostentation, designed to give state and dignity to the City monarch. But with all its resources, and notwithstanding the successful experiment of an excellent system of police established by the exertions of Sir Robt. Peel and the Duke of Wellington over the west end of the town, and extended throughout the country, the organization of an efficient and vigorous police in the city of London has been neglected, and the operation of the present system tends only to the encouragement of vice, immorality and crime.

But the most crying abuse under the existing constitution of the City government, appertains to the administration of justice. The corporation consists of a Mayor, Court of Aldermen, and Common council. The Aldermen are chosen for life, and the members of the Common Council annually, by all inhabitant householders, being freemen, that pay thirty shillings to the City rates.—Under this state of things, it follows of course that the civic honors do not always devolve on the great merchants and the most important citizens of London. Yet the corporation not only control the whole revenue of the City, but to a great extent, the administration of justice therein. It holds the appointment of six judicial officers, five of whom are chosen by the Common Council by ballot. They choose the Common-Sergeant, who sits on the bench and administers criminal law, with a jurisdiction over 2,000,000 of people. They choose the judges in the Sheriffs' Court and the assistant judge in the Central Criminal Court.—The Aldermen appoint the Recorder. Two of this body sit as judges in the Central Criminal Court, where two judges form a quorum. To secure the administration of justice is the great object for which men live together in society. But what confidence can be had in the interpetation which unprofessional and unlearned men may put upon the law?

Lord Brougham commented on another species of abuse in the police administration, which hardly has any parallell with us.—This consists in an *ex parte* application for advice to a sitting magistrate, which, whatever may have been its origin, is now chiefly adopted with sinister ends—as a method sometimes of extortion, or with a malicious motive of prejudicing the public mind against an enemy. For this it is a most effectual engine; because the magistrate listens to all the details of the applicant's story, which, with the advice that is given, is reported in the newspapers as part of the proceedings of the Court.

JUDICIAL SALARIES.

It will be seen by a reference to the letter of His Honor J. M. Scott, Mayor of the City of Philadelphia, and also of His Hon. Martin Brimmer, Mayor of the City of Boston, as set forth on pages 109 and 110, of this number, that the salaries of Judicial Officers, who may be called upon to adjudicate upon matters in controversy, in questions which may arise between their respective Corporations and a citizen, are not paid by the Corporation.

This is a matter of very great importance. The Judiciary Department, should be distinct from, and independent of, all the other branches of the Government.

Mr. Justice Story, *that able commentator upon the Constitution, and most enlightened Jurist*, says:

"The independence of the Judiciary, is indispensable, to secure the People against the intentional, as well as the unintentional, usurpations of the Executive and Legislative departments. It has been observed, with great sagacity, that power is perpetually stealing from the many to the few; and the tendency of the Legislative department, to absorb all the other powers of the government, has always been dwelt upon by statesmen and patriots, as a general truth, confirmed by all human experience. If the Judges are appointed at short intervals, either by the Legislative or the Executive department, they will naturally, and indeed, almost necessarily, become mere dependents upon the appointing power. If they have any desire to obtain, or to hold office, they will, at all times, evince a desire to follow, and obey the will of the predominant power in the State. Justice will be administered with a faultering and feeble hand. It will secure nothing, but its own place, and the approbation of those who value, because they control it. It will decree, what best suits the opinions of the day; and it will forget, that the precepts of the law rests on eternal foundations. The rulers and the citizen will not stand on an equal ground in littigations. The favorites of the day, will overcome by their power, or seduce by their influence; and thus the fundamental maxim of a republic, that it is a government of laws and not of men, will be silently disproved or openly abandoned."

Again, he says:

"Few men possess the firmness to resist the torrent of popular opinion, or are content to sacrifice present ease and public favor, in order to earn the slow rewards of a conscientious discharge of duty; the sure, but distant gratitude of the people; and the severe but enlightened award, of posterity."

Mr. Justice Story quotes Mr. (afterwards Judge,) Hopkinson, thus:

"The pure and upright administration of Justice, is of the utmost importance to any people; the other movements of government, are not of such universal concern."

And again, this truly eminent Jurist, remarks:

"Indeed, in a Republic with a limited Constitution, and yet without an independent Judiciary, sufficiently independent to check usurpation, to protect public liberty, and to enforce private rights, would be as visionary and absurd, as a society organized without any restraints of law. It would become a democracy with unlimited powers, exercising through its rulers, a universal despotic sovereignity. The very theory of a balanced Republic of restricted powers, presupposes some organized means of control, and resist any excesses of authority. The people may, if they please, submit all power to their rulers for the time being; but then, the government should receive its true appellation and character. It would be a government of tyrants, elected it is true, but still tyrants; and it would become the more fierce, vindictive and sanguinary, because it would perpetually generate factions in its own bosom, who could succeed only by the ruin of their enemies. It would be alternately characterized as a reign of terror, and a reign of imbecility. It would be as corrupt, as it would be dangerous. It would be another model of that profligate and bloody democracy, which, at one time, in the French Revolution, darkened by its deeds, the fortunes of France, and left to mankind the appalling lesson, that virtue and religion, genius and learning, the authority of wisdom, and the appeals of innocense, are unheard and unfelt in the phrenzy of popular excitement; and that the worst crimes may be sanctioned, and the most desolating principles inculcated under the banners and in the name of liberty. In human governments there are two controlling powers; the power of arms and the power of laws. If the latter are not enforced by a Judiciary above all fear, and above all reproach, the former must prevail; and thus lead to triumph of military over civil institutions."

This learned Jurist quotes the Federalist, No. 78, as follows:

"The complete independence of the Courts of Justice, is peculiarly essential in a limited Constitution. By a limited Constitution, I uuderstand, is one which contains certain specified exceptions to the Legislative authority; such, for instance, as that it shall pass no bills of attainder, no expost facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the Courts of Justice; whose duty it shall be to declare all acts, contrary to the manifest tenor of the Constitution, void. Without this, all the reservations of particular rights or privileges, would amount to nothing."

This learned Jurist had previously remarked, that

"Where there is no Judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty."

AMERICAN SALT.

No. 47 Orange St., Brooklyn,
October 10, 1842.

To the President and Board of Managers of the American Institute.

GENTLEMEN:

I most respectfully take leave to crave your notice of the specimen of Salt Rock from the Salt Mine in Washington county, Virginia, and to the sample of Fine Table Salt from the extensive salt works of that place; and also to samples of salt from the very extensive Works and Salt Fields in the Onondaga valley in this State, and also to the remarks, &c. which are below.

May I ask you, in behalf of the great public interest which this necessary of life sustains, to examine these specimens and samples—not only as respects the quality, but also in regard to the quantity now manufactured in our country and the low price at which it is sold, and the ability of our own citizens to supply the inhabitants of this great and growing country with this important article, which, as will be seen in the sequel, is so extensively used.

Bread is said to be the staff of life—that our soil produces in abundance;—Water comes next in order, and this the clouds shower down upon our earth in rich profusion, supplying its rivers, lakes, springs, wells and aqueducts with that fluid which is the dissolved crystals of that primative stock which had its place in the Creation ere the Solar Orb had moved its terrestrial attendants around it as a centre in this one great system, and which now forms the arctic and antarctic fountains of the great deep, the breaking up of both of which in the same day by the melting of their continents and mountains of ice deluged our earth with a flood of the resulting aqueous fluid from their water crystals!

Next in order comes another crystalized body—

SALT:

An article so necessary to animal life that even the monster Beasts of the Forest travel its rugged paths for immense distances to taste its sweet. In some sections of our globe Salt constitutes the circulating medium. It passes as Money, and truly it may, for it has intrinsic value and extrinsic beauty—for the brightest Gem will not outshine the crystals of the SOLAR SALT OF ONONDAGA!

The importance of the manufacture of Salt from the mines of rock salt and from the waters of the saline springs in the United States as compared with the importation of salt from abroad may be inferred from the following statement:—

I have received from the Hon. McCLINTOCK YOUNG, acting Secretary of the Treasury of the United States, a statement of the Salt imported into the United States from foreign places during a period of ten years from 1832 to 1841, both years inclusive, to which I have appended the rate of duties, which is as follows:

IMPORTS AND RATE OF DUTIES.

In 1832, 5,041,326;	duty	10	cents.
1833, 6,822,672;	"	10	"
1834, 6,058,076;	"	9	" 4 mills.
1835, 5,375,364;	"	9	" 4 "
1836, 5,088,666;	"	8	" 8 "
1837, 6,343,706;	"	8	" 8 "
1838, 7,103,147;	"	8	" 2 "
1839, 6,061,608;	"	8	" 2 "
1840, 8,183,203;	"	7	" 6 "
1841, 6,823,944;	"	7	" 6 "

The bushel is reckoned at 56 pounds, and the duty on the same quantity.

The quantity of Salt manufactured in the United States in 1840, as appears by the returns made by the persons employed to take the census of the United States, was as follows:

Aggregate amount of Domestic Salt manufactured in each of the States of the United States according to the sixth Census.

	Number of bushels produced.	Number of men employed.	Capital invested.
Maine, - - -	50,000	15	25,000
New Hampshire,	1,200	1	2,500
Massachusetts, -	376,596	463	502,980
Connecticut, -	1,500	2	3,000
New York, - -	2,867,884	332	5,601,000
New Jersey, -	500	1	1,500
Pennsylvania, -	549,478	255	191,435
Delaware, - -	1,160	17	200
Maryland, - -	1,200	3	100
Virginia, - - -	1,745,618	624	300,560
North Carolina,	4,493	8	7,090
South Carolina,	2,250	7	1,500
Kentucky, - -	219,695	291	163,585
Ohio, - - - -	297,350	240	113,195
Indiana, - - -	6,400	19	20,050
Illinois, - - -	20,000	22	10,000
Missouri, - -	13,150	36	3,550
Arkansas, - -	8,700	25	20,800
Florida Territory,	12,000	4	30,000
	6,179,174	2,365	6,998,045

The salt made in the State of Maine was manufactured in the county of Washington; that in Massachusetts in the counties of Barnstable, Bristol, Dukes, Norfolk, Suffolk and Plymouth; that in Connecticut in the county of New London; in New Jersey in Atlantic county; in Delaware in the county of Sussex; in Maryland in Worcester county; in Virginia from sea water in the counties of Accomack and Princess Ann; in North Carolina in the counties of Carteret, Currituck and Onslow; in South Carolina in the districts of Beaufort, Charleston and Georgetown; in Florida at Key West.

The salt made from saline springs and wells in the other States as follows: in New York in the counties of Onondaga and Cuyahaga; in Pennsylvania in the counties of Allegany, Armstrong, Beaver, Butler, Fayette, Indiana, McKeon and Westmoreland; in Virginia in the counties of Kanawha, Harrison and Washington; in Ohio in the counties of Athens, Columbia, Guernsey, Jefferson, Lorraine, Meigs, Morgan and Muskingum; in Kentucky in the counties of Adair, Barren, Breathit, Carter, Clay, Cumberland, Floyd, Knox, Perry, Pulaski and Whitley; in Indiana in the counties of Brown, Fountain, Monroe and Montgomery; in Illinois in the counties of Gallatin and Vermilion; in Missouri in the counties of Cooper, Howard, Randolph and Saline; in Arkansas in the counties of Clark and Sevier.

The quantity of salt manufactured in the United States in 1840 added to the quantity imported in that year would make an aggregate of 14,302,377 bushels, which will give to each man, woman and child in the United States a proportion of near seven eighths of a bushel of salt.

The amount of duty on salt imported in 1840 and secured to be paid to the United States that year was $617,363. 42, which is less than four cents each for every inhabitant in the United States.

I have carefully examined the New York Price Current from 1832 to 1841, both years inclusive, to ascertain the price of Turk's Island Salt in the New York market during these years. I selected the months of April and October in each year, as affording a fair sample. The following is the result of my examination:—

	APRIL.		OCTOBER.		
1832	50	cents;	53	cents	per bushel.
1833	42	"	47	"	" "
1834	40	"	41	"	" "
1835	40	"	42	"	" "
1836	39	"	41	"	" "
1837	43	"	41	"	" "
1838	33	"	39	"	" "
1839	41	"	40	"	" "
1840	36	"	37	"	" "
1841	31	"	27	"	" "

About two fifths of the foreign Salt imported into the port of New York in 1841 was Turks Island salt.

The reduction of the price of the foreign salt by the competition of the American salt it will be seen has diminished the price of the foreign article during that period to the consumer 26 cents per measured bushel, which is a saving to every inhabitant of the United States on the proportion allotted to each of about 16 cents: this exceeds their proportion of duty 12 cents ——. Thus each consumer is a gainer by the duty.

The duty on imported salt became reduced to five cents and eight mills per bushel of 56 pounds on the 1st of January, 1842, by the gradual reduction provided for in the Compromise Act of 1832, and this rate of duty continued until the 30th of June of this year. On the 1st of July, 1842, the duty on foreign salt under the same compromise act became fixed at twenty per cent. on the home valuation.

By the Tariff passed by Congress in August, 1842, the duty on foreign salt is fixed at eight cents on the bushel of 56 pounds; and should this tariff remain permanent, capitalists will embark in the manufacture of salt by solar evaporation.

Turks Island Salt is made from sea water evaporated by the rays of the sun. It is delivered on board vessel in sacks of half a

bushel each, and costs about 8 to 10 cents per bushel at the island.

Bonnaire, Curacoa, Cette and many other salts imported from abroad are made in the same manner.

The Bonnaire salt is very heavy, weighing from 80 to 90 pounds to the bushel.

The quantity of Salt imported into the port of New York in 1840 and 1841, and the first quarter of 1842, was as follows:

In 1840 - - - - - - -	1,600,573
1841 - - - - - - -	1,522,333
1842, first quarter, - -	198,545

The quantity of Salt made at the Onondaga salines in the State of New York, which belong to the government or People of this State, during ten years, from 1832 to 1841, both years inclusive, was as follows:

In 1832, 1,652,985.	In 1837, 2,161,287.
1833, 1,838,646	1838, 2,575,632
1834, 1,943,252	1839, 2,864,718
1835, 2,209,867	1840, 2,622,305
1836, 1,912,858	1841, 3,340,769

These bushels are also calculated at 56 pounds each.

The State of New York now collect a duty of six cents per 56 pounds for all the Salt made at the Onondaga salines, which duty was formerly appropriated to the payment of the interest on the Erie Canal Debt, but now it goes into the general fund.

Of the salt manufactured at these salines in 1841, two hundred and twenty thousand bushels was coarse salt made by solar evaporation: the residue was fine salt made by evaporating in iron kettles by heat of fires supplied entirely with wood as fuel.

The number of kettles used for the manufacture of fine salt at Onondaga Salines in 1841 was six thousand seven hundred and forty-eight, containing in all four hundred and ninety thousand and eight gallons.

The number of superficial feet of surface occupied by the vats for solar evaporation were one million four hundred and ninety-eight thousand two hundred and fifty-three.

In the latter estimate is the steam-works of Mr. J. W. Hale, which cover 5,175 superficial feet, from which was made 13,553 bushels of coarse salt.

The ground covered by the salt works is near six hundred acres.

It will be seen that the quantity of salt made at the Onondaga Salines in 1840 and 1841 was about double that imported into the port of New York during the same years.

The brine in the wells at Syracuse is of 78 degrees of strength: 100 degrees being the point of saturation, about 30 gallons of the water make a bushel of salt. At the Saltville wells in Washington county, Virginia, the salt water from the wells when sunk within less than fifty feet of strata of SALT ROCK of 150 feet in thickness was about of the same strength as the water of the Onondaga wells.

The wells at Syracuse are about 270 feet in depth, and yield an inexhaustible supply of water. These wells terminate in a bed of gravel, and the stratas passed through in boring are fine sand and gravel: the lower stratas of the gravel are agglutinated to a considerable extent.

The wells at Salina are of about 170 feet in depth, and yield water of 80 degrees of strength; and those of Liverpool are 80 feet in depth and yield water of 81 degrees of strength.

The stratas passed in boring in these wells last mentioned are clay, rock and sand.

The strongest water lies in a northerly direction from the Syracuse wells first named, and approaches nearer the surface in progressing north from the first well, as will be seen by what is stated above.

The villages of Syracuse, Salina, Liverpool and Geddes skirt the head of the Onondaga lake almost in the form of a crescent, and no doubt will at some future period, not far distant, form one great city.

An examination of this lake in connection with the salt wells led me to the conclusion that the lake has resulted from the dissolving of a strata of salt rock beneath the surface of the earth, and that what once formed the surface of the earth now forms the bottom of the lake.

In company with the State Superintendent of the salines, THOMAS SPENCER, ESQ. and the State Inspector of Salt made at the Salines, HENRY W. ALLEN, ESQ., I made an excursion upon the lake during the month of August last and sounded it with a line in the vicinity of the salt wells. We found the lake for a few rods very shallow, from six inches in depth gradually increasing to three feet in depth, to where the bottom descended quite abruptly for a few feet to the depth of seventy feet: the bottom is of earth, and this abrupt precipice in the water is of the same material.

The nearest well to this sounding, which is one that is now in the process of boring, has been sunk to the depth of 207 feet: the strata of the first few feet is of soil resulting from decomposed vegetation, next a strata of marl of some six feet in thickness, then a thin strata of soil, and below this a body of tough elastic clay of 173 feet in thickness: next, nine feet rock composed of fine gravel cemented with gypsum: next, one foot of tough clay mixed with pebble stones: next, four feet clay, when the auger struck the rock again, and in which the workmen are now boring. It is this strata of clay which I think has settled down, and its surface now forms the bottom of the lake and its fracture the earth precipice which I have mentioned. This lake is about six miles long and one and a half mile wide, and is drained by Seneca river.

The water of these wells is so strong that it is as profitable to raise the water and evaporate it as it would be to raise the salt rock and dissolve it and afterwards evaporate the solution, as very little of the fossil salt can be used without being first dissolved and the solution evaporated.

It seems evident to my mind that the saline properties of the water of the wells at the Onondaga Salines is derived immediately from fossil salt, and that the deposit of this mineral must be near by.

The withdrawing annually from beneath the surface more than three millions of bushels of solid substance must make a mighty void to be filled with air or water somewhere, unless the earth settles down and fills the space: it therefore becomes important to determine where the fossil salt lies, for if it should be found to compose the under stratas on which these towns I have named are so rapidly building, when these become one great city the increased weight upon the surface may be too great for the support which may be underneath and the whole give way and make another lake. This may be said to be speculation, but there is reasonable grounds to found such a speculation upon. At Syracuse where the under strata is sand and gravel this cannot be feared for the reason that fossil salt cannot repose in a bed of sand and gravel: it is an unnatural position, and one which it is impossible it could long occupy in a country where great quantities of water fall from the clouds upon a surface which absorbs it.

The Onondaga salines can be made to furnish salt water sufficient to manufacture ten millions of bushels of salt per annum.

The water, as I before remarked, is from 78 to 81 degrees of strength as denoted by the hydrometer, which is graduated at O for fresh water and 100 for water fully saturated with salt.

Should the State authorities make such arrangements as will result in the condensing the salt water by artificial heat to near the point of saturation, the impurities in the water, which are very trifling, would be precipitated, and the pure brine would then be used in all the vats which are three in a set, instead of one. The manufacturers of solar salt use one vat to precipitate the earthy matter, a second to throw down the sulphate of lime, and the third to crystalize the salt. In the event of first condensing the water by artificial heat, three times the quantity of salt could be crystalized in the same vats; but a large number of large deep vats would be necessary to receive the brine in which the impurities must be precipitated from the boilers heated by terrestrial fire. The result of such a process is a matter of mathematical calculation as to profit: its practicability as a chemical operation is unquestionable. The operation of heat has the effect to cause all earthy particles which are held in suspension in the brine to precipitate, and the concentrating or condensing the salt water to that point at which the impure salt crystalizes, and allowing the fluid to remain quiescent for a few days, the operation of crystalization of the more easily crystalized salts will be completed.

Thomas Spencer, Esq. the State Superintendent of the Onondaga Salines, in a letter which he addressed to the Editors of the Journal of Commerce on the 29th of July, 1842, and which was published in that paper on the 2d of August, states that the vats for solar evaporation to cover an acre of ground cost about $1200, and that one man can attend two acres. One acre will produce on an average about two thousand bushels of solar Salt annually.

If all the salt manufactured in kettles, &c. at the Onondaga Salines, in 1841, had been produced in vats, it would have required as many as would cover sixteen hundred and sixty-seven acres of ground, which would cost about two millions of dollars for the vats a-

lone, which is a large sum of money for capitalists to invest at a time when the provisions of the tariff remain so unsettled in the public mind as to probable permanency.

Taking into account the cost or rental of the ground, the interest of the capital invested in the vats, and the wages of the men employed, it is evident that the manufacture of solar salt can be profitably and extensively carried on in the United States, and that as much salt can be made at a low price as will be required for the consumption of the people if a moderate duty like that of the present tariff is continued.

The samples of salt which are exhibited at the Fair of the American Institute will compare in quality with the same descriptions of salt from any part of the world.

The sample of Onondaga county solar salt is from the works of Messrs. Henry Gifford & Co. of Syracuse. This salt is equal in quality to the Turk's Island Salt. Messrs. Henry Gifford & Co. through the State Superintendent of Salines, Mr. Spencer, have authorised me to say that they will deliver the best Onondaga Solar Salt at the wharves in the city of New York by the boat-load at 31 cents the measured bushel.

The sample of Onondaga common fine salt is from the works of Mr. W. K. Blair. This salt will answer all the purposes for which Liverpool fine salt is used. It is now sold at the Salines at five cents per bushel. Some sales have been made at the Salines at four cents per bushel, but these are ruinous prices. A State duty of six cents is to be added to this price, which will bring it to 11 cents per bushel. If this salt is brought to the banks of the Hudson river the state duty is remitted, which debenture will equal the cost of freight, so that it can be delivered at Albany at 11 cents per bushel, to which is to be added the freight from Albany to New York. This it will be borne in mind is the price in bulk. If packed in barrels the cost will be increased about four cents per bushel, and in bags about nine cents per bushel.

The Liverpool fine salt which is brought to the United States is packed in bags of 224 pounds each, which is equal to four bushels. Ten of these sacks make one ton, and costs delivered on board ship at Liverpool near one pound sterling per ton. The sacks cost fifteen pence sterling each, which is 12s. 6d. per ton in addition. To this is to be added difference in exchange, freight, insurance and duties. The last sales of Liverpool Salt were from $1.57 to $1.60 per sack, equal to 39 to 40 cents per bushel, including sack. The Onondaga works should be furnished with stove-rooms for depriving the salt of all the moisture which it is possible to divest it of by heat.

The sample of dairy salt is from the works of Messrs. D. M. Burnett & Co. This salt is solar salt ground, and in point of quality is superior to most foreign table salt, as will be readily seen by comparison.

The Fine Table Salt is from the works of Mr. S. W. Caldwell. This salt is made by slow terrestrial heat, by boiling the salt water in the back kettles nearest the chimney where there is but little heat: it is a superior article, and its appearance alone is a sufficient recommendation of its quality.

These specimens are exhibited to show the excellent quality of the salt and call public attention to the great extent of the supply.

These Salines are the property of the People of this State—public property—belonging to the great body of the citizens of this great commonwealth. With the monies arising from the duties collected from the manufacture of Onondaga salt, the State has paid a portion of the interest of the Erie Canal Loan: thus have these inexhaustible Salines conferred a double benefit on the people of this State.

During the month of July, 1842, the quantity of salt made at the Onondaga Salines was 363,497 bushels against 558,643 bushels made in the month of July, 1841. This difference in the quantity arose from the suspension of many of the works of the present season in consequence of the low rate of duties on foreign salt. Turk's Island Salt was entered at the New York Custom House in July and August, 1842, as low as 18 to 20 cents per bushel—of course the duty at 20 per cent. on the home valuation was about four cents per bushel—this competition was ruinous to the manufacture of salt at Onondago, hence the stoppage of the works. The price of salt at these works is only the wages of labor: for the price of the wood consumed in boiling is the value of the labor in cutting and transporting: therefore the duty operated to paralize industry by compelling the laborer to be idle. The great Source of wealth is Labor. The price of the produce of labor is governed in the main by the wages of labor. However bounteous the products of the earth may be, they cannot be gathered without labor. Every public measure which has the effect to encourage industry and give employment to labor is a public and also a private benefit.

The sample or specimen of Salt Rock exhibited at the Fair of the American Institute is from the salt mine at Saltville, near Abingdon, Washington county, Virginia, which co. borders upon East Tennessee and North Carolina.

This mine is situate between the Clinch mountain and the Blue ridge, and on the western declivity of the latter. The strata of salt rock is 150 feet in thickness, and lies 220 feet below the surface of the ground. The over stratas are black shale, slate, plaster rock and clay. Shell lime is abundant on the surface near by. This salt rock is of very excellent quality, and is composed almost wholly of the chloride of sodium. The strata was discovered in 1840 in boring for salt water. A well had been sunk in this place a number of years ago from which considerable salt was made, but the well *caved in*, and the proprietors caused it to be sunk deeper. The water obtained was about of the same strength as that now used at the Onondago salines. The quantity, however, was not so abundant as the proprietors desired and they caused the well to be sunk still deeper, and in this boring they struck the salt rock which they continued in for 150 feet, when they reached a strata of slate mixed with plaster rock in which they continued about six feet; but finding the supply of water inconsiderable, the proprietors concluded to sink another well about forty feet from this boring, which they sunk to the depth of 214 feet: in this they obtained an abundance of salt water which was 22¼ to 22½ degrees of strength as indicated by the hydrometer. This hydrometer was graduated at O for fresh water and 25 for salt water fully saturated: 22½° of this hydrometer corresponds with 90° of that used at the Onondaga salines. The manufacturers find it more economical to raise the water and evaporate it, than to raise and dissolve the salt rock and evaporate the solution. My highly respectable correspondent at this mine, Alexander Findlay, Esq. who is one of the partners of a large house engaged in the manufacture of salt, writes me that they can make all the salt which they can find a market for. The sample of table salt which is displayed at the Fair of the American Institute is from Mr. Findlay's Works: it is truly a most beautiful article. The water of this well is the purest and richest in the world. It is from the comparative qualities of the salt water of these two salines, viz. the Onondaga and the Saltville, that I infer that the fossil salt is near the wells in the Onondaga valley.

The salines on the Great Kanhawa in Virginia are extensive. My worthy and valued correspondent, Lewis Ruffner, Esq. who is extensively engaged in the manufacture of salt at these salines, writes me as follows:

KANAWHA SALINES, Jan. 17, 1842.

"Small quantites of salt were made at this place from weak salt water found at the margin of the Kanawha river, in the sand, by the Indians and earlier white inhabitants up to the year 1808, at which time stronger brine was discovered by boring into the sand rock under the bed of the river to the depth of some seventy feet. Since that period probably an hundred wells have been bored along each bank of the river extending for ten miles, to the depth of four to eight hundred feet, not more than half of which are in present use. Each of these wells produces daily a quantity of water sufficient to make 150 to 300 bushels of salt.

"Its strength, tested by a hydrometer graded from O for fresh water and 25 degrees for saturated brine, indicates from 8 to 13 degrees in the different wells—the deepest the strongest. The brine when heated shows a large admixture of earthy matter of a brown color. Boiled in cast iron pans up to a point as near saturation as is safe to avoid caking, the brine is drawn into wooden reservoirs, in which when left undisturbed for 12 hours the sediment is *per se* precipitated; and thence it is drawn into kettles in the hinder part of the furnace for granulation, or into larger wooden reservoirs as is now becoming common, through which the steam is conducted by copper pipes from the pan or boiler, and the brine thus converted into 'steam salt,' a kind of salt well fitted for use, being free from bittering, pure and white. The boiled kettle salt is more or less tinged with the iron, and has no small quantity of bittering when newly made, but which drips away after a few months. This latter salt is celebrated in the West for

its penetrating meat rapidly, and saving it in difficult weather, yet it does not leave so fine a flavor as the steam salt. The Kanawha salt is universally preferred in the West to any other description of domestic salt for preserving meats: it is believed mainly from the fact of its almost entire freedom from lime in any combination.

"When the wells were first bored to the depth of three to four hundred feet, many of them produced petroleum in large quantities; but that substance has long since entirely disappeared.

"Bituminous coal is the fuel exclusively used for twenty years past in salt making here. It is found abundantly in the adjacent mountains, imbedded in horizontal strata of 3 to 6 feet in the stratified shales and sandstones of the country.

"No lime, plaster or slate has as yet been detected in the borings of our wells. White, grey and yellow sand rock, shales and pit coal, are the prevailing substances passed in boring.

"The strength of our brine is not known to be affected in our deep wells by the changes in quantity of superficial waters; although it was formerly imagined that at the depth of three or four hundred feet high water in the river increased the strength and volume of salt water.

"I will add that from one and a half to two million bushels of salt of 50 lbs. weight are annually made here and vended in the West and South-west. The price at Cincinnati by the cargo is now 25 cents per bushel. We could produce, it is believed, five millions if the markets would require so much."

"Our coarse salt when made with care has a translucent crystal resembling alum. I have no doubt myself that alum salt can be made here of unequalled purity to very great advantage, and would be, should Congress give us a reasonable protective duty, and could the requisite capital be commanded, which I doubt whether our own people at present can furnish. In boring recently two salt wells in the neighborhood to the unusual depth of 850 to 950 feet, good brine has been found, which is forced up by streams of gas to the height to which it is usually forced by pumps, say 70 feet above the surface of the river in a constant supply. After doing this work, the gas is set on fire at night and illuminates the whole surrounding valley. The owner of one of the wells is preparing to burn this gas in his furnaces to aid in making salt."

The United States Salines near Shawneetown, Ill. were many years ago very important to that section of the country. In 1813 they were leased from the Government by Charles Wilkins, Esq. of Lexington, and his associates.

In 1814, when I was at these salines, the shakes of earthquakes were quite frequent. In 1811 and 1812, at the time of the disaster at New Madrid, these shakes were very severe.

In a letter recently received from my correspondent, E. Mills, Esq. of Shawneetown, Ill. he remarks, "the Shakes as they are called, are not unfrequent at these salines. The wells average about 130 feet in depth, and are 16 in number—100 gallons of the water make one bushel of salt. Iron ore and lime stone are abundant—clay altogether in the digging to the rock—sand stone plenty—no bituminous coal. Our market for salt is St. Louis and the points on the upper Mississippi."

In another letter which I recently received from my correspondent, Dr. John Croghan, of Locust Grove, Ky. he remarks—

"I formerly owned an extensive body of land denominated 'the Salt Lick Bend of Cumberland,' on which there were strong indications of salt water. The only unfavorable appearance was that of lime stone rock—a rock which is not an associate of the salt formation; and almost invariably when the salt water is found under such circumstances, it (to use the workmen's expression) 'gives out'; or after the introduction of the copper tube, *it blows*, by means of which the whole of the water is thrown with great force out of the cavity which contains it. I have heard of the poles being driven, much to the consternation of the workmen, to a great height in the air. When this is the case, it is unaccompanied by any discharge of water. The gas set free by the introduction of the boring rods into the cavity which contained it, is the carburetted hydrogen, and is found in water springs called 'burning springs.' A well was bored on Green river in the county of Casey or Adair, Ky. in which I am told a terrible explosion occurred, caused by the mixture of atmospheric air with the carburetted hydrogen. Rocks and the largest of trees were torn up, and thrown a considerable distance. There is a salt well on Renwick creek, Cumberland county, Ky. in which the water is contained in a cavity; the salt makers work it until they exhaust the cistern, and renew their operations when it is replenished, which takes (as well as I recollect) two or three months. At the works which I own on Cumberland river, the earth is excavated to the depth of 30 or 40 feet, embracing an area of about half an acre. An incredible number of buffalo and other bones were found here. Salt was manufactured nearly forty years ago at this place, by persons living in the neighborhood. They dug but a few feet in the ground, and obtained water which I understood was very weak. About fifteen years since, I hired some borers and commenced operations in the bottom of the excavated ground, only 30 or 40 yards from the river. In descending to the depth of 80 feet we struck a small vein of very strong salt water, and after going to the depth of 200 feet through solid rock, the auger (to use the language of the borers) 'fell,' and a large stream of water mixed with petroleum poured out of the well. In the course of a short time the petroleum ceased running; the water, though very abundant, was, as I anticipated from the bad company in which the salt rock was found (lime stone), exceedingly weak, so much so that I would not work it, and I rented it to some men in the neighborhood for a term of years. Since steamboats commenced navigating the Cumberland, salt can be purchased at so reduced a price that no one could manufacture it at my works without sustaining a loss."

These weaker salines in the far West, were in former times, and before the white man settled in those regions, the resort of buffalo, deer, &c.

An account was published in the Journal of Commerce of the 9th instant, of the explosion in the well near Elmira, Chemung Co. New York, the week previous, in consequence of a lighted candle being taken down into a well newly dug, which ignited the carburetted hydrogen gas. This must have been abundant, and had become mixed with about an equal volume of atmospheric air, thereby becoming explosive. In this case two men were injured by the explosion, and one killed.

The salt made in Maine, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina and Florida Territory, and the sea-shore of Virginia, is from sea water evaporated by solar heat.

All the other salt noted as made in the other States is made from saline springs and wells. The salt mine in Virginia at the period at which the census was taken was not then discovered.

In the United States a limited quantity of salt only is used, but in England and France a cheap means of manufacturing a valuable alkali from it has been discovered. At the present time large quantities of Soda Ash and Sal Soda are made from common salt, and these articles are now being extensively used throughout the world.

The soap manufacturers and glass makers are using soda ash as a substitute for pot ash, which latter article is becoming scarce and dear in consequence of a dimunition in the quantity of wood ashes.

A well has recently been sunk at Montezuma in this State to the depth of 605 feet, yielding water of great specific gravity. This water by the hydrometer denoted 100 degrees, which is full saturation of common salt in hot water. On analyses it yields 1024 grains of common salt and 1088 grains of chloride calcium and magnesium to one pint of water.

Mr. L. P. Rice, who superintended the boring of the well, in his letter to me of June 26, 1842, states—

"At 190 feet struck the first view of salt water, which stands by the hydrometer at 44 degrees; at 245 feet at 48 degrees; at 501 feet at 52 degrees; the last vein, at 598 feet, stands at 100 degrees or full saturation. The boring was through red and blue indurated clay, plaster rock and slate."

His Excellency Governor Seward, in a letter to me of June 22d, remarks—

"The operations at Montezuma are likely to result in the discovery of important Facts bearing on your theory."

Nature has been most bountiful in its provision in the supply of the material for the manufacture of this article of absolute necessity, both in the salt mines and springs of salt water which are to be so abundantly found in various sections of our country.

I will in the course of a few days lay before the public a further statement in relation to the Salines of this State, and also in relation to the Fossil Salt in Virginia.

E. MERIAM.

LIGHTNING CONDUCTORS.

"A way for the Lightning of the Thunder."

The Cities of New York and Brooklyn have, the present year, been uncommonly free from thunder and lightning. Neither the detonations of the one have been felt or heard, nor the coruscations of the other been seen, more than five or six times during the warm season, a circumstance as extraordinary as it is rare.

In other sections of the country, thunder and lightning has been frequent, and the damage great. In our files of the Journal of Commerce, published in the City of New York, we find from May 1st to October 1st, inclusive, the record of eighty-five different disasters, caused by thunder and lightning.

Among these, the death of fifty persons are recorded, as killed by lightning, fifty-seven persons were injured, and three cases of damage, where the number of persons injured are stated as "several."

Eighteen barns, with the contents of each were burnt, and one dwelling house, several barns, and other buildings injured.

Several horses, oxen, cows and swine, are stated to have been killed.

Also, one buzzard, one hen, several ducks, one cat and one dog, *killed.*

Feathers, in these cases, were not a protection. Three buildings are stated to have been struck, which were furnished with lightning rods. The damage in these three cases, was trifling. In one of the cases, the termination of the lightning rod, is said to have been defective. The defect is not stated. In another, the lightning left the rod before reaching its termination. The cause not ascertained. The third case was that of the Telegraph office, at Baltimore, particulars not mentioned.

In one case, it is stated that the lightning followed a tin leader from the house to its termination, and some portion of this *conductor* had the *appearance* of being fused.

A field harrow, which was being drawn over the surface of the ground by a pair of oxen, was rent in pieces. The lightning passed down the chain. The oxen were killed.

Of the persons killed, eight were killed by two bolts, four at each time.

Fourteen were killed by seven bolts, two at each time.

Twenty-eight were killed by as many different bolts.

In 1843, the dwelling house of Mr. B. Skidmore, Franklin street, New York, was struck by lightning, but not much damaged, the inmates were not injured. In the garret was a brass kettle, which had been used. This was fused in several places, and the bail soldered to the kettle. A pair of shoe brushes, which were threaded with brass wire, attracted the lightning, and the wire was fused in several places, and left in small globules. The tin spout attracted the lightning, which passed down that conductor without melting the solder. The lightning passed from the leader to the cellar door hinges and hasp, which were iron, and then skipped from nail to nail, as is seen by the nails, and passed off.

The brass kettle being covered with a black incrustation, and the wire of the shoe brushes with verdegreas corrosion, caused the metal to absorb the heat of the lightning; had these been polished surfaces, I think it may be presumed, that no absorption of heat would have taken place, and consequently no fusion. Bright surfaces reflect all heat, the properties of which we have any experience in, and I know of no reason why a polished surface will not reflect electric heat.

A dwelling house in Cranberry street, Brooklyn, was struck by lightning in 1842. The lightning passed down the tin spout to its termination, which was some distance above the ground, from this it burst through the basement door and followed the copper bell wire. A lady passing through the basement hall at the time, with a tumbler of water in her hand, was knocked down and the water spilt over her body in falling. The tumbler of water restored her.

The soldering of the tin spout was not in the least melted. The concussion appeared to have accompanied the lightning to the basement door, as that door was forced open. The copper bell wire was not melted, although the electric charge was so heavy as to force in the door.

This house was two stories high, and adjoined a three story house, which latter was not struck. There were several trees in front of the house, and other dwellings adjoining it, none of which were injured. The house was painted white.

A dwelling in Duane street, in the City of New York, was struck some years since; the lightning passed down the tin leader and killed a little girl who was holding a tin cup to the spout, catching rain water. The tin cup was much bruised.

In these four cases mentioned, tin was found to be a good conductor, and in but one instance was the heat known to have fused the soldering, and this only apparently.

Bright surfaces may therefore, be presumed to have good conducting properties, and in addition to this, all electricians prefer polished surfaces for the points of lightning conductors. I may therefore infer that experience shows that these surfaces have equal powers of attraction.

We have a common illustration of heat upon polished surfaces, in the use of bright tin to shield wood work from the heat of stoves; if one of these bright surfaces is passed over with paint by a brush, that particular portion will at once absorb heat when in contact with a heated atmosphere. This is an illustration which is brought home to every persons' experience, in high northern lattitudes.

I shall not, in this paper, discuss the material of lightning, or say it is a fluid, or what other matter. It is etherial fire from the great labaratory of Nature, created by the Almighty. We see it sometimes in a ball of fire, at others in the flash of flame, and then that which is the most common, the zig zag crinkled stream of fire.

Thirty-three centuries ago, the penman of the Book of Job, whose extensive knowledge of natural things are evidenced by the language of that sacred poem, in speaking of the works of the Almighty, says: "*He made a way for the Lightning of the Thunder.*" In the ignorance of the dark ages, knowledge has been entombed, and when we regain it, we are apt to consider it as original with ourselves, while in reality it is but the resurrection of the past.

The detonation of the artillery of the clouds, causes the human body that reposes at the bottom of deep water, to arise to the surface, the influence of thunder upon our atmosphere is very great: the observing house-wife notices the milk in the cellar is affected by the thunder's roar: if it then affects animal fluids in a detached state, how much more must they be affected when mingled up with animal life.

I will confine myself, however, in my remarks, to the point which I am anxious the reader should give heed to, viz: that the Almighty "*has made a way for the lightning of the thunder.* The operations of Nature are found to be most simple in their progress and great in their results.

A metalic wire well polished, or a metalic rod without polish, will conduct the lightning of the thunder safely into the bosom of the moist earth, and dissipate it on the surface of water.

It is a small service for man to render, to ensure protection to his person and to his possessions, from the fire of the raging tempest, to raise "*the way the* ALMIGHTY *has made for the lightning of the thunder,*" and a most reasonable service; it is obtaining the protection by a use of the means provided by Him who made both. Learned men have discussed the various kinds of "ways" that shall be reared: some say it must be an iron bolt of an inch in diameter and round, others that it must be square iron, and still another class, that these ways must have side points. I will not dispute with either of these class of advocates for a particular way, but will introduce the testimony of experience in favor of a simple way, a cheap way, one that can be reared for a single dollar, and which will be effectual protection, as I believe, in the heaviest thunder storms that are experienced.

Letter from David Henshaw, Secretary of the U. S. Navy, to E. Meriam:

"NAVY DEPARTMENT,
Aug. 2, 1843.

SIR,

Upon the receipt of your letter of the 25th ult., making inquiry as to the sufficiency of the lightning conductors, used on board our public vessels. I referred it to the chief of one of the Bureaux, for information as to their practical operation.

I am informed that the lightning conductors now and heretofore in use, have been found to answer well. *None of our ships have ever been injured by lightning, if the con-*

ductors were up. Whether the rods may be reduced or enlarged, it would be difficult to say, until experiments have been made to test the point.

I am very resp'y,
Your ob't servant,
DAVID HENSHAW.
E. MERIAM, Brooklyn."

Letter from Capt. S. H. Stringham, Commandant of the U. S. Navy Yard, Brooklyn, to E. MERIAM:

"COMMANDANT'S OFFICE, NAVY YARD,
Brooklyn, Aug. 10, 1843.

SIR,

In reply to your note, I have to state that the iron used for conductors of vessels of war in the Navy, is of the following dimensions, viz:

For sloops of war, one quarter of an inch in diameter.

For frigates and ships of the line, five-sixteenths of an inch.

Resp'y your ob't serv't,
S. H. STRINGHAM.
E. MERIAM, Brooklyn."

A friend has placed in my hands the Army and Navy Chronicle and Scientific Repository, of August 12th and 19th, 1843, which is published at Washington City. Twenty-seven pages of this valuable paper are occupied with the details pertaining to the Report of the Lightning Committee, appointed by the Board of Admiralty, to inquire into the injury to vessels belonging to the British Navy. The Committee consisted of Rear Admiral J. A. Griffiths, Chairman; Rear Admiral Sir J. Gordan, K. C. B.; Captain James Clark Ross, R. N.; Professor Daniell, F. R. S.; Mr. John Finchman, Master Shipwright; Walter Clifton, Esq., Secretary.

In the papers produced before this Committee, by Mr. Snow Harris, (of whom M. Arago, the celebrated French Astronomer, speaks in great commendation,) it appears from the summary made up, by search of the official log books, that there were 174 cases of vessels belonging to the British Navy, damaged by lightning: of these, 47 were line of battle ships, 49 frigates, 17 brigs and a cutter; of which there were struck by lightning on the mainmast 68, mizzen mast 5, foremast 28, bowsprit 1, fore and main 6, main and mizzen 5.

Sixty cases are not specified. In about one hundred of these cases of damage, Mr. Harris found that the number of seamen killed was sixty-two, wounded one hundred and fourteen, exclusive of one instance, to which the number killed is denoted as several, and that of the Resistance of 44 guns, in which only four people were saved. Of the spars damaged or destroyed, ninety-two were lower masts, eighty-two were top-masts, sixty top gallant and royal, and one bowsprit.

Here follow copies of letters addressed to the Lightning Committee.

Copy of a Letter from Capt. Woolrige, to Walter Clifton, Esq., Secretary, dated

"STONEHOUSE, PLYMOUTH,
June 7th, 1839.

SIR,

In answer to yours of the 5th inst, requesting me to state for the information of the Commissioners appointed to inquire into the subject of lightning conductors, the circumstance of the Norge being struck in 1815, and my authority. Her Majesty's ship Norge, when at anchor at Port Royal Harbor, Jamacia, June 1815, then commanded by Capt. now Admiral Sir Charles Dashwood, was at night struck by lightning, which knocked the maintop gallant mast in three pieces, shivered the maintop mast, absolutely forcing the centre out of it, and brought the mizzen topmast and top gallant mast on deck; consequently the ship was a wreck, and detained two or three days from sailing with a valuable convoy for England.

I was a sick passenger on board the Norge at the time of the accident, but so terrific was the shock, that every man was in an instant on deck; therefore I was an eye witness to the damage sustained.

What is more remarkable, (and most fully evinces the great utility of conductors,) is, that among the number of ships which surrounded ours, none were struck but a merchant ship, who, like the Norge, had not her conductor up. The Warrior, of 74 guns, was at anchor close to the Norge, with her conductors up, and did not receive the least injury.

I have, &c.,
THOMAS WOOLRIGE,
Captain, R. N."

The Hastings 74, having returned to Portsmouth, her captain was written to and the following reply, dated 8th June, 1839, was received:

"SIR,

I beg to state for the information of the Committee appointed to inquire into the merits of Mr. Harris' and other lightning conductors, that on the morning of the 8th of March last, a heavy thunder storm came on, which even spread over the town and harbor of Valetta, that at seven o'clock on the same morning, the Ceylon was struck by lightning, her pole foretop mast being shivered, and a piece split out from the side of the foremast, from the mast head to near the deck where the fire engine was, to which the lightning was drawn by the iron work, and dispersed in some water in the bottom of the engine. The Ceylon had no conductor, and was lying in Dock Yard Creek, close to the Talavara and Bellerophon, both of which ships had conductors up and were not struck. The Hastings also had a conductor up, was lying in a direct line with the Ceylon, and only distant a few hundred yards.

An English merchant vessel, which I believe was struck by lightning during the same storm, while off the island of Malta, was brought to Valetta, almost on her beam ends, the lightning having entered her hold and had been attracted to the side by some bolts; the lightning at the same time driving a part of three planks out of the side. This vessel had no conductor.

I have, &c.,
FRANCIS E. COOK,
Captain."

Captain Smith was written to upon the same subject by Mr. Clifton, and returned the subjoined answer, dated

"BEDFORD,
June 7th, 1839.

SIR,

In answer to your letter of the 5th instant, I beg to state, that about the 8th of September, 1824, writing from memory, His Majesty's ships, Phantom and Adventurer, were moored inside the niche of Gibaraltar, when a violent thunderstorm took place; I was writing in my cabin in the evening when I was interrupted by a startling crash, followed by a cry 'the Phantom's on fire!' I instantly ran upon deck, turned up the hands, veered away upon the fasts, hove in the bower cables, and manned the boats: but the flames were quickly extinguished, principally, Captain Sturt told me, by the *cool exertions of one of his men*, who was therefore expressly recommended. Her foremast I understood, was rent from the truck to the deck, some sails and rigging were set on fire and several seamen struck down.

On this occasion the Adventurer's conductor was rigged, but the Phantom's was unprotected. The vessels were about a cable's length apart, and they were the only ships there. Many of my men felt a kind of electric shock, but we did not sustain the slightest damage.

My own opinion of the conducting power of METALIC WIRES, and therefore the vast utility of lightning conductors, indifferent as to their construction and adaptation seemed to be, was very strong in their favor; and I have labored hard to propogate this feeling, in opposition to their being dangereus from attracting the lightning, an opinion which cannot but be deemed absurd, since it infers that the masts, and not the ships, form a point in the electric surface. Indeed, it would be a comfort to the service, as well as an enormous saving in spars, canvass and gear, were the laws and indications of meteorology more strictly attended to.

During many years passed at sea, I have known of several disasters occasioned by lightning, and also of various ships being struck and escaping destruction as if by a miracle. This led me to consider the subject, that in my written orders, the officer of the watch was directed, whenever the weather appeared threatening, whether at sea or in port, to hoist the conductor, which was kept (not in a store room,) in a box fixed to the stool of the after maintop mast back-stay, and both officers and men were carefully instructed to place it, so that the spindle should be well above the truck, and the chain carried into the water, clear of the crosstrees, top and channels *by outriggers.*

Under these precautions, I feel a confidence tantamount to conviction, that at least the spars of His Majesty's ship under my command, were saved in several severe thunder storms which she encountered in the Gulf of Lyons the Adriatic and Ionian seas, and in the Lesser Syrtis, the electric fluid having been seen to descend the chain and pass overboard into the sea, without damage to the ship.

I happened to be on board the Queen, of 74 guns, when an electric discharge shivered her maintop mast to chips, and fatally damaged her main mast in the harbor of Messina, in 1815. On this occasion, I remarked to Sir Charles Penrose, who had his flag flying on board of her, that the amount of the injury now inflicted, *would supply all the ships in commission with lightning conductors.* If I remember rightly, this ship carried the useless and dangerous appendage of a spindle, upon her truck.

I have, &c.,
W. H. SMITH,
Captain R. N."

On the same day, Captain Edward Sparshott, thus addressed Mr. Clifton:

"SIR,

I beg to acknowledge the receipt of your letter of the 5th instant, requesting me to state to the committee, appointed by the Lord's Commissioners of the Admiralty, to inquire into the merits of Mr. Harris' and other lightning conductors, the circumstances of a case of lightning which occurred at Trincomalee, in the year 1837, whilst I was in command of Her Majesty's ship Winchester, &c.

The following are the circumstances which I have the honor to transmit for the information of the Commissioners:

In the month of November, 1837, her Majesty's ship Winchester, under my command, was lying in Trincomalee during a thunder storm, on which occasion, the Cochin tank vessel, moored about two cables length in shore of us, was struck by lightning, and her foremast so much damaged as to require a new one. The electric fluid could be easily traced from the hoop of the masthead to the jaws of the fore gaff, which was lowered down upon the boom, whence it appears to have been attracted by the chain cable, by which the vessel was riding, passing out of the hawser hole into the water. The Cochin was schooner rigged, without a topmast. She had no conductor up. The Winchester had a conductor up, which was made on board, *of small copper wire, of about half the size of that of the established conductors.* It was the largest we could procure; and as the Winchester escaped injury, although the electric fluid was seen to pass down into the water, *it appeared to answer the purpose intended.* No other vessel was near the Cochin or Winchester.

I have, &c.,
E. SPARSHOTT,
Captain, R. N."

THE COMMITTEE, IN THEIR REPORT, state:

"We beg to observe that every search has been made for cases of injury sustained by ships fitted with conductors, and though several statements to that effect have been brought under our notice, not one has been substantiated; and no instance, so far as we are aware of, has ever occurred of a ship sustaining injury when struck by lightning, if the conductor was up to the mast head, and the continuity uninterrupted to the water."

Having laid before the reader this testimony which is that of great experience and what I consider conclusive, I proceed to quote from an old file of newspapers.

I have in my possession a file of ancient newspapers, published in Boston in 1753, in one of which I find a notice, in the words following:

"Those of our readers in this and the neighboring Provinces who may have an opportunity of observing, during the present summer any of the effects of Lightning on Houses, Ships, Trees, &c. are requested to take particular notice of its course and deviation from a straight line, in the Walls or other matter affected by it, its different operations or effects on Wood, Stone, Brick, Glass, Metals, Animal Bodies, &c., and every other circumstance that may tend to discover the Nature and Complete the History of that terrible Meteor. Such observations being put in writing and communicated to *Benjamin Franklin*, in Philadelphia, will be thankfully accepted and acknowledged."

In the same file of papers of June 24th, 1753, I find the following, which I presume was from the pen of BENJAMIN FRANKLIN:

"Philadelphia, June 12. On Sunday, early in the Morning, a Dwelling House and Kitchen, on the western Side of Second Street, were struck by Lightning and considerably damaged; but being untenanted, no person was hurt. The great Fondness that the Matter of Lightning has for Metals, was perhaps never more conspicuous. In its passage downwards, it went considerably out of its nearest Way to the Earth, for the sake of the Leads* of the Windows, and Iron Hooks, Staples, &c., in the Window Frames, which were all in many Places, much melted and stained thereby; several Panes of Glass were also a little melted and stained thereby in a beautiful Manner, round the edges, near where the Leads surrounded them, and those parts of the Leads being thin and not sufficient to conduct the whole of the Flash, were melted; but the thick Parts of the Leads (which separates the Panes from each other) conducted it freely, and without being the least damaged."

In the same files of August 1st, 1753, I find the following:

"On Monday last, the Corporation of *Harvard College* met at *Cambridge*, and taking into consideration the great Genius of BENJAMIN FRANKLIN, of *Philadelphia*, Esq., for Learning, the high Advance he has made in *Natural Philosophy*, more especially in the Doctrine and experiments of ELECTRICITY, whereby he has rendered himself justly famous in the Learned World, unanimously voted him a Degree of *Master of Arts*, which Vote was fully confirmed by the Overseers of that Society, and on Friday, the President presented him a DIPLOMA, therefor."

Gentle reader, of the two, which was the most honored, BENJAMIN FRANKLIN, by the Diploma, or the college in awarding it to him?

These lines were from the pen of Benjamin Franklin who honored the college by receiving a Diploma at the hands of its faculty.

The laws which govern electricity are to be found by observation, as far as these are capable of investigation.

The construction of the lightning rod is a matter of much importance. I examined these on board of American ships of War. These are made fast to the highest point of the mast and extending about a foot above it and then diverge and when reaching a surface nearly even with the railing of the ship are braced out with a wooden outrigger and drop into the water. This mode of construction has been practised and it is sanctioned by experience.

In the putting up of lightning conductors to buildings, I would make fast to the highest point of the roof, letting the rod extend upward as high as its size would afford it a support. If the rod is small I would sustain it by a wooden support ten feet—the support may be a round pole flattened at its lower end so as to nail it to the building. From this fastening I would let the rod diverge from the building, and make it fast by a staple to a fence post letting it extend into the ground from this several feet or into the well or into a cess pool and connect with the water.

The point of the rod should be polished metal or a point of bright tin. Tinned wire for the entire rod would cost but one cent more per pound than common wire. The tinned wire is sold by Messrs. Phelps, Dodge & Co. corner of Cliff and Fulton st., New York, at seven cents per pound and the iron wire at six cents per pound. Size called No. 1, about five feet weigh a pound. Where this wire cannot be had use nail rods. The lightning conductors to ships of war are in pieces of about four feet with a turned eye at each end which connect the pieces together like a chain. When the rod hangs pendant the weight of the rod keeps these parts in close contact. The rolls of iron wire are in long pieces, and only one joint need be made in a rod for a high building and this by means of loose hooks.

It is said by some learned men that the rod will not conduct when corroded by rust. The rods of ships of war get rusty but no injury has yet been found to result.

My object is to call public attention to the risque of buildings being without protectors and to suggest the cheap rod—the effectual metallic policy which is within the

*A century ago lead was used for window sash and then the panes of glass were about four inches in diameter and diamond shaped.
E. M.

means of every one who has life or property to protect.

I would use a wire no larger than a common knitting needle if I could get no other.

PROFESSOR OLMSTED, *in a letter to me dated* YALE COLLEGE Oct. 12th 1842, *remarks, that*:

"Lightning possesses great powers of discrimination, selecting in its course the best conductors with great precision. I think it will very seldom happen that it will strike a vessel below the water line. Still if carried by some good conductor into the hold it may evidently reach the bottom of the vessel."

"I think it not unlikely that the large wire you speak of would in most cases answer well enough for a lightning rod; but still, as it is not accurately ascertained how large a wire the more violent discharges of the fluid are capable of melting or dispersing.—I should prefer a rod ¾ of an inch in diameter for a dwelling house, but would risk a large wire for a barn or out house. The community will be benefitted by making known the cheapest rod that will answer the purpose; for such only can be generally adopted. It is a great objection to some of the new forms of lightning rod that they are too expensive for common use. None but the wealthy will adopt them."

"I have heard that in a mixed forest, pine tress are more likely to be struck by lightning than others. If the fact is so, it is probably owing to the non-conducting properties of the resinous matter of the tree.—Other trees may be struck as often or oftener, but would show less marks of violence, *for lightning does not exhibit its peculiar violence except where its passage is opposed by imperfect conductors.*"

In another letter from the same learned Professor, to myself, dated Yale College July 25th 1843; he remarks,:

"I think a combination of wires such as you propose might if properly united be a cheap and eligible form of rod. The French practiced something of the kind on a larger scale for their ships of war."

"The termination of your rod in the Cess pool is well, unless the pool is made of Hydraulic Lime. This being a worse conductor than the earth itself presents an impediment to the dispersion of the fluid at its termination. M. ARAGO gives an instance of a rod terminating thus which failed."

"I think your wire of 5-16 of an inch, hardly large enough for the most violent charges. The charge would be apt to throw off small portions upon neighboring conductors—not enough however, as I imagine to destroy life. Your point of tin might melt.

"I am of your mind with respect to the *inutility of side points.*

"That Barns are oftener struck than dwelling houses has been noticed by others. Professor SILLIMAN has an article on the subject in one of the earlier numbers of his Journal. He supposes that the steam arising from barns furnishes a conducting medium to the electric fluid."

"*Rusty* nails and hinges are doubtless better conductors than wood, but not so good as when bright."

"Tin spouts and stove pipes are evidently dangerous things unless connected with the conductor or *converted into conductors themselves by a proper connection with the earth.*"

Since the letter last above quoted of the distinguished Professor, was written, I have obtained the testimony of the Secretary of the Navy as to the use of the small wire in the United States Navy on board of ships of war, where the greatest security against lightning is required.

The conductors used on board British ships of War, I understand are of the same kind of wire as described by Capt. Stringham in his letter to E. Meriam as above.

Professor OLMSTED addressed a communication to the editors of the New-York Observer which they published October 23d 1843, on the subject of "Protection from Lightning," which, although brief, is pertinent. It is in the words following.

'PROTECTION FROM LIGHTNING.'

'Messrs. Editors :--I observed in your paper of the last two weeks, a "Reply" to my remarks on Lightning Rods, by Mr. J. E. Strong of Boston, who appears to be interested in supporting the claims of the "improved rods," as constructed by the late Dr. King. Presuming that it would not be agreeable either to yourselves or your readers, to encumber your paper with a lengthened controversy on this subject, I will only submit to the consideration of your respected correspondent one or two brief suggestions :

"The theoretical principles of electricity with which a great part of his paper is occupied, appear to me to have very little bearing on the practical construction of lightning rods. As far as this is concerned, it will make no difference whether electricity consists of two fluids, or only one, or no fluid at all. The construction of conductors must depend on the known and established *properties* (not *hypotheses*) of electricity, and the final appeal must be to experience. Can Mr. Strong point out a case where a lightning rod constructed according to the rules I have prescribed, has in fact failed to afford protection? I do not ask whether according to his views, it *would* fail, but whether it *has* failed? The cases he has adduced are more or less hypothetical, and are therefore inadmissible. I do not assert that no case of failure of the simple Franklin rod constructed as I have directed, *can be* found. None has ever come to my knowledge, either from personal observation or from examining the records of experience for nearly a hundred years. Should he meet with such a case, it certainly concerns the public safety that it should be made known. The importance of such a case will justify us in requiring the most careful investigation of the facts, and the most unequivocal testimony. I do not consider it a point of the greatest importance that rods should be "round" instead of "square :" but believing that round rods are safe when all other things are right, I would not excite unnecessary alarm in any householder because his lightning rod happens to be round. And believing as I do that a single rod is sufficient to protect ordinary dwellings, I would not urge the necessity of arming it with two, three, or half a dozen.

Respectfully,

DENISON OLMSTED."

With regard to side points I have to observe that it is said that in electric discharges from the clouds the lightning has been seen to disperse in its downward course to the earth at the side points of the modern lightning rods. I cannot conceive it possible that the human eye could determine that path by its observation, however near the observer might be to that rod—if some substance which was easily fused was placed upon these points and that should be found melted by the electric fire which should escape from these side ways, then we might begin to indulge such a belief, and then my conclusion would be, the fact being established, that such side points are dangerous. I have in very extensive wilderness journeys had the opportunity of examining a very great number of trees which had been scathed by lightning, and among these I have not met with a single instance where the electric fire escaped by the horizontal limbs. Had such an escape taken place the tender bark would have been scathed and thus discovered such track of the lightning.

I should as soon expect to be able to distinguish the materiality of an idea emanating from the human mind and declare its visibility to the human eye in passing from the mind in which it kindled up, through the arm, the hand of which, guided the pen that with its coloredfluid traced its substance upon the parchment sheet, as to be able to distinguish the minute divirgings of the lightning's fire in its instantaneous passage from the cloud to its terminus.

Some persons assert that the passage of the lightning is from the earth to the clouds, If so then we should not look for thunder and lightning upon the great ocean. This doctrine may be said to be anti-neptunian. Lightning is as frequent upon the water, as upon the land. It seldom happens that lightning does much damage in a vessel below the water line.

In 1817 the ship Pallas, bound from Savannah to Europe was struck by lightning at sea, and put into the port of New-York to examine the damage. In this case, on overhauling, it was found that a hole about the size of a swivel ball had been made through her kelson and that the slivers and splinters left were so numerous as to prevent a leak. The account of this singular phenomenon was published about two years ago in the Journal of Commerce and was well authenticated.

Within the last twelve months I have seen the account of a public vessel in the East India seas having been struck by lightning and blown up, the electric fire entered the magazine and ignited the powder. The destruction of human life was very great, but the vessel being near the land, and several other vessels being near, many lives were saved, as a portion of the vessel was separa-

ted from that immediately surrounding the magazine.

Among the vessels struck by lightning the past year, of which accounts have been published between the months of April and October I find the following:

"The schooner Saul from Boston for Savannah, 22d July, 1842 when off Plymouth was struck and the captain who was at the helm was struck senseless. Shortly after smoke was seen to issue from the hatch way and on removing them the flames burst forth with such fury that the crew had bare time to escape to their boat.—*Journal of Com. Aug. 4th.*

"During the thunder shower yesterday forenoon, the lightning struck the foretop gallant mast of the brig Woodstock, Capt. Tucker, lying on the opposite side of the river. The top-gallant mast was split in pieces. The blocks on the top-sail yard was also split and both clews of the top-sail were set on fire. The rain however, which was falling in torrents at the time, soon extinguished the fire without much damage. The lightning descended down the top sail tie to the top sail sheets, which were of iron and thence to the deck of the vessel, following the chain cable, which was lying across the deck, and passing off at the side. The links of the chain of the top-sail sheet were scattered in all directions over the deck. The captain, mate and another person were in the cabin at the time, but fortunately received no harm."—*Savannah Rep, 27th July* 1842.

"The schooner Maria, Capt. Eldrickson, lying at the new basin, was yesterday struck by lightning about 4 o'clock. It carried away her maintop mast, shivering her mainmast, passed through the center case setting it on fire. It was only through the exertions of the crew that the vessel was saved from being consumed. Capt. E. was at the time leaning against the main mast and was saved by the chain of the center-board attracting the fluid."—*N. O. Pic. July 21st*, 1842.

"Ship Saxon, of Salem, while lying in the port of Havana had two main top masts shivered in the course of ten days."—*Jour. Com.* 26th *July* 1842.

"At New-Haven on Tuesday morning Aug. 8th 1842, the brig Comet was struck with lightning, which passed down the fore mast and then took to the chain cable, following it through the hawser hole into the water. But little damage was done."

"The Ligenia, at Boston for Havana 23d July 1842, sailed in company with brig Ottoman, Hannan, for Boston, and parted company 30th. 1st inst. lattitude 48, 42, lon. 71, 10. At half past 3 A.M. experienced a severe tempest, during which the lightning struck the main mast and shivered it to pieces, together with the main-royal yards; also damaged the main and top gallant masts and yards attached, burnt the main top gallant sails and cut two large holes in the main top sails. It then went between decks, started up three of her between deck planks and split one of her deck planks. During the shock the mate and one man was knocked down and the mate slightly injured."—*Journal of Com. Aug.* 1842.

Vessels should be required by law to carry lightning conductors and to keep them constantly rigged. The melancholy scene which I once saw described of a vessel with a great number of passengers which had been struck by lightning at sea and wholly destroyed will never be effaced from my memory while life continues. The passengers were all obliged to flee the burning ship in open boats on the open ocean and were providentially met with by a vessel which rescued them from a watery grave. One such misfortune is of greater amount than all the money expended for lightning conductors since the earth has commenced its course in the harmonious system of the universe.

Steamboats are rarely struck by lightning and when such misfortune happens, but little damage is done.

I have met with but four accounts altogether of steamboats struck by lightnig.

One of these was about a dozen years ago—the steamboat Philadelphia, on the Delaware. The railing of the boat had a splinter of wood grooved out of it by the lightning and it was the only mark left of the electric fire. I have this account from Capt. Jenkins commander of the steamboat Albany, who also states to me that it is the only case that he has any knowledge of where a steamboat was struck by lightning.

One other in the account I have given above on the waters of the Ohio River the present year.

In 1842, a steamboat in the North River opposite New York, was struck by lightning but no damage done.

In 1841, a steamboat on Lake Erie was struck by lightning but little damage done.

I have never known a ware-house in which iron and steel is stored, to be struck by lightning. I have made extensive enquiries with the same result as to Furnaces, Forges and Blacksmith shops.

Iron Rail-ways which extend for hundred of miles and under various clouds, have never been struck by lightning, or at least I have never been able to find any account of such a phenomenon.

Some sections of country during a series of years are more visited by lightning than others. I have noticed this in extensive forests. I remember that in travelling many years ago on the west side of the Muskingum and Tuscaroras rivers, through what was then a wilderness road that passing up an extensive oak ridge the trees that had been struck by lightning were so numerous that we gave it the name of thunder and lightning ridge, and while upon this particular portion of my essay I will remark that trees growing upon soil filled with minerals, are impregnated with the particular minerals which lies in the soil in which the trees take root, hence such trees have attractions and conducting properties. In the combustion of wood for crude ashes to make into fixed alkalies I have noticed this peculiarity in the color of the Alkalies when fused by intense heat and it may be traced in the color of glass in which the fixed alkalies are used.

It will be noticed in the statement of the 85 cases of damage by lightning, that the proportion of barns are greater than that of dwelling houses. Professor Olmstead quotes the Scientific Journal of Professor Silliman on this head, imputing it to the heat of the hay. I am much inclined to the opinion that the metalic paints on dwelling houses, has much influence upon electric fire, and impute the difference to that cause, The metalic paint covers a broad surface, although very thin; if it had the thickness of tin, the influence would not be disputed, and although thin, I think the influence I suggest, may be presumed.

Persons who drink water which contains mineral properties, are more or less affected by such mineral properties. I have been frequently at the Blue Licks, in Kentucky, and after drinking the water for a week, I found that silver coin in my pockets, and my silver sleeve buttons and watch, were tarnished by the sulphurated hydrogen in the water which I drank. It may be owing to this influence, that persons are more or less affected by electricity.

Professor Olmstead, in one of his letters, which I have quoted, speaks of the liability of a small rod to being fused by the lightning. I have never met with any account of such a result in all my investigations, which have been extensive.

In the house struck by lightning, in Cranberry street, Brooklyn, in 1842, there was a small copper bell wire about the size of No. 17, this conducted the lightning without melting any portion of it, and the charge was so heavy that when it left the tin spout in front of the house, it burst through the basement door to reach the wire, and was finally dissipated in a tumbler of water.

St. Paul's Church, in London, was struck some years since, as I am informed by a gentleman of great scientific attainments; the lightning conductor is large, being at the termination, several bars of iron melted together and painted. This rod was heated to redness, and the heat continued some minutes. The iron being covered with paint, absorbed the heat; had the surface been bright, I think all the heat would have been reflected, and none absorbed.

In case the single wire is thought to be insufficient to convey a heavy charge, then two wires may be put together, or even three, and four if desired, in which latter case the cost of the quadruple rod will be but four dollars.

I see no possible use in confining the rods to the side of the building, it is enough to make it fast to the top. I would prefer conducting the lightning from the building instead of leading it along its surface.

How far lightning is attracted by metals, is not satisfactorily determined. I have known of no case over thirty feet. The case I refer to, is that of the vessel where the lightning left the mast of a vessel and passed on to the chain cable and into the water, here it was thirty feet from the descent it was making. I have known of several in-

stances where it bounded from ten to fifteen feet, to come in contact with a favorite conductor.

Copper is found to be a better conductor than iron, in the proportion of about twelve to one; therefore, if copper is in close contact with an iron lightning conductor, it would invite the electric fire, and thus divert it from the channel designed for it. Care should be taken in this respect.

The disasters by lightning are so numerous, that it would seem we are not justified in neglecting the protection afforded by a metallic rod, when the testimony is so strong as that here introduced, in favor of its adequacy. This, it will be borne in mind, is that of experience, which is the best school master. I am not desirous to establish a new theory, but to sustain the old doctrine, a doctrine which reaches back to the days of the Patriarch Job, who himself declared that the Almighty "made a *way* for the lightning of the thunder." The great expense of erecting large lightning rods, has been an objection to the extensive use of these conductors, and the new fashioned rods with side points, are also expensive. I do not wish to discourage the use of these rods, but at the same time I do not think that there is any merit in a patent that is to protect human life. If such a rod has advantages, these should not be restrained by a patent.

I have made extensive examinations on high mountains as to the effects of lightning in high altitudes, and I have never been able to find a tree scathed by lightning 3000 feet above tide water, and it may be remarked, that the temperature of that altitude comes so near that of the weather in which we have no thunder lightning, that this fact alone may be the cause of this exemption.

It is unnecessary to discuss the composition of the matter of lightning, whether it is a fluid or what else; it is we know "the lightning of the thunder," and we also know that it is destructive to human life, when the human frame is made to feel the force of one of its bolts. That there is provided "a way for the lightning of the thunder," is declared in the Book of Truth, and all that is required, is that man shall rear this Franklin *rail-way* for the ethereal fire of the skies to traverse in its downward course to the earth. The lightning conductors on board of ships of war, are sometimes corroded with rust, but I have never heard of an instance in which one of these conductors has failed to conduct the fire of the thunder to that element in which it finds repose. On board of some of the largest ships, there are sometimes near 1,000 human beings, and beneath their feet tons of gunpowder, which if ignited by an electric spark, would cause instant destruction. Notwithstanding this, the mariner amid the roar of the artillery of the skies, rests with confidence, that if the lightning first descend upon the ship, the conductors will receive it, and convey the electric fire beneath the ocean's wave.

In the celebrated Mammonth Cave of Kentucky, the lightnings' blaze is never seen, nor the thunder's roar ever heard. I have stood within this vast subterranen territory, near thirteen miles distant from the nearest access to the earth's upper surface, during a violent thunder storm, without being conscious of its occurrence. Here the temperature of the atmosphere is 59° of Farenheit, an atmosphere that does not generate electric fire, thus all Nature harmonizes.

I will in subsequent pages, give a detailed account of this vast nether territory.

Professor Olmstead has published in the New York Journal of Commerce and New York Observer, a lengthy Essay on Lightning Conductors. It is an able production, from an able pen, and I hope he will, for the benefit of his race, continue these Essays. Added to his great ability, he possesses great facilities for rendering important services in discussing this great subject.

The atmosphere of the immediate surface is changed by the coruscation of electric fire and by the detonation of the thunder of the raging tempest, and thus Nature, in all her various operations, harmonizes.

There are great numbers of persons who suffer much from fear during the continuance of a thunder tempest, and dread the occurrrnce of thunder storms. Such persons should always protect the buildings in which they reside, by a lightning conductor, which can be reared for the expense of a single dollar.

Steamboats are the safest during the continuance of a thunder storm, of any place that can be selected.

I cannot close these remarks, without endeavoring to impress upon the mind of the reader the great importance of the free use of cold water, to be thrown upon persons who may be prostrated by lightning. Throw it upon the body with great freeness.

The speed of electricity may be compared in velocity to that of thought, and I should as soon expect to see the emanations from the human mind, escaping from the frill of a pen which marks these emanations upon the sheet destined to record them, as to see the escape of lightning from a metalic lightning conductor by side points.

I would not discourage the use of lightning rods such as some gentlemen are anxious to introduce, but I should feel gratified that those gentlemen would lend their labors toward introducing the cheap rod, believing that they would increase the security to human life, and the increase of the number of rods, would give them more pecuniary benefit, if this they seek.

E. Meriam.

FALL OF RAIN.

The fall of water from the clouds varies in quantity in different years, and in different places the same year, same month, week and day.

We here present the reader with the particulars from three different registers kept at three different places of the fall of rain during the months of June, July, August and September of 1843, inclusive. The First is from the rain gauge kept at the Erasmus Hall Institute, at Flattbush, Long Island—the second from the government rain gauge kept at the city of Washington, and the third is from the rain gauge kept at the Onondago Salines for the use of the state of New York.

The gauge kept at the Erasmus Hall Institute is under the supervision of Dr. Strong.

That kept at the City of Washington is under the superintendence of the Bureaux of Ord. and Hydrography of the U. S. Navy Department.

The Gauge kept at Syracuse is under the Superintendence of Lyman W. Conkey, Esq.

These accounts may be relied upon as accurate.

FLATBUSH.

June 3d.	0.27.100
" 5th.	0.11.100
" 11th.	0.80.100
" 14th.	0.02.100
" 16th.	0.53.100
" 17th.	0.02.100
	1.75.100
July 2d.	0.17.100
" 5th.	0.01.100
" 9th.	0.68.100
" 10th.	0.02.100
" 11th.	0.02.100
" 15th.	0.02.100
" 17th.	0.36.100
" 19th.	0.50.100
" 29th.	0.16.100
" 30th.	0.08.100
" 31st.	0.54.100
	1.96.100
Aug, 5th.	1.90.100
" 8th,	0.08.100
" 9th,	1.94,100
" 10th,	1.20.100
" 11th,	0.75.100
" 15th,	0.04.100
" 20th,	0.03.100
" 21st,	0.54.100
" 22d,	9.13.100
" 28th,	0.03.100
" 29th,	0.02.100
	15.76.100
Sept. 1st,	0.22.100
" 7th,	0.15.100
" 11th,	0.65.100
" 12th,	0.35.100
" 15th,	0.60.100
" 25th,	0.20.100
" 26th,	0.43.100
" 27th,	0.18.100
	2.78.100

RECAPITULATION.

June,	1.75.100
July,	1.96.100
August,	15.76.100
Sept.	2.78.100
Total	22.26.100 *inches.*

WASHINGTON CITY.

Hydrographical Office,
Washington Oct. 1st, 1843.

SIR,

In obedience to an order from Com. WM. E. CRANE, Chief of the Bureaux of Ord. and Hydrography, you are herewith furnished with a statement of the Rain-guage kept at this office, viz:

June	3d,	0.240
"	5th,	0.055
"	11th,	0.240
"	24th,	0.330
"	28th,	0.450
		1.295
July	2d.	0.190
"	11th,	0.170
"	12th,	0.140
"	13th,	0.450
"	15th,	0.280
"	30th,	0.550
		1.780
August	1st,	0.180
"	5th,	0.500
"	8th,	0,435
"	9th,	0.890
"	10th,	0.170
"	14th,	0.346
"	19th,	0.450
"	20th,	2.788
"	21st,	0.750
"	22d,	0.180
"	31st,	0.200
		6.889
Sept.	6th,	0.190
"	7th,	0.640
"	11th,	1.020
"	12th,	1.910
"	14th,	0.820
"	15th,	0.800
"	26th,	0,270
"	27th,	0.836
"	30th,	0.010
		6.496

RECAPITULATION.

June,	1.295
July,	1.780
August,	6.889
September,	6,496
Total,	16.460 *inches.*

Rospectfully,
Your ob't serv't.
M. F. MAURY,
Lt. U. S. N.

EBEN MERIAM, Brooklyn, N. Y.

ONONDAGO SALINES.

June,	3.00.100
July,	2.19.100
August,	2.15.100
September,	4.73.100
Total,	12.07.100 *inches.*

The fall of rain on the particular days at the Onondaga Salines in the months of August and September was as follows:

August	7th,	0.70.100
"	14th,	0.20.100
"	21st,	0.60.100
"	22d,	0.15.100
"	27th,	0.50.100
Sept.	1st,	0.05.100
"	7th,	0.60.100
"	15th,	2.30.100
"	18th,	0.90.100
"	21st.	0.30.100
"	23d,	0.10.100
"	24th,	0.30.100
"	25th,	0.18,100

RECAPITULATION.

	June,	July,	Aug.	Sept.
Washington city,	1.295	1.780	6.889	6.496
Onondaga Salines,	3.000	2.190	2.150	4.730
Flatbush,	1.750	1,960	15,760	2,780

From the above statements it appears that nearly twice as much rain fell at Flatbush during these four months as fell during the same time at the Onondago Salines, and more than a third more than fell at Washington city during the same time.

Mr. Conkey in his letter to me dated Syracuse Sept. 18th says: "On the 15th inst., 2.30.100 inches of rain fell which is the greatest fall of rain I have known at any one time in this place for four years. The Barometer fell during the storm 84-100 inch.

Doct. Strong states to me that the fall of rain at Flatbush on the 22d August was the greatest which had taken place since the rain gauge has been kept at that place, viz, about 18 years.

Washington City is in Lat. 38 d. 52 m. 45 sec., Lon. 76 d. 55 m. 30 sec. west from Greenwich observatory. Flatbush L. I. 42 d. 41m. Long. 2 d. 55 m. east Washington city. Onondago Salines are near N. L. 44 d. and about 2d. 30m. E. lon. Washington City.

On the 8th July 1842, at Flatbush, the Barometer rose an inch above the highest gauge, and again on the 23d July and remained up until the 26th July. On the 12th Sept. the Barometer rose at 2 o'clock, to the same height and at 5 o'clock the same afternoon, sunk down to 29.85.100

At a time subsequent to the creation of the heaven and the earth the sacred penman declares in the Book of Truth that, "the Lord God had not caused it to rain upon the earth,"—"but there went up a mist from the earth and watered the whole face of the ground." The sacred record then proceeds to say that "a river went out of Eden and watered the garden" &c. Here then we find a commencement of the falling of rain, and the origin of primitive rivers. The falling of rain was the natural consequence of the ascension of vapor or mist, and the formation of rivers the same result from the falling of rain. Water exists in its solid state, at the Artic and Antartic poles, and periodically in the same state in the temperate zones. It also exists in its fluid and gaseous state, that of vapour or mist.

The solar orb and the satalite of our Earth, are by the inspired penman, stated to have been placed in the system before animated nature was kindled into life, but vegetable life had its begining before that period, and may have had its support from the heat of the light, which was that which was spoke into being in that day in which GOD made the Heaven and the Earth. The seperation of the waters from the DRY land and the gathering of the waters into seas, immediately preceded the bringing forth of herbs, "and grass bearing seed, and trees bearing fruit, whose seed was in itself in the Earth." Thus we have, in the regular order of succession from the begining, a continuance of what was then began, and although the days which immediately succeeded the creation of Heaven and Earth, which were from the begining, are not chronicled as the period of time which we term days, under and near the equator, nor in that period of time which an inhabitant of the arctic extreme would term a day, but as we use that word in speaking of an event which happened in our day.

E. MERIAM.

ICE, ICEBERGS, ICE-ISLANDS, &c.

The year 1842, as contrasted with 1843, presents a striking contrast in the quantity of polar ice which flooded the Atlantic in the former year.

We have extracted from the files of the New York Journal of Commerce of 1843, the following reports of vessels which have arrived at the port of New York, from March 30th, 1842, to Sept. 18th, of the same year, as follows:

Arrived, March 30. 1842, ship Memphis, Knight, 41 days from Liverpool; on the 19th passed large icebergs southeast of the Banks.

Arrived, April 4, packet ship Siddons, Cobb, from Liverpool, Feb. 17th; lat. 43, lon. 46 50, passed an impenetrable field of ice, 90 miles in extent.

April 6th—ship Echo, Sill, from Liverpool 19th Feb.; 14th March, from lat. 44 31, long. 45 57, to lon. 50, saw large quantities of ice, at one time over 200 icebergs were in sight. The Echo was among the ice 18 hours.

April 7th—Packet ship Cambridge, Barstow, from Liverpool, March 28th; fell in with ice in lat. 44 30, lon. 47 20, and left it in lat. 43 20, lon. 50 15. Saw about forty islands, some sixty feet high, besides hundreds of large pieces and fields.

April 10th—Packet ship St. James, Sebor, from London, 23d Feb.; lat. 45 41, lon. 4 50, saw a number of icebergs: lat. 41 lon. 50, passed a large field of ice.

Ship Clifton, Ingersoll, from Liverpool, Feb. 22d; on the Banks passed a large quantity of icebergs, some of them very large, on a run of 100 miles, had from five to seventeen in sight all day from the deck.

April 12—Br. ship Royal Sovereign, Walker, from Liverpool, 47 days. The R.

S. fell in with great quantities of ice between lat. 46 33, and lon. 44 29.

April 13—Packet ship Stephen Whitney, Thompson, from Liverpool 6th March; passed considerable ice south of the Banks.

Packet ship Roscoe, Huttleson, from Liverpool March 5th; April 1st, in lat. 41 50, lon. 48 50, was surrounded by large islands of ice.

April 15—Packet ship Albany, Watson, from Havre 24th Feb.; 1st instant, lat. 42, lon. 47, saw a large island of ice; 2d, lat. 41 44, and from the lon. 48 30 to the lon. 41 11, passed between icebergs, the weather being clear at the time; they were as far North and South as we could see.

April 18th—Steamship Great Western, Hoskin, from Bristol April 2d; 12th passed several bergs and a quantity of floating ice, lat. 44, and from lon. 48 to 49 30.

Packet ship Sheridan, De Peyster, from Liverpool, March 16th; saw much ice on the Banks.

Ship Mary Kingsland, Weare, from Liverpool 24th Feb.; was obliged to run to the southward two days on account of the great quantities of icebergs and field ice.

April 20—Ship Silve de Grasse, (packet,) Burrows, from Havre 12th March; passed in lat. 43 N., and lon. 39 3 West, a number of large icebergs.

April 21—Ship Charles Carroll, Sec, from Havre 12th; 8th inst., lat. 41 30, lon. 59 30, passed several icebergs.

April 22—Ship Benjamin Morgan, Johnson, from Liverpool 17th Feb.; lat 41, lon. 5, saw several large icebergs.

April 25—Ship Nicholas Biddle, Freeman, from Liverpool, 14th March; 9th, lat. 41 9, lon. 28 34, saw a large island of ice; 14th, lat. 41, lon. 49 20, saw great quantities of ice.

April 26—Packet ship Mediator, from London, 13th instant; lat, 43, lon. 50 saw several large ice bergs.

April 27—Packet ship South America, from Liverpool; passed large quantities of ice on the Banks.

April 28—Ship Isabella, from Bremen, 7th instant; lat. 42 36, lon. 41 20, saw large icebergs, one about three miles long and one hundred and fifty feet above the water, one two miles in length and fifty feet high, also passed other icebergs and much field ice.

May 2—Packet ship Duchess d'Orleans, from Havre; saw great quantities of ice between the lat. 44 and 45, and lon. 32 to 52.

May 4—Ship Emblem, from Liverpool; the Emblem fell in with great quantities of ice, and was obliged to steer South to clear it.

Packet ship George Washington, from Liverpool; April 17th and 18th, between lon. 46 and 59, saw forty-seven large icebergs.

Bark Oberlin, from Liverpool; in lat. 43 30, lon. 40 30, saw three very large icebergs.

May 5—Brig Byron, from Wales; lat. 40 18, lon. 50, saw four large islands of ice, one about 200 feet high and three miles long, saw it thirty miles off.

May 7—Ship Franklin from Bremen; lat. 47, lon. 48, passed about 150 islands of ice.

May 9—Packet ship England, from Liverpool; lat. 41 29, lon. 49, saw large numbers of icebergs.

Ship Pauline, from Bremen; April 22d, lat. 43 30, lon. 48 14, saw thirty-two icebergs.

May 10—Ship Rochester, from Liverpool; April 24th, in lat. 43 16, lon. 42 31, saw a large island of ice. The Rochester fell in with great quantities of ice, and was obliged to run to the Southward to clear it.

Ship Agnes, from Amsterdam. The Agnes has been five days among the ice, saw one island over eight miles long.

May 11th—Br. brig Triton, from Panzance, England; lat. 42, lon. 49 38, passed 150 icebergs.

May 13th—Ships Ocean, from Liverpool; 27th April, in lat. 41 23, lon. 48 27, passed several large icebergs.

May 14th—Packet ship Sully, from Havre; 29th April, lat. 42 5, lon. 49 50, was surrounded by ice for three days, and was obliged to run to the Southward in order to clear it.

May 16th—Ship General Parkhill, from Liverpool; the G. P. fell in with large quantities of ice, and was obliged to steer South to clear it.

Bark Cormo, (Br.,) from Bristol; East of the Banks, passed large quantities of ice.

May 18th—Ship Camilla, from Hamburg; April 25th, lat. 42 19, lon. 43 30 and lon. 46 50, passed two icebergs.

Ship Splendid, from Liverpool; April 30th, lat. 41 20, lon. 46 35, saw two icebergs.

May 21—Ship Howard, from Hamburg; lat. 42, lon. 45 to 53, was ten days in the ice.

May 23—Packet ship Oxford, from Liverpool; 11th inst., lat. 45, lon. 48, saw 15 large icebergs.

Packet ship Oneida, from Havre; 12th, lat. 44 10, lon. 49, saw several icebergs.

Ship Sarah and Arsilli, from Liverpool; in lat. 42 30, lon. 48 to 50, saw great quantities of ice, and was surrounded with it for three days.

Ship Hibernia, from Liverpool; passed large quantities of ice on the Banks.

Bark Francia, from Amsterdam. On the 8th, while running the distance of forty miles on the Grand Banks, counted eighty icebergs.

May 26th—Ship Solar, from Liverpool; May 11th, lat. 44, lon. 47 30, saw several icebergs; 12th, was compelled to stand to the Southward to avoid the ice; 13th, lat. 42 10, lon. 49, succeeded in getting clear of the ice.

May 28th—Steam ship British Queen, from Antwerp; passed large quantities of ice on the Banks, was a day and a half going through it.

June 6th—Steam ship Great Western, from Liverpool; on the 30th and 31st, from lat. 48 30, lon. 46, to lat. 46 39, lon. 53, about 32 hours, passed an immense number of icebergs and a quantity of floating ice.

Ship Liberty, from Liverpool; 22d and 23d, lat. 42 50, lon. 48, fell in with large quantities of ice.

June 8th—Packet ship Francis, from Havre; lat. 42 30, lon. 49 to 50 30, for ninety miles, passed through very large islands and fields of ice.

June 16th—Ship England, from Liverpool; lat. 41 30, lon. 46 30, passed large quantities of ice.

June 25—Packet ship Independence, from Liverpool; 13th inst., passed several icebergs.

June 27th—Ship Fairfield, from Liverpool; 13th, lat. 42, passed fifteen icebergs, extending from lon. 49 30, to 51 20.

June 28th—Packet ship Ontario, from London; June 13th, lat. 42 30, lon. 48 30, to lon. 50, passed a number of very large icebergs.

June 30th—Packet ship Virginia, from Liverpool; between lat. 43 20 and 42 20, lon. 48 30 and 51 30, passed forty icebergs.

Ship Nova, from Antwerp; 8th, lat. 27 50, lon. 36 25, passed a large number of icebergs.*

Juiy 1st—Packet ship Toronto, from London; 17th, lat. 43 30, lon. 49, saw several icebergs.

Ship Carroll, from Liverpool; 18th, lat. 43 30, lon. 48, saw forty icebergs.

Ship Manhattan, from Amsterdam; June 14th, lat. 43 41, lon. 49 45, passed close by two large icebergs.

July 4th—Ship Sylvanius, from Liverpool; saw some ice on the Banks.

Ship Isaac Newton, from Liverpool; 18th ult,, lat. 46 40, to lat. 48, and from lon. 47 to 50, passed many icebergs, extending as far as the eye could reach.

July 8th—Packet ship New York, from Liverpool; 24th ult., from lat. 44 20, lon. 47 40, to lat. 43 18, lon. 51 35, saw a large number of icebergs.

July 14th—Packet ship Ville de Lyon, from Havre; 25th, lat. 41 30, lon. 24 23, saw two large islands of ice, two hundred feet high and three hundred feet long.

July 16th—Ship Samuel Hicks, from Liverpool; 28th, lat. 42 40, lon. 49 30, saw a great number of islands of ice, and continued to pass them for twelve hours.

July 22d—Packet ship Westminster, from London; in lat. 44 30, and lon. 46 30, to lon. 39 30, saw a number of icebergs.

Packet ship Siddons, from Liverpool; passed a great number of icebergs.

Bark Lotus, from Bristol; 30th, lat. 45, lon. 48 40, passed a great number of icebergs, some of them of great dimensions.

July 26th—Ship Emma, from Bremen; the Emma passed a great number of icebergs on the Easternmost edge of the Banks.

July 28th—Ship Memphis, from Liver-

* Probably an error in the figures.

pool; the Memphis saw considerable ice on the passage.

August 3d—Ship Sea, from Liverpool; from lat. 43 to lat. 40 30, saw large quantities of ice, thirty islands; was obliged to go two degrees south to clear it.

August 4th—Bark John George, from Bremen; from the 10th to the 15th of July, lat. 43 20, to lat. 42 30, lon. 48 50 to 52 20, saw seventy-five large icebergs from the deck.

August 5th—Packet ship Utica, from Havre; in lat. 42 34, lon. 49 12, saw a quantity of ice.

Ship Franconia, from Havre. Saw a great many icebergs near the banks.

Ship George Wilkinson, from Bristol.—The G. W. saw several large icebergs on the passage.

Ship St. James, from London. On the 19th, 20th, and 21st July, from the lat. of 44 29 to 45 30, and lon. 47 to 52 30, passed 34 icebergs.

August 6th—Packet ship Roscoe, from lon. 45 30 to 53 30, saw numerous icebergs.

Packet ship Cambridge, from Liverpool, July 15th, lat. 46. lon. 43, fell in with great quantities of ice; was surrounded with it for 5 days, most of the time in a dense fog; saw 23 large islands of ice in one day; left the ice in lat 44 30, lon. 42.

Ship American, from Havre, had been detained by the ice. July 21, lat. 43 lon. 48, saw several icebergs.

Aug. 8th—Ship Swanton, from Liverpool. Between lon. 46 and 54 passed upwards of 300 icebergs—came very near being wrecked on them, having run between two large islands in the night before we discovered them.

Ship Richmond, from Havre. The R. passed numerous icebergs on the passage.

August 10th—Ship Metoka, from Liverpool, July 25th and 26th, lat. 42 lon. 47 64 saw 100 icebergs.

August 11—Packet ship Montreal, from London, July 29, lat 44, lon. 47, saw several large icebergs.

August 13th—Bark Clarissa, from Gottebnurg. Saw a great number of icebergs.

August 15th—Packet ship Albany, from Havre, 30th. lat. 44 30, lon. 47, saw three icebergs.

Bark Natchez, from Bordeaux. Saw great quantities on the Banks.

August 16th.—Packet ship Silvie de Grasse, from Havre, lat. 44, lon. 53, saw three icebergs.

Ship Courier, from Palermo, July 28th, lat. 49 30, saw a large island of ice to leeward; at 5 P.M. saw several large icebergs in sight to the S. W.; reported great quantities of ice to the westward; during the night passed large icebergs; 29th, at daylight, saw a large mountain of ice, judged it to be 10 miles long and 300 feet high, two more in sight; 31st, a large iceberg in sight to the windward.

August 17th,—Ship Southerner, from Liverpool, passed several icebergs on the banks.

August 17—Packet ship Gladiator, from London, 4th inst. lat. 44 4, lon. 47 12, boarded a large iceberg and passed several small ones.

Packet ship Columbus, from Liverpool, latitude 48, longitude 45, passed nine large icebergs.

Ship Odraka, from Liverpool. From longitude 46 to 53, saw large quantities of ice.

Bark Emilie, from Norway. In latitude 46, longitude 45, passed several icebergs.

August 19—Brig Wellingsley, from Newcastle, Eng. from 26th to 30th July, from lat. 44 to 43 30, lon. 48 to 52, saw a large number of large islands of ice.

August 22d.—Ship Peter Hattrick, from Newcastle, 1st, lat. 55 26, lon. 45 25, saw several large icebergs. 7th, lat. 43, lon. 57 40, saw several more icebergs.

August 24th—Packet ship Sully, from Havre. The S. passed a number of icebergs to the eastward of the Grand Banks, and on the 12th, lat. 43 26, lon. 53 30, saw two very large icebergs.

August 25th—Ship Agnes, from Amsterdam, August 13th, lat 43 40, lon. 53 30, saw large islands of ice.

August 25.—Packet ship Independence, from Liverpool, 13th inst. passed several icebergs.

Bark Newburyport, from Antwerp; 9th inst., lat. 45, longitude 45, saw a large iceberg.

August 27th—Packet ship George Washington, from Liverpool, August 13th, lat. 42 40, lon. 50, passed a large iceberg.

August 27th—Ship Fairfield, from Liverpool, 13th, lat. 42. passed 15 icebergs, extending from 49 20, to 51 20.

August 28th—Packet ship Ontario, from London, June 13, lat. 42 30, lat. 42 30, lon. 48 30 to lon. 50, passed a number of very large icebergs.

August 30th—Packet ship Virginia, from Liverpool, between lat. 43 20 and 42 20, lon. 30 51 40, passed 40 icebergs.

Ship Neva, from Antwerp, 8th, lat 27 50 lon 36, 25, passed a large number of icebergs.

August 31—Ship Caledonia, from Liverpool. 11th, lat. 43 30, lon. 48, saw a large iceberg.

September 1st—Ship Rochester from Liverpool, 16th, lat. 42 25, lon. 50 45, passed a large iceberg.

September 19th—Steamship Great Western, from Liverpool, passed a small iceberg in lat. 50 N., lon. 42 W.

ICE—1843.

The following is the account of all the vessels which arrived at the Port of New-York in 1843, which reported Ice on the Atlantic as contained in the files of the New York Journal of Commerce of 1843.

Aug. 11th, 1843.—Ar. Packet ship Silvie de Grasse, from Havre, in lat. 46 30, lon. 46, 39, saw two large islands of ice.

August 18th, 1843.—Arrived, Brig Gulnare, from Antwerp, in lon. 42, saw large islands of ice.

August 25th, 1843,—Arrived, ship Camilla, from Rotterdam, on 8th inst. lat. 49 30, fell in with a number of icebergs and a large field being several miles in extent.

Capt. Parry states that in "in 1816 a great change took place in the polar ice.—A portion of about 2000 square leagues of ice drifted out of the Greenland sea, from between the paralels of 74 deg. and 80 deg.

It is also stated, a great change in the position of the ice took place in the beginning of the 15th century, whereby the intercourse between Iceland and the Colonies then established in Greenland was interrupted, and the colonies probably perished; for nothing has been seen or heard of them since. Icebergs have been seen of almost incredible dimensions. Capt. Ross saw one 1200 feet long, and 325 feet high above the water. Another was estimated to weigh 1,292,397,683 tons. Icebergs commonly float on a base much more extended than their upper surface. When two fields of ice meet in rapid motion the concussion is terrible."

The polar ice may be termed the fouatains of the great deep. The sacred penman, in the 11th verse, of the 7th chapter of Genesis, in speaking of the commencement of the universal deluge, says: "*the same day were all the fauntains of the great deep broken up.*" Truly these immense accumulations of chrystalised waters at the poles of our earth are vast store houses, or fountains of the great deep. The penman of the Book of Job, asks: "*Hast thou entered into the treasures of the snow, or hast thou seen the treasures of the hail.*" Ice has taken the place of silver and gold in the commerce of many sections of the globe, and ship loads of ice are exchanged for the product of tropical climes. Truly, the snow and the hail have treasures, and are dealt out by the merchant by weight.

Ice on the tops of high mountains is perpetual. At an altitude of about 9000 feet. In this latitude frost is permanent throughout the year.

The icebergs of the southern hemisphere are of greater height than those of the northern. The ocean is of greater depth, in the southern hemisphere ihan in the northern. Capt. Ross let down the lead 400 fathom without finding soundings. This is about four and a half miles, and nearly equal in depth the altitude of the tops of our largest mountains above the sea.

Icebergs, when permanently fixed, continually increase in height from the accumulations from the atmosphere by refrigerating its fluids.

In 1838, some of the British Government ships met with icebergs from the Antartic in South lat. 18 deg. These Icebergs were of 300 feet altitude above the surface of the ocean and large rocks were visible on these bergs. The water ran down in torrents from the sides—resulting from the ice melted by the suns rays. Icebergs which have grounded in soundings enable navigators to ascertain the proportion of these crystalised bodies that extend beneath the surface of the ocean, and that proportion is thus ascertained to be

two thirds the bulk below the water and one third above. These antartic bergs were therefore allowed to be 900 feet in height, measuring from the base to the summit.—The vessels encountered a severe hail storm when near these immense masses of frozen water. Powerful refrigerators of the atmosphere these.

The force of water in expanding by frost is immense, the frost may be termed the archmides of the atmosphere.

The arctic ice furnishes our section of the country with the material for rain showers, and I have noticed in summer, when the arctic ice was abundant in the Atlantic, that we were at the same time visited by cold northeast rain storms.

The abundance of ice on the Atlantic in 1842 is a singular phenomenon, and it would seem that some powerful natural cause must have operated to produce such a result.

The visit of the polar ice to southern latitudes in August, 1843, was attended by very heavy rains.

The arctic ice, when brought in contact with the heated waters of the Gulf Stream, are soon melted.

I have thought this fact of the departure of the Polar ice of so much importance, that immediately on hearing that Capt. Sir James Ross was about revisiting the arctic seas I at once communicated to him through the Lords Commissioners of the British Board of Admiralty the particulars stated above.

EBEN MERIAM.

BEHEMOTH.

We are often told that this animal, the fossil remains of which are sometimes met with in the excavations made beneath the earth's surface, has been extinct since the Noachian deluge. I was disposed to coincide in this opinion, but having recently visited the remains of a giant beast which have been exhumed in Walkill township, Orange County, New-York, I have come to a different conclusion.

The writer of the Book of Job speaks of the BEHEMOTH as of a beast then alive; and according to the chronology of the Sacred Scriptures, this Book was penned 829 years subsequent to the flood—besides, the writer of the book of Genesis declares in the most positive language that two of every beast entered the ark. Here then the preservation of this race of animals is placed beyond the possibility of doubt.

I have omitted to describe the bones of this monster beast, for the reason, that all the bones belonging to the frame have not yet been found. When the dry season returns, a further examination will be made, and when the whole are obtained, I will give a full and minute description of the whole frame.

I visited the ground in Walkill township, Orange co, where the bones of the great beast of antiquity have recently been exhumed. In order to know something of the geological formation of the section of country in which this monster beast once had his habitation, I walked the distance from Middletown, where the Erie Railroad terminates, to the place of exhumation, about five miles. The surface is undulating, and in some places rising into large swells. The soil is quite various, and the ground very stony. There are many swampy places, which are made into meadow land, and these are also stony.

In these, I noticed the swamp alder and the meadow flag growing. The forest growth on the high land, is chesnut, oak, hickory, &c. Among the vines, I noticed one of peculiar character, which was pointed out to me by D. W. Smith, Esq., Postmaster of Scotchtown, who was so polite and obliging as to accompany me in my examinations of the immediate vicinity. The vine wound around the stalk of the pokeberry, and had its roots in the stalk of this vegetable instead of the earth. We examined several, and found them all in the same way. I had before frequently seen at the West, the misletoe, which is a beautiful evergreen, and which takes root in the bark of trees, at a great height from the ground, presenting in winter its green foliage and white pearly berries, in contrast with the leafless branches of the tree on which it takes root.

We visited the pit, in the diggings of which the bones of the monarch beast were found. It is in a natural basin, and about half a mile from Scotchtown. On the north, about three fourths of a mile distant, is a high hill; to the south at a less distance is a hill of smaller size; to the east, and also to the west, at a distance respectively of about 80 rods, the ground descends rapidly. A small brook runs alongside the pit, which discharges its water to the east; if this brook should be deepened for about eighty rods, it would effectually drain this basin. The pit is about 40 or 50 feet long, and 20 feet or more wide, and about 7 feet deep, is now filled with water within a foot of the surface of the meadow. The meadow was some years since cultivated as a hemp field, but is now in grass. In winter it is flooded with water, and when frozen over is a skating pond. The meadow is rocky. In digging the pit several pieces of wood and small trees were found which had been felled by the Beaver; and here was, as my informant stated, an old Beaver Dam. There is an elasticity in the surface of the ground around the pit. We found by stamping upon it a sensible vibration under our feet. The black earth (very black) which forms the surface, is a strata of about thirty inches in thickness: beneath this is a strata of marl, the extent of which I had not the means of ascertaining. The black earth is very tenacious, of great specific gravity, and is filled with vegetable fibres, small roots, &c., but so solid as to be capable of being made into candlesticks, urns, &c. I brought away several pieces of this composition, considering it a great curiosity, in addition to its being the covering of the Monarch Beast of antiquity. Beneath this impervious strata, at a depth of about seven feet, reposed the head of the giant beast, imbedded in marl. How this animal frame came in this position is more than can be told, although we may guess or form an opinion from the facts stated, but after all it is but conjecture. When I arrived in Orange county, I made diligent enquiry for Salt Springs and licks, supposing that the monster beast had selected this section of the country for the sake of saline waters, but I found no account of any such formation; but after visiting the pit, and then the fossil remains at the house of Mr. Conner, on whose farm the pit is, we visited the high grounds in the north of the pit.

Near the summit of this hill is a well, dug for the use of the cattle pastured here—this well is about 14 feet deep, and is nearly full of water—in this well is a pump. Mr. Smith laid hold of the handle of it, raised some of the water, which gave out to the atmosphere a sulphurous gas. I tasted the water and found it to be a mineral water, and on examining the strata passed in digging the well by the excavation thrown on the surface, I found it a black slate or shale. It was this water which found an outlet in the basin, that doubtless this animal resorted thither for, and thus I account for his bones being found in that basin. The surface would not, I think, at this time, bear the weight of such an animal as the bones indicate this to have been, and when resorting hither for the water, and once beginning to sink the struggles of such a monster, would in his dying agonies sink his body deeper and deeper, and if he had such an appendage as a trunk, would sink deep keeping the extremity of the trunk above the surface by which he would be enabled to sustain life for a considerable period of time. The body would decompose slowly in such a place, for the temperature of the water would exclude that heat which is necessary to decomposition, and besides, the qualities of the water have a powerful influence in aiding the preservation of the frame. When animal life ceases, animal heat also ceases, and a heat produced by decomposition shortly after commences, unless some antiseptic quality in the surrounding atmosphere prevent it.

About two miles from this place is a sulphur spring, and from the account given me of the water by those who have seen it, I presume it contains a large portion of sulphureted hydrogen gas.

I felt a strong desire to examine the locality, which in the progress of time, ere man had dominion in this region, had become the resting place of the bones of one of the race of Behemoth. The Patriarch Job, mentions this race of animals with much particularity, although with great brevity, and that is the only written history of the giant beast now extant; but in the exhumation of this giant's frame, we have the book of nature corroborating the record of the sacred historian. How wondrous, how convincing!

Mr. Smith remarked to me that the hill to the north of the pit, and of which I have spoken above, would afford a fine view of the surrounding country, altho' it would be a great labor to climb it, but labor that results

in attaining an object, is an easy service.—I therefore gladly availed myself of his kindness in offering to go with me to the pinnacle of this terrestial observatory. On arriving at the top, we found a vast area of surface within the compass of vision. I judged this field in our view, to be over one hundred miles in circumference: high lands in the States of Massachusetts, and also in New Jersey, could be distinctly seen, and nearer by the highly cultivated farms in Sullivan, Ulster and Orange Counties, were spread out in all the variety of field, meadows and wood, on the terrestrial carpet. A beautiful spot this for a summer house, or a hotel, and near by its top is the mineral well, and at its foot, the grave of Behemoth. To this terrestrial protuberance, I gave the name of Behemoth Heights, a place worthy of the name, and a name worthy of the place. It has associations that will be as durable as the pages of written record, for from its foundations issued the waters which have embalmed the giant frame of a mute witness of antiquity, bearing testimony of the perfect accuracy of the natural history embodied in the written record of the Book of Truth. I am induced, on examination of sacred chronology, to believe that the representations of this race survived the Noachian deluge, affording another illustration of the accuracy of the account of that extraordinary event.

On a minute examination of the chronology of the Book of Truth, I find that the Deluge occurred 2349 years before the Christian era, and that the Book of Job was written 1520 years before the advent of the Saviour. A period of 829 years, therefore, intervened between these two events. The Patriarch Job gives us a description of the Behemoth, of his make, powers and habits, and speaks of him as a beast then alive. Job, also, in his beautiful poem, gives us light as to the hydrography of the land of Behemoth, its meteorology, its botany and zoology. This written history of the Behemoth is the only one now extant, and its accuracy is corroborated by the mute witness recently exhumed in Wallkill. The bones of this giant beast are a wondrous wonder. I examined with great care the bones of the head, which weigh 449 lbs. The forehead is solid bone, *one foot thick* (I measured and re-measured it with care,) the thickness of the brick wall of a four story house at its foundation, such as are a brick and a half in thickness. With the skin which covered it, it must have presented, when alive, a front of greater solidity than the bulwarks of the largest line-of-battle-ship. Its teeth are in their proper places in the jaws, and are completely sound and perfect. The fore teeth are worn smooth by use. The hinder teeth are grooved very deep, the convex of the upper fitting exactly the concave of the lower, qualifying the animal to crush the limb of a tree, or a stone, with the same facility that the most powerful steam sugar mill crushes the cane with its iron jaws. The animal is of the ruminating species, and not carnivorous, that is, such is my opinion from a careful examination of its mouth and teeth. I measured one of the rib bones, and found it six inches in width. It has been said by some who have examined these bones, that the ribs are not in proportion in size to the head. I think differently. I have examined the bones of this race of animals in various places on this continent, and the ground from which they were respectively taken.

The finding of these bones in Wallkill, on the farm of Mr. W. Conner, half a mile from the village of Scotchtown, was in the month of July, in digging marl in an upland meadow. I call it upland, because it has once been cultivated as a hemp field, and it is rocky. At the depth of about seven feet, the workmen came upon the head imbedded in loose marl, which is filled with shells.

July, it will be recollected, was a very dry month. The bed of marl was then dry, but before all the bones of the animal had been collected, rain came in great abundance and filled the pit with water, and it has continued so ever since, and consequently the labor of the workmen has been suspended. A pump was placed in the pit and the water thus drawn out, but during the succeeding night it filled again. A trench of about eighty rods long and ten feet deep, will be necessary to drain the place before any further progress can be made in obtaining the bones. Some doubt has been expressed as to the probability of finding the residue of the bones, in consequence of the confusion and disorder into which those already exhumed were by some cause found to have been thrown. But I think, from a careful examination of the strata in which the bones were found, that there is no mystery in reference to their scattered position. The marl is loose, and some of it so light as to float in water; and other portions of greater specific gravity, precipitate in water in obedience to the laws of gravity. The frame, in such a bed, which was sometimes saturated with water and sometimes dry, would be liable to fall to pieces, and be carried by the force of the retiring or invading waters, to various sections of the bed, as the particles on which these respectively rested were moved from underneath. I should not, therefore, be surprised to find this frame scattered over several hundred feet. While I was at the pit examining the locality, I perceived several shells rose upon the surface of the water, and the wind wafted these to the shore. In one of the ponds of this State, this same operation has been noticed at periodical intervals, and regarded as an unaccountable phenomenon; but I think it may be accounted for by this illustration—for where a subterranean bed of marl has a strong spring of water boiling up through it, the force of the water, and buoyancy of the shells, will bring them to the surface, and the wind will float them to the shore. The covering, I remarked, was a black earth; geologists would call it indurated peat, I presume. This earth has been saturated with mineral water, and formed into what I term a semi-petrifaction We often see water, in passing through a limestone arch, carry with it fine particles of lime, forming stalactites. Were such a solution to penetrate a bog, it would change it in process of time into a stone, and whatever of a solid body is held imbedded in such a strata would be thus incrusted, and if porous, would be saturated, and thence crystalise. I see no difficulty in supposing that this animal broke through this place, for it is evident from the formation of the ground that it could never, at any time, have held water enough above the surface to drown so large an animal.

The bones already found, I understand from Mr. Conner, he intends shortly to exhibit in New York: the public will therefore have the opportunity and the benefit of comparing the written record with the organic remains, and to see how exactly they agree.

I will here quote a part of the description given by the Patriarch Job, of the Behemoth:

"Behold now Behemoth,
Which I made with thee;
He eateth grass as an ox."

Thus he was a grazing animal, and this the teeth prove, and therefore here is a perfect agreement.

"He moveth his tail like a cedar."

Some of the tail bones have been found, which indicate that it was of very large size. The cedar is the growth of this region.

"His bones are as strong as pieces of brass;
His bones are like bars of iron."

The description I have given of his head, the thickness of the skull and the width of the ribs, are here illustrated.

Iron, copper, zinc and lead, are the products of this region of country.

'He is the chief of the ways of God:
He that made him, can make his sword to approach unto him."

The fiat of the Almighty has made the race of the Behemoth extinct forever in our planet, a verification of the almost prophetic language of the Patriarch.

"Surely the mountains bring him forth food."

In this region, the mountains are in view from the great terrestrial observatory to which I was requested to give a name, and which I called Behemoth Heights, in consideration of the grave of the giant beast of antiquity, the subterranean monument of the perfect accuracy of the natural history of the Book of Truth being at its foot or base.

"He lieth under the shady trees;
Under the covert of the reeds and fens."

Here are these also, a perfectly accurate description of this vicinity.

"The shady trees cover him with their shadow;
The willows of the brook compass him about."

Here also the willows of the brook are now to be seen within a short distance of the grave of this animal giant of antiquity.

"Behold, he drinketh up a river and hasteth not."

Here is the Wallkill, a stream of a size which once, no doubt, would vie with the Jordan. A beast like this, with such a power of frame, would be without fear, for where is the superior among the animal tribes?

"He trusteth that he can draw up Jordan into his mouth;
He taketh it with his eyes;
His nose pierceth the saga snares.

Thus speaketh Job of the Behemoth. Again he says of meteorology:

"As the stream of brooks they pass away;
Which are blackish by reason of the ice,
And wherein the snow is hid:
What time they wax warm they vanish;
When it is hot they are consumed out of their place."

A correct description of the climate of this region. When I speak of region or vicinity, I do not wish to be understood as confining it to the limits of a township or county.

That the general Deluge destroyed vast numbers of the race of Behemoth, there can be no doubt. The bones of that animal have been found in the arctic regions, deeply imbedded in the ice. Lieut. Kotzebue, of the Russian Navy, found the bones of the mammoth in North lat. 66 deg., imbedded in an island of ice. This island was covered with grass and moss, growing luxuriantly on a soil of six inches in thickness. In an ice cliff on one of the rivers of Siberia, which empties into the Arctic sea, the entire body of a mammoth, flesh and all, came in sight in 1799, by the melting of the ice, and five years thereafter became entirely disengaged by the melting of its crystalised casement, and fell down on the sand bank below, where its flesh was fed upon by the white bear, and the Juhuts of that region cut it up to feed their dogs.

In this region of country, round about Wallkill, the Behemoth had his home. Several of his bones have been found in excavating the earth in this immediate vicinity.

When I arrived at Middletown, about five miles distant from the Wallkill, I stopped for the night at the Union Hotel, the landlord of which, learning that I was on the way to Wallkill, to see the organic remains, brought me a piece of the tusk of a mammoth, which had recently been found in a swamp near by, embedded in the earth. This was broken.

This section of the globe may have been inhabited by man when Behemoth was here; but I have never in my travels, met with any remains that indicated the possession of civilized man. I have visited nearly all the ancient fortifications and works of antiquity within the borders of our country, and have visited the burying places of the dead, and the place of sepulture of a human being of antiquity, having her entire wardrobe by her side, in a state of perfect preservation, and none of these indicated the marks of civilization.

I know it is a favorite opinion with some, that this section of the globe was once peopled by a race of men superior to the red men of the forest, which the white man found in its possession, two and a half centuries ago, and we may even go back beyond that period in one instance, with the same result. But I came to a different conclusion.

Some geologists say, that the position in which the bones of the Wallkill giant are found, is not the geological position where they belong. The fact speaks for itself, and therefore theory is, in this case, without place.

Geology is a modern science, and in its infancy fixes arbitrarily the crusts of our globe in chronological order; but we need not go any where else for the science but to the Mosaic record; whatever contradicts that, is unworthy of consideration and undeserving of contradiction.

Cities have been overwhelmed by the elements in obedience to the command of the great Jehovah, and the crusts which cover them, are the growth of a moment.

It is in vain for us to attempt to account for the works of the Almighty Architect. He does what pleaseth him; and man should be silent, and bow reverently, and adore that munificent Being who has made him a candidate for immortality. The works of God, in their beauty and harmony, both gigantic and minute, praise him in their boundless perfections.

The Behemoth is called the Mammoth, and when I use this word, I do so as a distinction of *size* and not of *species*. The elephant is by some travellers termed the mammoth, and if I mistake not it is so called in Russia.

M. Cuvier, in his life time, classified nearly one hundred animals of species now extinct, from the organic remains he procured, and had his valuable life been spared, no doubt would have given to the world information of great value upon this subject.

Governor Rosas, of Buenos Ayres, is making an important collection of organic remains. Those already obtained by him were in that section of the country, the climate of which corresponds nearly with our own, being in south latitude about 38 deg.

The Asiatic and the African Elephant vary considerably from each other, and the organic remains found upon our continent more nearly resemble the Asiatic than the African. The animal frame of Orange County I think, from an examination of its head, was furnished with a proboscis or trunk.

The Patriarch Job describes at much length the Leviathan of the deep—a Mammoth of that order—and as presenting an extraordinary attribute; that its "neesings" were phosphorescent or electric. He thus speaks:

"By his neesings a light doth shine,
"And his eyes are like the eyelids of the morning.
"Out of his mouth go burning lamps,
"And sparks of fire leap out.
"Out of his mouth goeth smoke,
"As out of a seething pot or cauldron,
"His breath kindleth coals,
"And a flame goeth out of his mouth."

Again he says—

"He maketh the path to shine after him;
"One would think the deep to be hoary.

And again he says—

"In his *neck* there remaineth strength."

Again—

"The flakes of his flesh are joined together;
"They are firm in themselves—they cannot be moved,
"His heart is as firm as a stone;
"Yea, as hard as a piece of the nether millstone.
"His scales are his pride,
"Shut up together as with a close seal.
"One is so near to another
"That no air can come between them;
"They are joined one to another,
"They stick together,
"They cannot be sundered.
"He maketh the deep to boil like a pot:
"He maketh the sea like a pot of ointment.
"Sharp stones are under him,
"He spreadeth sharp things upon the mire."

The remains of this monster belong to our earth, and it is possible that the living monarch of the deep may still have his habitation in our planet. I have among my collections an account given by a sea captain some years since, of two monsters having been seen by himself and crew in the Indian Ocean, at a great distance, lying a little beneath the surface of the water giving out a great light, and illuminating the water for a distance around them.

Electricity belongs to the inhabitants of the water. The electric eel will give an electric shock equal in force to the largest machine.

It is true, the Patriarch Job does not speak of the Leviathan as electric or phosporic, altho' that writer was conversant with the natural phenomenon—atmospheric as well as subterranean fire. He says—

"When he made a decree for the rain,
"And a way for the lightning and the thunder."

Again—

"As for the earth out of it cometh forth bread;
"And under it is turned up as it were fire."

The hardness of animal flesh, and the very formations which characterise some organic remains, have induced some very learned men to suppose that our earth had at one time an atmosphere of much higher temperature than that of the tropics at the present day.

I do not think that the geological features of our Earth contradict the Mosaic record—far from it. There is a mutual confirmation; but some modern writers hold that there is a disagreement.

If we begin with Burnet's Theory of the Formation of our Earth, and follow down to that of Werner, Hutton and others, to the present day, we will at length have to go back to that period when

"God divided the waters from the waters;
"Divided the earth which was under the firmament,
"From the waters which were above the firmament,
"God called the firmanent heaven,
"And the *dry* land Earth."

Geology, as I before observed, is still in its infancy; and it is more instructing to

read the Book of Revelation and of Nature than the works of the most learned of our day, for in Revelation and in Nature, the views have an originalty that is instructive —teaching not theory, but fact.

Ice remains in some sections of medium latitude, throughout the year. In the ravines of a mountain, called "Ball Peak," situate in the northeast part of the town of Pittsford, in Rutland County, Vermont, ice has remained permanent throughout the year, since the first settlement of the country, and is most probably the chrystalized waters, which was left on the subsiding of the waters of the universal Deluge. In one of the mountains in the State of Virginia, ice remains throughout the year.

E. MERIAM.

LIGHTNING STRIKING RAIL ROADS.

While the preceding sheet was passing through the press, I met, in travelling in an omnibus, with Ex-Alderman Campbell, of the City of New York, who informed me, that while travelling upon a railroad in the State of Pennsylvania, some time since, the lightning struck the iron rails, and was seen to pass over the iron bars which formed the track, for a great distance. This is the first and only instance I have ever heard of lightning striking a rail way.

THE EARTHQUAKE.

In the Journal of Commerce of January 30th, 1843, I noticed a paragraph from a St. Louis paper, giving an account of a singular phenomenon attending the Earthquake of the evening of the 4th of January, viz: the disappearance of a pond of water, and the producing of what is called in the West, a sink hole, out of which issued steam, and that the temperature of the earth around the surface was such as to cause the snow to melt, while the snow on the ground adjacent remained unaffected.

During the shakes of the Earthquake, in the winter of 1811 and '12, a person walking near the banks of the Muskingum river, in Ohio, discovered smoke issuing from an opening in the ground; he examined the spot, put his cane down in the opening, and it immediately took fire. He was much alarmed, and on his return to town related the circumstance. The Legislature of the State were then in session at Zanesville, and immediately adjourned to afford the members an opportunity to view the phenomenon. The report spread rapidly through the village until it reached the ears of an old gentleman, who immediately explained the matter. He had. the year previous, burnt a kiln of lime on and against the bank of the river, which ignited a vein of bituminous coal, that continued to burn under ground, and the violence of the Earthquake had thrown down so much of the bank of the river as to cause the opening. An examination of the ground, proved that the old gentleman was right in his conjectures. Subterranean fires feeding upon bituminous coal, may have produced the phenomenon spoken of in the St. Louis paper, and the subterranean fuel may have been kindled by electric fire.

Shakes are very frequent near St. Louis, and more particularly near Shawneetown, Illinois. At the United States salines in that neighborhood, shakes are felt almost every year. During the shakes in 1811 and 1812, at New Madrid, bituminous coal was thrown up in large quantities at that place.

Liquid Petroleum, which is very combustible, is found in boring for salt water through the regions of country west of the Alleghany Mountains, and in many places it comes to the surface in the shape of Mineral Tar Springs. Immense quantities of Carburetted Hydrogen Gas, also issue from some of the salt wells of the West, and from numerous springs, termed burning springs. The different Virginia Springs possess every degree of temperature, from that of the heat of boiling water down to the temperature 52 degrees.

The increased temperature is entirely local, as appears from all the investigations which have been made in the Western States.

The Carburetted Hydrogen Gas is set on fire at the Kenhawa Salines, and at the burning Springs in Virginia, by the inhabitants, to afford visitors the opportunity of witnessing the phenomenon.

Beneath the earth's surface in many localities, are vast gasometers of carburetted hydrogen gas, and also burning bodies which have become ignited from chemical causes fully understood. These subterranean fires produce in the course of time, intense heat, displacing vast bodies of solid matter, until perchance a body of water is thus reached, which, on coming in contact with the liquid fire, becomes converted into steam. This must either find vent by some terrific explosion, or be condensed by a force of pressure which must shake the earth for an immense distance around.

The effect of earthquakes are quite various; sometimes the motion is vertical, throwing buildings upward; at other times, the motion is horizontal.

It is a wonder that earthquakes are not more frequent, and more disastrous.

E. MERIAM.

HEAT OF THE INTERIOR OF THE EARTH.

This was one of the subjects discussed in the Convention of American Geologists, recently held at Albany. Some of the members of that body suggest that the heat of the interior of the Earth, increases at the rate of one degree of Farenheit, to every 50 or 60 feet descent. This would be an average of one degree to every fifty-five feet, which I take as a basis for my calculations.

Assuming this theory to be true, it would follow, that the temperature of any given distance below the earth's surface, may be ascertained by mathematical calculations.—Allow the heat at the surface to be 50 degrees, which is near the actual temperature, it would then follow that at the depth of eight thousand nine hundred and ten feet, that point would be reached where the temperature is increased to 212 degrees of Fahrenheit, being that at which water boils under common atmospheric pressure; and at the depth of one million, one hundred and eighty-six thousand two hundred and eighty-five feet, a point would be reached where iron would become liquified; a temperature of twenty-one thousand six hundred and thirty degrees of Fahrenheit's scale, which is the melting point of iron under common atmospheric pressure. This would be a depth of near two hundred and twenty-five miles, (unless I have an error in my figures.) From numerous experiments which I have made in various places, I have found a great variation in the increase of heat in the interior of the earth. I have found in the atmospheric air above the earth's surface a regular and gradual decrease of temperature in proceeding upward. At the height of eight thousand nine hundred and ten feet above the earth's common surface, in this latitude a point would be reached where water would become solid by cold in the hottest day in summer; and at a still higher elevation is that point where all fluids now known to us, become solid. Hence I infer the formation of meteoric stones termed ærolites—and hence our highest mountains are covered with enduring snows. The knowledge we have of our earth is limited in the extreme; and the more we investigate the better satisfied we become of our ignorance. Geology is but a modern science, and one of great and growing importance. If the theory advanced by some of the members of the Geological Convention, and other scientific men, is correct, then it follows that the temporary dwelling place of our race is midway between the regions of enduring frost and those of perpetual fire. What a subject this to contemplate!—what a position this to occupy! The earth has thus continued from the termination of the days of creation, and will no doubt continue so for thousands of years to come.

E. MERIAM.

SUNKEN WELLS.

I visited Mount Prospect on Long Island, September 16th, 1843, to view the opening in the surface of the ground resulting from the sinking of the well and the wood work of the bucket house, on the premises of Mr. Meeks.

The well is about two hundred feet from the main road, in a garden. About the same distance from it, is a natural pond a few hundred feet in circumference, which, I was informed, is permanent. The surface of the ground for about three or four acres, is nearly that of a basin, and the well and pond near-

ly in the centre. The surface water from rain, therefore flows to this common center. The stratifications of the earth which are visible, are compact, made up of earth, stone, soil, &c. Were the upper strata loose, it will readily be seen from the near proximity of the pond to the well, that the latter would drain the former; and this pond may have at some remote period resulted from an indentation made in the surface by the departure of a lower stratum.

The opening where the well was, is about 10 feet in diameter; the sides, solid earth, very hard, and perpendicular: the water is within 12 feet of the surface of the ground.

During the day, Mr. Meeks heard a rumbling sound in the well, but thought little of it. The next morning it was rainy; he raised an umbrella over his head and went into the garden, holding it partly before him, and would at the next step have placed his foot over the opening, when he fortunately discovered that the well-house had disappeared and left the frightful chasm which he thus barely escaped.

The well-house, wheel, rope, and buckets, have all disappeared, as has also the wall of the well. The water in the well is yet turbid from frequent rains since, and the frogs quite numerous on the sticks floating on the water.

The well was 125 feet deep, and was walled with stone. Allowing the well to be 3 feet diameter, and computing the weight of the stone at 500 lbs. for each foot, we have 65,500 lbs. of stone in the entire structure—a great weight to rest on a sand foundation. If this foundation had become so much saturated by the water of the storm as to make it flow like soft mortar, it would, with such a pressure, be forced under the stone into the bottom of the well, and rise in the inner stone curb to a great height; and this wall and the house which rested upon it would sink in the same proportion as the soft earth rose within its curb.

Mount Prospect is a sand hill 200 feet high, and Mr. Meeks' premises are twenty rods or more from the top. Judging from the hydrography of the surrounding country and from the fact that the well of the Mount Prospect house is two hundred feet deep, I conclude that the surface of the water of the adjacent country has its flow in the stratum in which this well terminates. If such is the fact, the looseness of this stratum may have caused a flow of earth and made room for the well-wall, &c., of Mr. Meeks. I shall in a few days sound this well, and also examine that at Fort Hamilton, and be able thereby to gather some facts which may form a basis for a reasonable conclusion. Mr. Meeks on Friday heard a rumbling sound in the well, and his family feel some alarm. I have, in the columns of the Journal of Commerce, heretofore noticed the same phenomnon in other sections of the country, in nearly all of which, the cause was ascertained, and the occurrence therefore was nothing extraordinary. E. MERIAM.

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Since writing the above, I have visited the location where the well sunk near the Narrows, and visited the well of Mr. Meeks.

At the Narrows, the sunken well is within about eighty rods of Fort Hamilton, and in the rear of that Fortress. This Fort appears to have a solid foundation, for I did not discover any cracks in the walls; hence this conclusion.

The chasm made by the sinking of the well is about ten feet in diameter, and no water visible. The well house is to be seen lying 12 or 15 feet below the surface in the chasm. This well was on the side of a small protuberance, and I presume from the hydrography of the surface which I surveyed with the eye, did not receive any surface water: but in the immediate vicinity are a great number of ponds, or sink-holes—(indentations in the surface). I am of opinion that these ponds are so numerous as to be in the proportion of one pond to every three acres of surface.

The walls of the well have caved in below and thus brought down as much of the top as would fill the excavation originally made in sinking the well.

The owner of this well, I understand, intends to have the chasm cleared of the rubbish, and the cause of the down heave will then be determined.

Mr. Church, the owner of the well, informed me that when the wall sunk, the water ran over the top of the well and then receded and sunk away.

The well of Mr. Meeks, on Mt. Prospect I visited, and again examined. I sounded the water with a line in several places, and found it to be about five feet in depth, and within 12 feet of the surface. The chasm is about 10 feet in diameter at the top, but within two or three feet of the water it is about 16 feet by 12, leaving a crust above which will probably break down. The water in the chasm has become transparent. I raised some of it and examined it in a glass, and found on tasting that it was rain water. The natural pond which I spoke of as being near it, is less than 100 feet from the well. This pond I call a sink-hole; a receiver of surface water, which has existed time out out of mind. Previous to the great rain of August 20th and 21st, the well had sunk a foot. When the well sunk, there were two barrels filled with water, raised for watering plants, standing by the well-house. These barrels have also sunk and disappeared. The well-house, bucket, wheel, rope and stone wall, all have disappeared, and are probably covered by the earth which has fallen from under the crust which now sourrounds the chasm.

I have little doubt from the abundance of rain that fell on the 20th and 21st, being over three-fourths of a foot on a level, that the water of the well and that of the pond met on the surface during the night, as these are both in the same basin of near four acres in extent. This well, I was informed, cost near six hundred dollars, and is the only one in use in that immediate neighborhood. Mr. Meeks is inclined to fill it up, fearing that it will not be permanent if he should re-excavate it. There are several natural ponds in the neighborhood of Mr. Meeks' well, which have existed since the island was first known to white men.

These ponds, the inhabitants believe are the cause of the fever and ague which sometimes afflicts persons living on this elevated ground, if so- the remedy is both easy and cheap; for the water would disappear if the ponds should be tapped, and afterwards the surface of the ponds scraped off, and the covering carried on to the adjoining lands as manure. E. MERIAM.

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A NIGHT'S RESIDENCE ON KELLINGTON PEAK.

On a very warm summer day, a party of six persons, the writer being one, made a tour to the pinnacle of Kellington Peak, one of the highest points of the Green Mountains. We left Rutland on horseback early in the morning of 27th July, and proceeded to near the foot of the mountain, to the end of the bridle path, where we alighted, and sent our horses back about three miles to a public house. Having arranged our luggage and apparatus in the best way we could to make it portable, we commenced the ascent of the steep mountain, accompanied by a faithful dog. After a few hours tedious labor, we reached the pinnacle, about four thousand feet above tide water, ut 4 o'clock P. M.—Our labors had given us a good appetite for dinner, which we made from the ample stores we had carried on our backs to this mountain height. A delicious spring of pure water issued from the sides of the mountain within about one hundred feet from its summit, of which we partook freely. Our next business was to set about constructing a habitation in which we could pass the night.—Having taken an axe with us, we at once felled brush timber sufficient to make a brush *cabin* which when completed, we furnished with a quantity of soft brush, filled with leaves, to cover the floor, which was to be our couch for the night. Next we commenced making a collection of firewood. We then kindled a rousing fire about one hundred feet from our cabin door, which we kept burning all night.

Having thus provided for the present, we began to look around upon the broad expanse and scenery spread out below us, and upward to the ocean of boundless space which formed the aerial canopy.

Objects could be seen by the naked eye at great distances, with much distinctness. The village of Pittsford which was many miles from us, was as distinctly seen by the naked eye from this pinnacle as it could be by an observer within a mile of it on the same surface with its streets. What this peculiarity arose from, we were unable to determine.—We were inclined to the opinion that the purity of the atmosphere in which we had stationed ourselves was the cause, but it is possible that the peculiar state of the atmosphere on the lower surface may have produced the phenomenon.

The pinnacle of the mountain is a level

of a few hundred feet in extent, which is covered with trees of stinted growth, none of them being more than twelve feet in height, with the limbs inclined downwards. One of these trees is quite large, and we seated ourselves upon its upper branches to make observation. An immense surface of country could be seen in every point of compass, and seemed to rise in the distance in every direction. The sun was visible to us seven minutes, at its evening exit, after the time laid down in the almanac for its setting, and eight minutes in the morning before the time so noted for its rising. The night was beautifully clear, but cold; our thermometer at 9 o'clock in the evening denoted a temperature of 46 degrees of Fahrenheit, while that which we left at the public house whither our horses were sent, denoted 73 degrees at the same hour—a difference of 27 degrees.

A quiet encampment this, for here sound has no echo, voice has no reverberation. We discharged fire arms to observe the force of sound, and were surprised at the little impression which the concussion made upon our ears. The reports of our fire arms were however, heard at a great distance below us, in an echo from a paralell mountain side and valley. Sound produces an echo from the nearest surface, and it is by the echo of sound that experienced boatmen in large rivers, in dark nights, determine their nearness to the shore by the time required for the echo of sound to return. By a little practice, and observation, they are enabled to determine the distance with great accuracy.—The effect of sound on the atmosphere of this mountain peak, contrasts beautifully with the quick echo from the dome of the great room in the granite Exchange in Wall street, and those of arched bridges when passed in railroad cars.

In high northern latitudes, in still and calm weather, sound has great force. Capt. Parry states that he could distinctly hear the common conversation of his men a mile distant. This was in latitude 76°, where silence was almost universal—and the cold intense. The smoke from our fire did not ascend more than ten feet in the air, and as fast as it accumulated a volume, rolled down the mountain side.

Sleep here was sweet and refreshing.—Fatigue had prepared us for repose. The bright shining of the blaze of our fire, and the faithful watching of our dog, who took his position at our cabin door, secured us from the depredations of any brute whose industry should enable him to reach this elevated point.

In the morning view which we were greeted with on this height, we feasted our eyes for three hours. The windings of the Connecticut River in the East, and of Lake Champlain in the West, were distinctly visible, being marked by the fogs which were rising from their waters. All below us became covered with a mantle of thick vapour, and presented a surface in appearance like an ocean transformed into one great and mighty cateract. This gradually rose in the atmosphere, until all that was so beauteous below us had gone far away, to form the clouds of distant places.

In this latitude, at an elevation of four thousand feet in midsummer, we found an atmosphere within fourteen degrees of the freezing point, and two degrees below that in which water in its fluid state and water in its chrystalized state, fill the same or an equal volume.

About four thousand feet above this mountain peak, the air in the hottest day in summer, is of the temperature of winter—and proceeding still upward, we should find that point not far distant where all fluids would become solids.

This mountain peak, although exposed to the rays of the sun and the action of the winds, never suffers from drought; on the contrary, it feeds a living spring by the refrigerating condensing powers of its chrystalized material from the surrounding atmosphere. There is spirit in animal life, when breathing such an atmosphere, so light, so pure—for here is the sweetness of quiet, the harmony of repose; here the mind expands, while contemplating the grandeur of nature's works, admiring and adoring the infinite wisdom which formed, and the power which controls them.

The winds here are mild; not a tree is found uprooted, or a limb broken by its blasts.

We engraved our initials and the date of our visit in the bark of the growing trees, and at ten o'clock commenced our downward march. E. MERIAM.

PRIMITIVE GEOLOGY.

The formation and the subsequent arrangement of our material world is a matter of history.

The Book of Truth, written by a pen which was obedient to the source of all knowledge, has with great brevity, yet with much particularity, chronicled the gathering together the waters under the heaven into one place, and thus the dry earth became seperated.

The language of the inspired penman is in these words:

"In the beginning GOD created the heaven and the earth:"—Gen. Chap. 1, v. 1.

Here then, is the whole account of creation. In the fourth verse of the second chapter of the same book, the sacred penman thus speaks:

"These *** the generations of the heavens and of the earth when they were created, in THE DAY that the LORD GOD made the Earth and the Heavens."

Thus "*the day*" is an epoch, a portion of time not marked by the diurnal revolution of our earth upon its axis, nor such a period of time as an inhabitant living under the equator, or at the extreme pole, would call a day, but such a period of time as "HE with whom a thousand years, are as one day," terms "the day which the LORD GOD made the Earth and the Heavens."

Thus we have the brief history of the creation. We come next to the description of the earth. It is thus:

"And the earth was without form, and void; and darkness *,* upon the face of the deep." Gen. Chap. i, v. 2.

The material of our globe was in being the first day of what is termed one of the six days of creation, but it was without form, and darkness was upon the face of the abyss, and this darkness constituted the primitive night.

Of its density we can form no adequate conception, but we may infer that it had acquired that state which caused it to approach the orbit designed for it to occupy by HIM who is the fountain of all power, and whose works are those of system and order.

In the book of JOB are these words:

"As the stream of brooks they pass away;
"Which are blackish by reason of the ice."

The sacred historians thus proceeds:

"And the spirit of GOD moved upon the face of the waters."
"And GOD said, let there be light; and there was light."

"No man can by searching find out GOD to perfection," says the Book of Truth.

The spirit of GOD. the power of JEHOVAH, moved upon the face of the waters, and by his Almighty Word, he permitted light to appear. A flow of light.

Water may, I think, be presumed to have been at this period, in its chrystalized state, that of ice, for after the introduction of light there was a separation of the waters from the dry, and a gathering of the waters into seas. There are various kinds of light.—Zodaical, Electric, Solar, Terestical, Phosphorescent, &c. Light, with the exception of the phosphorescent, is accompanied with heat.

"And GOD saw the light, that *,* good: and GOD divided the light from the darkness."

The light, as here spoken of, can have no reference to aggregated solar light, for the sun and moon had not then been placed in their orbits.

"And GOD called the light day, and the darkness he called night. And the evening and the morning were the first day.—Gen. Chap. i, v. 5.

Thus the first day, or epoch, is marked by the introduction of light by the permission of the source of all light, and a separation of that light from the darkness, and the night which was constitued by the presence of darkness, is placed thus in order of precedence.

This darkness, which was upon the face of the deep, constituted the primitive night, a period of repose in nature which was succeeded by the birth of that light which formed the primitive day, which consisted of the primitive evening and morning that succeeded the Heaven and the Earth which were created in the beginning.

The term day, as used in this connection has no reference whatever to that period of time, which mark the present diurnal revolution of our Earth upon its axis. The Scriptures are records designed for the whole human family, and is not like many other books calculated only for a particular meridian. It is alike the word of life to the inhabitant of the extreme frigid pole, as well as to him who lives under the burning sun of the equatorial regions.

At this period there was no sea. The separation of the waters had not taken place, and yet our globe was in being, a shapeless mass.

We come next to the 6th, 7th and 8th verses of the first chapter of Genesis.

"And GOD said let there be a firmament, in the midst of the waters, and let it divide the waters from the waters. And GOD made the firmament, and divided the waters which *.* under the firmament, from the waters which *.* above the firmament; and it was so. And GOD called the firmament heaven."

The division or separation of the waters was therefore a work subsequent to the introduction of light. Whether the light here spoken of was accompanied by heat, the sacred historian has not mentioned, and it does not become us to be wise above that which is written.

The term heaven, is here used to denote a portion of the universe. We speak of Heaven, as the dwelling place of JEHOVAH, as the home of the blessed, as that celestial world, into which flesh cannot enter. I forbear to indulge my pen in discussing the place of the HOLY of HOLIES.

I continue my quotations from the record of the inspired penman, who wrote as he was moved by the HOLY GHOST.

"And the evening and the morning were the second day."

No solar orb, such as now known to our system, had assumed the dominion, which the darkness had acquired, but it was the light of the word of JEHOVAH.

At this period the waters must have become fluid, and covered the whole face of the earth, and as much as this is indicated by the various marine formations which we see and find in the excavations among our highest mountains.

Vegetable remains are found in the lowermost and most ancient stratas of the earth unmixed with animal remains.

I next quote the 9th and 10th verses of the same chapter and book.

"And God said, let the waters under the heaven be gathered together unto one place, and let the dry *.* appear; and it was so. And GOD called the dry *.* earth, and the gathering together of the waters called he seas: and GOD saw that *.* good."

Here we have the declaration of a fact, and the record of an event, we need not look beyond this. It is sufficient for us that it was an emanation from the lips of truth. It matters not, whether it accords with our philosophy, or that it is an act beyond the comprehension of the mind of feeble man.

The 11th, 12th and 13th verses of chapter 1, are as follows:

"And GOD said, let the earth bring forth grass, the herb yielding seed, the fruit tree yielding fruit after his kind, whose seed *.* in itself, upon the earth, and it was so. And the earth brought forth grass, herb yielding seed after his kind, and the tree yielding fruit whose seed *.* in itself after his kind, and GOD saw that *.* good. And the evening and the morning were the third day."

The solar orb had not at this period become a member of the celestial system, neither had the satelite of our earth, the Moon, been placed in the firmament.

Animal life, had not then become visible on our earth. Vegetable life had, however, commenced its germination, the seeds of which were in the Earth, the great terrestrial store house of Nature.

The shape of our Earth at this period, had not been influenced by the position of the Solar orb, or by the diurnal revolutions of the Earth upon its axis, or its annual revolution around the Sun.

From the commencement of the 14th to the end of the 19th verse, inclusive, is the history of the creation of the lights in the firmament of the Heavens, as follows:

"And GOD said, let there be lights in the firmament of the Heaven, to divide the day from the night: and let them be for signs and for seasons, and for days and years; and let them be for lights in the firmament of the Heaven, to give light upon the Earth, and it was so. And GOD made two great lights; the greater light to rule the day, and the lesser light to rule the night: *.* the stars also. And GOD set them in the firmament of the Heaven, to give light upon the Earth. And to rule over the day and over the night, and to divide the light from the darkness: and God saw that *.* good. And the evening and the morning were the fourth day."

The distinction in the 14th verse, first above quoted, from the 3d verse in the same chapter, previously quoted, is, that the former is spoken of the introduction of LIGHT, and the latter as the creation of LIGHTS. These '*lights*,' are declared to be for specified objects, viz: to divide the day from the night, for signs, for seasons, for days and years, to be lights in the firmament, and to give light upon the Earth; to rule over the day and over the night, and to divide the light from the darkness. Twenty-five hundred and fifty-three years subsequent to this period, 'the Sun and Moon stood still, and hasted not to go down for nearly a whole day." This extraordinary event, is recorded in the 10th chapter, 12th verse, of the Book of Joshua, and it is there mentioned, as being recorded also, in the Book of *Jasher*. This event was preceded by the falling of great stones, which caused great destruction of human life, and these stones are, in the same verse, called hail-stones. This latter account is in the 11th verse of the same chapter.

At this period, which is the begining of the Solar System, our Earth must have acquired a shape corresponding with its motion, and the waters have become influenced by the Sun and Moon, and thus the tides had a beginning.

Thirty two hundred and ninety-one years after the creation of Adam, our great common ancestor, according to Scripture chronology, the shadow of the Sun's going down, was brought backwards in the dial of *Ahaz* 10 degrees. This event is recorded in the 11th verse of the 20th chapter of 2d Kings.

Between these two events, a period of seven hundred and thirty-eight years intervened, and the first event was eight hundred and ninety-seven years subsequent to the commencement of the general Deluge.

The seasons are controled by the solar orb, the great treasury of Nature; the days and years are marked by its influence with unerring exactness, and the light of these bodies fill a vast firmament, and give light upon the earth. The light is divided from the darkness by the Sun and Moon, in accordance with the will of the GREAT CREATOR. In the beginning, or first day, light was divided from the darkness by the immediate act of JEHOVAH, here it is divided by the means he put in operation.

From the 20th to the 23d verse, both inclusive, I quote as follows:

"And GOD said, let the waters bring forth abundantly the moving creatures that hath life, and fowl *.* may fly above the Earth in the open firmament of Heaven. And GOD created great whales, and every living creature that moveth, which the waters brought forth abundantly after their kind, and every winged fowl after his kind; and GOD saw that *.* good. And GOD blessed them, saying, be fruitful and multiply, and fill the waters in the seas, and let fowl multiply in the Earth. And the evening and the morning were the fifth day."

Thus, animal life was made to succeed the placing of the solar orb in the centre of our system, which was to rule over the days. Vegetable life had preceded this epoch.

From the 24th to the 31st verse, inclusive, we have the history of the completion of all things, as follows:

"And GOD said, let the Earth bring forth the living creature after his kind; cattle, and creeping things and beast of the Earth after his kind, and it was so. And GOD made the beast of the Earth after his kind, and cattle after their kind, and every thing that creepeth upon the Earth, after his kind, and GOD saw that *.* good. And GOD said, let us make man in our image, after our likeness, and let them have dominion over the fish of the sea, and over the fowl of the air; and over the cattle, and over all the Earth, and over every creeping thing that creepeth upon the Earth. So GOD created Man in His *.* image; in the image of GOD created He him; male and female created He them. And GOD blessed them, and GOD said unto them, be fruitful and multiply and RE-PLENISH the Earth, and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the Earth. And GOD said, behold I have given you every herb bearing seed, which, *.* upon the face of all the Earth, and every tree, in the which the fruit of a tree yielding seed; to you it shall be for meat, and to every beast of the Earth, and to every fowl of the air, and to every thing that creepeth upon the Earth, wherein *.* life, *.* every green herb for meat, and it was so. And GOD saw every thing that he had made, and behold *.* very good. And the evening and the morning were the sixth day."

Before proceeding to remark upon the last foregoing quotation, I will quote the three first verses of the 2d chapter of Gen., as follows:

"Thus the Heavens and the Earth were finished, and all the host of them. And on the seventh day GOD ended His work, which He had made; and he rested on the seventh day from all His work which He had made; and GOD blessed the seventh day, and sanctified it: because, that in it He had rested from all His work, which GOD created and made."

This completes the brief history of the commencement of time. The Earth at first was without form, and void. The first change was in that of the Spirit of God, moving upon the face of the waters; the introduction of light, the dividing of the light from the darkness, the dividing of the waters which were above the firmament, from the waters which were below the firmament, the gathering of the waters together into seas, and the separation of the dry earth.

Here concludes the second epoch as to what pertains to primitive geology, unless we pass forward to the period denoted as the fourth epoch, when the Solar Orb and the Satalite of our Earth, were placed in

the firmament. The solar and lunar influence of which is great, upon all solids, as well as all fluids; therefore, we must concede to this period, a powerful change. If we look forward to the latter portion of the 5th and all of the 6th verse, of the 2d chapter Genesis, we shall find these words: "*For the* LORD GOD *had not caused it to rain upon the Earth, and * not a man to till the ground. But there went up a mist from the Earth and watered the whole face of the ground.*" It would seem by this language, that rain descended upon the Earth subsequent to the gathering of the waters into seas, and previous to the creation of Man. In the 10th verse of the same chapter, we find these words: "*And a river went out of Eden to water the garden.*" This is spoken of as an event subsequent to the fall of rain, which resulted from the ascension of a mist from the Earth, which rain was so abundant as to water the whole face of the ground, and thus become the primitive fountain of the river of Eden. Here, then, are other changes, which may have had an influence upon the material of our Earth.

The seventh verse of the same chapter, contains these words:

"And the LORD GOD formed Man, *,* the dust of the ground, and breathed into his nostrils the breath of life; and Man became a living soul."

Thus Man was of the dust of the Earth, an offspring, in his mortal frame, of the material world; but his soul became a living spirit by the breath of the Almighty being breathed into his nostrils.

The material world was a shapeless mass. The subsequent charges are stated with great brevity, but with particularity. We are unable to determine the consequence of these changes from what we now see, for the crusts of our earth are made up of aggregates, we know of no simple substance which predominates, and these aggregates are constantly acting upon each other, and producing new substances.

I see nothing in the Mosaic record, to contradict the opinion that our Earth had its existence long prior to the separation of light from the darkness, as recorded in the 2d verse, of chapter 1, of Gen., and I see nothing, therefore, to contradict the Plutonic and Neptunian theory. The material of our Earth is now influenced by heat, as well as water, and each, and both, are producing continual changes.

The interior of our Earth, is, without doubt, a sea of liquid fire, of more than 2,500 miles in diameter, and above its surface, is a region of cold, so intense, that all fluids known to us, would become solids.

Modern Geologists have introduced theories in reference to the substances which compose the crusts of our Earth, but I will not detain the reader to discuss them, with the exception of one, viz: the coal formation. This formation, they nearly all agree in pronouncing of vegetable origin, because, they say, they find vegetable remains incrusted by it, and imprinted and imbedded in it.

We might, with as much propriety, insist that water is of vegetable origin, for the reason that we find vegetable matter incrusted by ice and embedded in it.

I have examined a great number of coal formations, bituminous springs, oil springs, gas springs, &c.

Petrolium, in an intense cold climate, has all the properties of bituminous coal. The carburetted hydrogen gas, when condensed, forms the mineral oil, the mineral oil the gas, &c. Many earthy substances, dissolved in heated petrolium, would, on cooling, become chrystalized, and form an anthracite coal.

The bituminous Lake, in the Island of Trinidad, would, in the climate of the arctic regions, become a coal field. A similar Lake, in the province of Texas, is, in winter, so hard as to bear the weight of persons passing over it; in summer, it is almost fluid. If, in its fluid state, it should penetrate a bed of pressed hay, and remain in it for centuries, the hay would become chrystalized with it, and form a solid body.

Coal, therefore, is a production resulting from the internal fires of our Earth, and one of those bounties provided by the Creator, for the use of Man, in accordance with the progressive increase of his wants.

We speak of the age of the world, as from the creation of Heaven and Earth, whereas, we should reckon chronology from the creation of Adam, who was formed of the dust of a world which may have previously undergone such a change as the Scriptures declare our Earth shall at some period undergo, before man shall be awakened by the last trump, and put on the robes of immortality.

I will recur to this subject again, in the subsequent pages of this number.

E. MERIAM.

AMERICAN SALT.

To the PRESIDENT and BOARD OF MANAGERS of the AMERICAN INSTITUTE.

GENTLEMEN—When I had last the honor of addressing you, I concluded by saying that in the course of a few days I would lay before the public a farther statement relative to the fossil salt in Virginia.

I have not been able to do so as fully as I desired until the present time.

During the month of May last, I received from my correspondent at the Saltville mines in Virginia a letter from which I make the following extract:

"When we reached the salt rock at a distance of 220 feet from the surface, we still continued digging, say about 8 or 9 feet square for about 50 feet. We then quit digging and bored about 110 feet. When we quit the well entirely having gotten water in an auger hole at 214 feet and we believe it cheaper to work the water than raise the salt rock. We are not of opinion that we even got through the body of the salt rock, we think that we were still in it. Our supply of salt water still continues abundant and the specific gravity about the same; if any change it is increased. We have never required water enough to use for our manufactory to ascertain the increase of the quantity. We have no doubt but our well would supply enough to manufacture from three to five times as much as we make.—Our Salt Water when first first drawn from the well looks clear, but we are aware there is sediment in it of sulphate of lime and have it drawn into large cisterns where some portion of the sediment settles. When drawn into the kettles it appears to be as clear as any lime stone water, but after being boiled a while, or pretty highly heated for some time, it becomes very clear, and is the most transparent and beautiful water I have ever seen, much surpassing any other water I have met with that has passed through the same process."

I have received during the present month another letter from my correspondent dated December 13th, 1843 in which he says:

"Nothing new has taken place with us. Our wells continue pretty much the same, no new ones have been dug, the old ones being sufficient to supply double the demand we have for salt.

My correspondent in his letter of May 24th, 1843 states that he had received the Diploma awarded to the house of FINDLEY, MITCHELL & Co., in which he is a partner, by the American Institute, at their Fair in October 1842, and adds that it is very beautiful.

Saltville is on the north fork of Holstein, which discharges its waters into the State of Tennessee, and the town is situated a long distance inland, and in a mountainous country. Nature in the profusion of her bounties has placed for the use of man this mineral salt treasured up in its great terestial storehouse in remote places where it may be needed as the human family extend their settlements in the wilderness regions and in exact proportion as the wants of the human family are increased the means of supply are developed to satisfy this demand.

It is a singular fact that in the perforating of the earth as stated to the depth of 414 feet no water should be found while in the prefaration at a distance of but 40 feet, it is found in great abundanee at the depth of 214 feet. My opinion is that this volume of water will increase precisely in the same ratio, as it is drawn from the well for the reason that every gallon of water must displace about three pounds of salt rock, and the water will fill the place of the displaced mineral.

During the present year a well has been sunk in the town of Galen in the County of Wayne, in this State, near the Cayuga Marshes, the location is 54 rods south of the Great Canal leading to lake Erie, six miles west of Montezuma, about 40 miles west of Syracuse, and about 18 miles from the waters of Lake Ontario.

I have received from my correspondent Mr. John Mead, the gentleman who sunk the well, two letters in reference therto; and also a bottle of salt water raised from the well, which has been sunk to the depth of

330 feet. Also a sample of salt, and some specimens of a chrystalized substance, which is continually forming in needles in the well. The water is of great specific gravity, weighing about 11 lbs. to the gallon. I have not had time to analyze the water, but will do so, soon. The last fifty feet passed in boring this well, the auger struck several stratas of mineral salt. These stratas were thin. Thus we have at length obtained the fossil salt in this state, and I have no doubt that the supply of this mineral below the surface of that region of country in and round about Wayne and Onondago will be found to be inexhaustible. The water raised from the well yield 3 lbs. salt per gallon.—Mr. Findley one of the proprietors of the Saltville mines, in his letter to me of Dec. 13th, 1843, says:

"The water Mr. Mead has procured must be fully equal, if not superior, to ours.—Ours is, so far as I have been able to ascertain, the best ever found, until Mr. Mead's. I presume from the account we have of his, there can be but little, if any difference, in the specific gravity of them."

Mr. Findley will forward to me a bottle of the water of the Saltville wells and also speciments of Salt Rock, Clay stratas, Plaster &c., &c. Saltville is far from this, and inland, and intercourse in winter much interrupted, therefore some time will elapse before these come to hand.

Mr. Findlay has sent me a printed communication of C. B. Hayden, Esq., of Abingdon, Va., addressed to the Editor of the Abingdon Banner, a paper published near the Salt Mines. The Editor of the Banner, accompanies this communication with prefaratory remarks, in which he says: "We may venture to state, upon the authority of Governor Campbell, that Professor Rogers, who is intimately acquainted with Mr. Hayden, regards him as an accomplished geologist."

"The Salines of the Holston, are in the shales belonging to the lower portion of the *carboniferous* series. These Salines, therefore, occupy a medial geological position in relation to the other Salines of the United States. Those of Kanawha, and the West generally, being higher up in the carboniferous rocks, and those of New York, according to *Messrs. Conrad & Vanuxem, belong to the Wenlock limestone group, of the Silurian system. With the exception of the Brine Springs, near Durham, (which are also in the carboniferous rocks,) they are, (geologically,) lower than those of Europe. These Salines are situated in a valley, the bounding hills of which here assume an amphitheatrical arrangement, rendering the topography highly favorable, by its drainage, to the formation of those subterraneous reservoirs of water, which, by solution of the Saline matter of the adjacent strata, furnish the wells with brine, and to this local topography they are indebted for their copious, constant and uniform supply. This amphitheatrical valley, to which the discovery of brine has been confined, is about ½ of a mile in breadth, and one in length. The centre of this valley, consists of an earthy alluvium, with a few interspersed pebbles and small boulders, forming a flat, through which the salt wells are sunk. This alluvium is generally from eighteen to twenty feet in thickness, and reposes immediately upon the gypseous rocks, which are here in an advanced state of decomposition, consisting generally, of blue and red clay, derived respectively from the blue and red shales with which the gypsum is associated. Undecomposed rocks are rarely met with *in situ* in the wells and borings, The existence of Salt Licks and Salt Springs, induced a successful search for salt water, early in the history of the country, but it is understood that the wells were shallow, and the brine both weak and limited in amount, although sufficient to meet the then limited demand. † The wells of the present establishments, are six in number, but two of which are now in operation. The wells vary in depth from 200 to 386 feet. All the wells at the present site, are within an area of 300 feet; to this area and the original wells, one mile northeast of the former, the discovery of salt water has been confined. The same general section is presented in all the wells and borings; the upper eighteen or twenty feet, consisting of the before mentioned alluvium, to which succeeds alternating strata of red and blue clay, and gypsum, the latter generally predominating, and which continue to the depth at which water is found, usually about two hundred feet. Throughout the valley already described, gypsum is found at the general depth of from eighteen to twenty feet. Further East the gypsum crops out, being underlayed with blue and red shales; immediately overlaying the gypsum, is a fœted crystalline limestone, of a dark color and quite cellular, the cells being filled with crystals of carbonate of lime. At times the gypsum is separated from this rock by a thin seam of black pyritous slate. The gypsum is laminated, the plane of lamination having a general parallelism with that of its dip, which corresponds with that of the associated rocks, which are here highly inclined, showing that the deposition of the gypsum, was anterior to the present disturbed condition of the rocks. The exposed portion of the gypsum, is from twelve to twenty feet in thickness. The gypsum, unlike that of New York, is a pure sulphate of lime, sometimes chrystalline, sometimes granular, usually white, except when exposed to infiltration from the shales, when it has a slight ferruginous tinge, which is usually the case in the upper part, which is also more distinctly crystalline. Occasionally it contains thin seams of a dark smoky color, and sometimes radiating crystals, of the same hue. Running through the mass, are frequently seams of beautiful fibrous gypsum. Well defined plates of selenite, are rare. Gypsum, of this general character, occurs over a region of country, of about half a mile in breadth and fifteen miles in length; it is generally worked to the depth of from twelve to twenty-five feet, without being passed through; at several localities, it has been ascertained to extend to the depth of two and three hundred, and in one case, over four hundred feet.

In 1840, in sinking a shaft at Saltville, after passing through the usual thickness of alluvium and alternating strata of red and blue clay and gypsum, nearly forty feet of which was solid gypsum; salt rock was met with at the depth of two hundred and twenty feet, and continued to the bottom of the shaft, two hundred and seventy-three feet, and was ascertained, by boring, to extend to the depth of three hundred and eighty-six feet, without being passed through. In this well no water was met with. Nothing is known respecting the shape or extent of this deposit, except what is learned from the above mentioned shaft, that it is there over one hundred and sixty-six feet in thickness; it is, however, local in some directions, as it is not found in the neighboring shafts: if, however, as most probably it is, the source of the brine which has been worked for so many years, undiminished in strength and quantity, it must be quite extensive. Much interest is imparted to this salt, by its being the only fossil salt yet discovered in the United States. The salt is irregularly intermixed with red and blue clay, and small fragments of shales; the salt usually predominating, occasionally the former are absent. These impurities, mechanically intermixed with the salt, were found to be much more abundant in the upper portion of the salt, which, when the borings were discontinued, was almost entirely free from impurities. The salt is compact, semi-crystalline, generally of a deep ferruginous color, though occasionally of a delicate flesh tint, and more rarely it is entirely free from coloring matter. The planes of the shales intermixed with the salt, have not that parallelism with each other, which gravity would impart to them, if deposited under quiet circumstances, and their irregular distribution through the salt, making with each other every conceivable angle, indicates an agitated condition of circumstances, at the period of their deposition. Gypsum is occasionally interlaminated with the salt, and sometimes occurs in it in fibrous crystals, more or less impregnated with salt. The salt is *anhydrous* and nearly a pure chloride of sodium as the following analysis will show:

Peroxide of Iron,	0.470
Sulphate of Lime,	0.446
Chloride of Calcium,	a trace
" of Sodium,	99.084
Total,	100,000

The local occurrence of a fault, the generally disturbed condition of the rocks, and the anhydrous nature of the salt, all argue the action of heat cotemporaneously, or subsequently to the deposition of the latter. Not having freshly quarried specimens, I have been unable to ascertain whether the

* Vide State Report, for 1841.

† Saltville, Washington County, Va.

gypsum overlying the salt, or that associated with it, is anhydrous. The solution of this rock salt, is undoubtedly the source of the brine, which, like that of Droitwich and Cheshire, derived from the solution of fossil salt, is saturated. This origin of the brine, will explain its general uniformity, in strength and composition, in the different wells, when unaffected by infiltrated fresh water, as well as its slight variation in strength, by continual working; it being well known that when the salt exists in the rocks instertially, the brine is soon weakened by the exhaustion of the saline matter, rendering it necessary to deepen the shafts from time to time. Does not this origin explain the singularly low temperature of the wells? which, in one of them, is the same as that of the Springs of the vicinity, and in the others, but one or two degrees above them. The temperatures of the respective wells, are as follows:

Anthony's Well,	226 feet	
in depth,	- - -	54½ deg.
King's Well,	206 feet	
in depth,	- - -	53½ deg.
New Well,	214 feet	
in depth,	- - -	55½ deg.
Mrs. Preston's Spring,	- -	53¾ deg.
(Average temperature of Springs of the country.)		
Springs at Salt works,	-	52½ deg.

This slight elevation of the temperature of the wells, is less than is due to their depth, and may, perhaps, be owing to the refrigerating effects of saline solution. The brine differs in composition from the rock salt only in the absence of the peroxide of iron, and its containing a larger proportion of sulphate of lime; the former existing in the rock salt in the state of an insoluble peroxide, is not dissolved, and the latter is derived from the associated gypseous strata. The annexed analysis, is of the brine of the New Artesian Well, bored a few months since to the depth of two hundred and fourteen feet, water having been obtained at the depth of one hundred and ninety-three feet:

1,000 grains of the brine, contains.	Chloride of Sodium,	240,52
	" " Calcium,	000,08
	Sulphate of Lime,	005,35
	Water,	754,05
	Alumina,	a trace

This brine, therefore, contains about 25 per cent. of solid matter, 24 per cent. of which is pure chloride of sodium, the richest of the New York brines, according to Dr. Beck, contains but about 15 per cent. of this ingredient, which is also associated with the Magnesian Salts, in addition to the other ingredients contained in this brine. A wine pint of this brine, yielded of saline matter, 2432.25 grains, equal in a gallon, to 19,458 grains, or 2.77 avoird pounds; therefore, by the ordinary process of direct evaporation, hereafter to be described, eighteen gallons of the brine will produce one bushel of salt, weighing fifty pounds. As the object of this experiment was to determine the practical value of the brine, the salt was not reduced to absolute dryness, but to the ordinary dryness of the salt of commerce. The annexed table from Van Rensselaer, with Dr. Beck's additions, to which I have added the result of my experiments upon the Holston brine, will afford a comparison of the strength of the different brines of the United States. At Nantucket, 350 gallons of sea water, yield one bushel of salt.

Boon's Lick, (Mo.)	450	gallons of brine give 1 bush. salt.	
Conemaugh, (Pa.)	300	do.	do.
Shawneetown, (Ill.)	280	do.	do.
Jackson, (Ohio)	213	do.	do.
Lockharts, (Miss.)	180	do.	do.
Shawneetown, (2d saline,)	123	do.	do.
St. Catherines, (U. C.)	120	do.	do.
Zanesville, (Ohio)	95	do.	do.
Kanawha, (Va.)	75	do.	do.
Grand River, (Ark.)	80	do.	do.
Illinois River, (Ark.)	80	do.	do.
Muskingum, [Ohio]	50	do.	do.
Onondaga, [N. Y.]	41 to 45	do.	do.
Holston, [Va.]	18	do,	do.

The entire absence from this brine, of the Magnesian Salts, so prejudicial in other brines, and the extremely minute proportion of the other salts present, precludes the necessity of those preliminary operations practised at other works, for the separation of these impurities. The water is first pumped into large reservoirs, where the impurities, held in mechanical suspension, are deposited, it is thence conveyed to the kettles and evaporated by rapid ebulition. As the salt is deposited, it is removed in wicker baskets and suspended over the kettles, until it is dry. The kettles are cast iron segments of spheres, of a general capacity of forty gallons; these are arranged in pairs, in parallel rows over an oblong furnace heated by wood, the heat being applied directly to the bottom of the kettles. In the arrangement of the kettles, and the construction of the furnace, little regard is paid to the economy of fuel or heat. By this direct evaporation at this high temperature, salt of a superior character is expeditiously made; but the process is attended with the serious inconvenience of the formation of a hard saline incrustation on the bottom of the kettles, owing to the intense heat to which the salt, as it is deposited, is subjected. This incrustation, called by the workmen, blocking, is sometimes fused into a vitreous mass, and is generally chrystalline, adhering with such tenacity to the sides of the kettles, that the pickaxe is required for its removal. This blocking, by the necessary interruption for its removal, and the rapidly increased corrosion of the kettles, caused by its protecting them from the cooling influence of the water, to acquire a temperature destructive to them, becomes a serious expense.

That this incrustation is not owing to the deposition of the more insoluble impurities of the brine, as is generally supposed, will be seen from the following analysis of two specimens, selected by the proprietors, as representing the average character of the blocking, which these analysis show to be nearly pure salt. The specimens were of a snowy whiteness, compact, hard, laminated, highly crystalized and anhydrous:

	No. 1.	No. 2.
Carbonate of Lime,	0,126 grs.	a trace
Sulphate of do.	9,314 "	4,892
Chloride of Calcium,	0,050 "	.064
" " Sodium,	90,510 "	95.044
Total,	100,000	100,000

The annoyance and expense of the blocking, would, I conceive, be entirely obviated by evaporation at a lower temperature, which would also improve the character of the salt; as the slower the evaporation, the more perfect the crystallization. At Cheshire, where the brine is similar to this, the water is evaporated at a temperature below ebullition in shallow-wrought iron pans, of an area of from eight to twenty square feet, which last for several years. A pan of this description, brought over from England by the Hon. Wm. C. Preston, was burned out in a few years at Saltville. The requisite low and uniform temperature, could be readily attained by the use of either steam or hot water, as a heating agent, applied in the manner so frequently done in the manufacture of sugar, and similar departments of the arts. This modification in the manufacture, besides avoiding the blocking and improving the salt, would econimize fuel, and the latter consideration should urge itself with serious force upon the proprietors, occupying as they do, a region whose forests must soon be exhausted, and whose geology forbids the hope of the discovery of coal.

A large proportion of the salt manufactured at Saltville, is made by the process of direct evaporation, already described. A whiter and purer salt is made, by first concentrating the brine in a wooden cistern, through which steam is conducted in a cast iron pipe, which sufficiently concentrates the brine to produce a deposition of most of the sulphate of lime; the concentrated brine is then conveyed to the kettles and evaporated, as in the other process. The salt thus manufactured is purer, more distinctly crystalline, and has a white satin lustre.

The following analysis of the two varieties of salt, will show the difference in their composition:

No. 1, is the salt made by the last described process.

No. 2, is that made by the process of direct evaporation, first described.

	No. 2.	No. 1.
Sulphate of Lime,	1,820 grs.	1,444 grs.
Chloride of Calcium,	.034 "	.016 "
" Sodium,	98.146 "	98.540 "
Total,	100 grs.	100 grs.

The two establishments at Saltville, manufacture annually, two hundred thousand bushels of salt.

I have received from Thomas Spencer Esq., the former Superintendent of the Onondago Salines, the Western State Journal containing the following:

opinion with the f econo- ess was discover d expen- y failed. the Re- ıd cords, ay, and land are annum ks. By ion, an ntly at- ply the surface, bject of or thirty olve the all un- rifice of . The bject in evolved n, was of each on the was but nd that h kettle ginning,

sults of , either ering it s. JNO. OLTON mmer es the es, as e, so ks of nged tain- first e a ront ow- is he u- o- re e s

fication and generates or invites carbonic acid gas.

A letter from an officer of the U. S. Army dated East Washita, Red River, August 25, 1843, published in a Cincinnatti paper contains the following statement:

"I informed you in a hasty letter of my departure from Fort Gibson to overtake Captain Greene. We travelled about seventy miles up the north side of the Arkansas, where the 'cross timbers' come against that stream. These cross timbers got their name from being a continuos belt of timber, of twenty or thirty miles in width, running north and south, from the Red river to the Arkansas, and some distance beyond it, separating the grand prairies of the West from the east side of it. It is composed of black-jack oak, principally, and filled in with grape vines and plum bushes, making the passage of it very difficult for the most part. We crossed the Arkansas river above this, and kept up the south bank until we came within one hundred miles from Fort Gibson we came to the great Salt plain.—This was one object of our journey, and the sight was truly gratifying. The bed of the river (the Nescutanga) was widened, being near six miles in width, and ten in length; the river running by one side of it, through a small channel in the sand, while this upper plain throughout was covered with a crust of salt as white as snow. We approached it through sand hills, and when within four or five miles of it, the plain looked like an immense salt lake which had dried up and left the salt in its bed. We found the salt to have a local origin; it comes to the river in a creek which is very salt. This overflows the plain and leaves the water to chrystalize on the surface. Heavy rains will wash the salt away; but the overflow from the creek comes at the same time to bring more salt for chrystalization.

"Within two days' journey of the Great Salt Plain we came to the great salt rock, as it is called. We found it to be the bed of the Semirone, a stream south of the one the Great Plain is on, and is an immense spring of salt water, rising at the base of a high clay hill, and boils up over a space of 160 acres, chrystalizing as fast as it reaches the surface, forming a rock of salt all over the cove, so hard that we broke one mattock in vain attempts to get a mass of it. The holes where the water comes out are lined with salt as far down as the arm could reach.

"After leaving the salt region we turned our bridles homewards, came S. E. for two hundred miles, mostly on the south side of the Canadian. Here Capt. Boone separated from me to find our way to this post. He told us that he were about 100 miles from Fort Washita; it proved in the end to be much farther; and being misinformed by two Kickapoos, whom Col. Hasney (as we afterwards found out) had imprisoned at this post, we were led astray, and before we discovered our error ran out of provisions.—This was a severe blow to us all; yet we got in safely."

Mr. Mead in his letter to me of Nov. 10th, says:

"The well is sunk in the woods a few rods from the Canandagua outlet. The strata first passed was soil resulting from vegetable decomposition, three feet. Of clay and marl, forty six feet, containing brackish water.—Indurated clay and plaster 36 feet, here struck a vein of salt water which raised and ran over the shaft at the rate of about five gallons per minute, continued on in the same kind of rock 50 feet further, when I struck another vein of salt water. Double the quantity ran over the top of the shaft. The water tested 8 degrees. The point of saturation of the instrument is graduated to 25 degrees—it soon fell to 6 degrees—continued on in the same kind of rock (with now and then passing a strata of white earth or marl in passing which the water was rendered as white as milk) eighty three feet from the last mentioned vein, where the augur reached another vein of salt water and gas, which came up with great force and fury and increased the flow over the top of the shaft to 100 or more gallons per minute for about four hours, it then subsided and ran over but a very little and continued quiescent for 30 or 40 minutes and then recommenced rising and discharging with great force and still has periodical and occasional rising.

"At this point the augur dropped having, as I presume, struck a subterranean water course, of large volume and strong current, and of a specific gravity equal to the water of the Dead Sea, the current of which caused a visible vibration of the stem of the augur. Below this for 18 feet the rock appeared of a darkish colored gypsum, after this a strata of red rock 2 feet thick, and then the red rock again, which continued on for 90 feet. The last 50 feet the water increased in strength very fast. Passed a number of thin stratas of salt which were broken and raised up with the sand pump and mixed with the drillings. The water raised in the sand pump, was, at this point 25 degrees or full saturation and yielded 3 lbs. salt to the gallon.—The temperature of the water is 52° of Fahrenheit."

Mr. Mead in his letter to me of December 9th states that the Cayuga Marshes are 14 miles long, and from 6 to 7 broad, and contains about 63,000 acres. These marshes are wet. Cattle however, graze upon them in summer. The Lakes of Cayuga Seneca, and Canandagua have their outlet through these marshes. There is about 152 feet of fall from the head of these marshes to the waters of Lake Ontario. The well is five miles from the village of Clyde. No limestone within ten miles. No mineral Coal, petroleum or mineral oil. Sulphur Spring near by. Carbureted hydrogen gas issues from a salt well recently sunk at Clyde. Iron ore abundant about 16 miles distant. No sand stone. Boulders weighing from half a ton to 4 tons, scattered over the surface upon the high grounds near the marshes.

You will perceive by this the importance of a continuance of the present duty on foreign salt. This duty will afford a protection to those who may make larger outlays in the bringing into use the mineral salt of our own country.

I have received from the HON. JOHN C. SPENCER, Sec. of the Treasury Department of U. S., a letter dated Washington City, December 27th, 1843, containing a statement of the importation of salt into the United States in the year 1842.

Import 1842, 6.178.743 bushels of 56 lbs. to a bushel, valued at $841.682. The accounts for 1843 are not yet made out.

The import of foreign salt into the port of New York in 1842 from January 1st to November 30th inclusive, is 1.511.609 bush. Import in 1842 in corresponding months 1.568.920 bushels.

I shall be obliged to close this communication without finishing the subject. I will resume it again.

EBEN MERIAM.

47 ORANGE STREET, BROOKLYN, Dec. 29th, 1843.

NEW YORK MUNICIPAL GAZETTE:

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VOL. 1. NEW YORK, APRIL 9, 1842. No. IX.

IMPOSITIONS.

WE give below the Memorial of ANSON G. PHELPS, Esq., one of our most estimable citizens, and also a part of the papers attached thereto, the others will be found in the previous numbers of this volume on the page to which he refers.

Some of the property of Mr. Phelps *is assessed to such an extent that the interest of the assessment nearly equals the value of the land assessed!!!*

From Senate Doc. No. 100, *p.* 306.

Memorial of Anson G. Phelps, for an investigation into the proceedings relative to an assessment.

To the Honorable the Legislature of the State of New York.

The undersigned represents to your honorable body, that he is the owner in fee of certain lands on the island of New York, situated between the Third avenue and the East river, and between Twenty-eighth street and Fortieth street, as laid out by the commissioners appointed by the act of the Legislature of the State of New York, passed April 3, 1807, which land is under cultivation.

The undersigned also represents that divers public officers appointed by the Supreme Court of the State of New York, or some of the Justices thereof, and divers other public officers appointed by the common council of the city of New York, or claiming to be so appointed, have, under the color or pretext of law or authority, imposed various and large assessments upon the said lands of the undersigned for pretended public improvements, which assessments, exclusive of interest, amount to the sum of five thousand five hundred and sixteen dollars and seventy-one cents, as per bills of the corporation collector hereto annexed.

The undersigned states, his said property is in no respect benefitted by the said proceedings, and should not be thus imposed upon.

The undersigned further represents, that the proceedings here complained of, were wholly unauthorized, and therefore illegal, and consequently void, yet his Honor the Chancellor of the State does not feel himself authorized to interfere and arrest the proceedings, but has stated, in an opinion he gave in a somewhat analagous case, that legislative interference is a proper remedy. The case alluded to by the undersigned, is that of Meserole *vs.* the Mayor, &c. of Brooklyn, recently decided in the Court for the Correction of Errors. The undersigned therefore complains to your honorable body, that the proceedings of the said officers, in the present instance, is an attempt to take private property for public use, without making just compensation therefor, and is therefore a violation of the constitution of the State, and such a violation as calls for legislative interference.

The Supreme Court having already been actors in some of the preliminary and also in the subsequent proceedings, are not a proper tribunal to review their own acts, and leaves the question almost without jurisdiction, except in the Legislature of the commonwealth.

The sacredness of private property is involved in the fundamental principles upon which all good governments are based, and without this, liberty would exist but in name. The value of real estate depends upon the goodness of the title and the security guaranteed to that title by the government of the people.

Some of the property of the undersigned is assessed more than double its actual value, and even the interest on the assessments approximates nearer to the actual value of the ground assessed, than the amount of the assessment itself. Such a state of things as these abuses complained of, is a great public evil, as well as individual wrong, and operates more to depreciate the value of real estate on the island than any other cause.

When public necessity makes it necessary to take private property for public use, full compensation is always expected to be paid, and by no good government ever is withheld, and as such ought to be looked for when public convenience requires the taking of private property for public use; but in the absence of both these, there should be no power given to invade private property, without the consent of the owner.

The proceedings of which your memorialist complains, are of an extraordinary character and are matters of record.

The annexed printed papers, on pages 40, 41 and 42, contain a full history of the proceedings of the board of assistant aldermen, the board of aldermen, and of the mayor of the city of New York, in the years 1835 and 1836, in this matter, by which it will be seen that the section of the island designated as "all the streets and avenues up to and including Forty-second street, not previously opened by due course of law, or by deeds of cession," were to be proceeded in with by one set of competent commissioners, instead of the practice theretofore practised of opening single streets, or small portions of streets in detail. The street committee estimated that the whole proceedings would not cost more than about five thousand dollars, and they calculated by this mode of proceedings "*nineteen twentieths of the expense* usually made in proceedings with single streets in detail, would be saved, and besides the lots would not be assessed but once for opening a street or part of a street or avenue."

The proceedings adopted by the common council and approved by the mayor, did not authorize any application to the Supreme Court for the appointment of commissioners of estimate and assessments. The affidavit of Benjamin Townsend, Esq. chairman of the street committee, which is hereto annexed states that fact.

The undersigned represents that it appears, from the official documents on file in the office of the clerk of the Supreme Court, at Albany, that application was made to the Supreme Court for the appointment of *eighty-one* commissioners of estimate and assessments, being twenty-seven sets instead of one set, as was the only decision of the common council, and the said *eighty-one* commissioners were accordingly appointed by the Supreme Court, and of which the owners of the property to be affected by it were not informed, the application being entirely *ex parte*. Many of the persons thus appointed were incompetent to perform the duties assigned them; this is a fact of general notoriety, and is admitted by the corporation officers. These appointments took place in 1836, and the reports of these said commissioners have been from time to time presented to the supreme court, and have been confirmed by that tribunal. In the presentation of the most of the reports, no such notice as is required by the ninth section of the act passed April 20th, 1839, and no such taxation of the costs and expenses as is required by the twelfth section of the said act, were ever given or made. Thus the whole proceeding from beginning to end has been *ex parte*, and without notice to the parties interested, whose estates were to be affected to the extent of hundreds of thousands of dollars.

The lands of the undersigned are so situate, that both the streets and avenues, as laid out by the commissioners under the act of 1807, intersect and pass through them and take up as much of his land as would equal his full quota to contribute; and had one set of commissioners, of competent abilities, proceeded in this business according to the only plan of the common council, the assessments of the lands of the undersigned would have amounted, in all probability, to less than one hundred dollars in all.

The making of costs, fees and expenses, to fill the pockets of the commissioners, attorney, surveyors, &c. was the motive which prompted the extraordinary proceedings complained of; the attorney's bill alone amounts to somewhere about twenty thousand dollars, as appears by document No. 71, in the hands of the select committee of the Senate. Many of the assessments in this district, as now made, are in effect a total confiscation of the land.

The undersigned also states that he apprehends that his said lands are probably heavily assessed for the pretended opening of Twenty-ninth, Thirtieth and Thirty-ninth streets, but to what amount he is unable to state.

The proceedings in relation to Twenty-ninth and Thirtieth streets, in addition to the other proceedings complained of, are also of an extraordinary character, and he refers to the printed statement annexed hereto, page 45, first column, for the objections made by two citizens interested, to the confirmation of the report of the commissioners, and notwithstanding said objections, the court confirmed the said report.

Subsequent to the confirmation of these two

have in consideration of the public inconvenience, denied the application, and the law does not allow of any appeal from such decision, however large the amount involved, or however aggravated the circumstances of the particular case. For such a state of things, the undersigned asks your honorable body, in their wisdom, to provide a remedy.

The undersigned respectfully submits to your honorable body whether the doctrine of public inconvenience thus set up by the Court shall be paramount to the majesty of the laws and the stern demands of justice, and the sacredness of private property.

With all due respect to the opinions of the learned Judges of the Supreme Court, the undersigned is constrained to say that they have taken an incorrect view of the question, as in the opinion of practical business men, who are conversant with the public and private interests of the city, the value of one hundred and fifty millions of real estate, which the city assessors return as liable to taxes, is affected injuriously to an extent by such proceedings as there complained of—to such an extent as to amount to a great public calamity, producing great individual suffering and injustice, and producing a depreciation in the value of real estate amounting to tens of millions of dollars.

The undersigned takes leave to call the attention of your honorable body to the former laws, which were in force previous to the year 1800, in relation to public improvements in the city of New York, as being more guarded and more cautiously framed, and as affording more adequate protection to private property, and affording less opportunity to public officers to depredate upon the property of owners of real estate.

The undersigned states that in addition to the large assessments imposed on his said land, that all of his said land which lies in the streets and avenues has been taken for the same, and no award or compensation made therefor.

The undersigned further states that the streets and avenues for which the openings of which the assessments have been made have not been opened, and will not be improved for a great many years to come, and probably not until the interest of the assessments will greatly exceed the value of the land. The undersigned conceives that it is important such action be had by the Legislature in the premises as will prevent expensive and vexatious litigation.

And as in duty bound, &c.

ANSON G. PHELPS.

The street committee to whom was referred the annexed papers from the board of aldermen relative to fixing the time for the actual opening of Twenty-ninth and Thirtieth streets, respectfully report: That they have considered the same, and recommend a concurrence with the board of aldermen in their resolution.

CHARLES J. DODGE,
ALFRED ASHFIELD,
WM. SHALER,
Street Committee.

(Endorsed.)

Report of the street committee relative to fixing the time for the actual opening of Twenty-ninth and Thirtieth streets.

Board of assistants, January 31, 1842.—Adopted and concurred in.

EDWARD PATTERSON, Clerk.

Approved February 4, 1842.

ELIJAH F. PURDY, Act. Mayor.

Correct. D. T. VALENTINE, Ass. Clk. C. C.

City and County of New York, ss.

Benjamin Townsend, of the said city, being duly sworn, deposes and says: That he was an assistant alderman representing the Fourth ward of the city of New York, from May, 1835, to May, 1836, and was chairman of the committee on streets in the said board; that on the proposition for opening the streets and avenues in the said city, up to and including Forty-second street, except such as had been opened, &c. being referred to the said committee, the said committee, and this deponent particularly, took great pains to investigate the expenses of opening streets, and the amount which might reasonably be expected to be saved by prosecuting the said opening up to Forty-second street, in one proceeding; that with this view it was stated to all who appeared before the said committee while the subject was pending before them, (they having given public notice requesting persons interested to appear and present their views) that it was the object of the resolution to have the whole of the said streets and avenues opened in one proceeding, one application to the Supreme Court, and by one set of commissioners; and that a ward map of the Sixteenth ward, which extended to Fortieth street, had been ordered to be made, and also a grade map of the said ward, and that therefore there would be very little expense for surveying and opening the said streets; that this deponent ascertained this while investigating the necessary expenses of such proposed opening; that on such investigation the said committee ascertained to their satisfaction the necessary expenses attendant upon such proposed general opening, with the exception of the counsel fees and court charges; that this deponent was entirely unable to learn or ascertain how much those fees and expenses would be, or should of right be; and that in consequence of being thus unable to learn the extent of those expenses, the committee determined to take the subject of the court proceedings into the hands of the common council, and with that view, and for that purpose, they withheld from the said resolution, in reporting the same to the board, the usual clause which had been inserted in resolutions for street openings, directing the counsel for the corporation to take the necessary legal measures for carrying into effect the resolution; that the said resolution was reported by the said committee, and adopted by the said board, with the object, purpose and intent, as expressed by this committee, and as this deponent believes, understood by the whole board, of having the streets and avenues therein resolved to be opened, opened by one proceeding, on one single application to the court, and by a single board of commissioners of estimate and assessment; and that it was the intention of the committee, and of the board also, as deponent believes, that the counsel of the corporation should not by such resolution be authorized to apply to the

Supreme Court. And this deponent further says: That he has no doubt but that the said resolution would have been rejected without hesitation if it had been supposed or thought by the members of the board that the said streets and avenues, or any of them, were to be opened in detail by separate commissioners, and on separate applications to the Supreme Court for each street.

BENJAMIN TOWNSEND.

Sworn the 26th day of October, 1841, before me, D. CODWISE, *Master in Chancery.*

CLINTON HALL.

NEW YORK, Sept. 21, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

The chairman submitted a letter which he had this afternoon received from Hon. Robert H. Morris, mayor, &c.

The committee informed the memorialists they were ready to hear them further upon the matter complained of: whereupon

William M. Holland stated that it will much facilitate the inquiries of this committee by classifying. The subjects of complaint are:

1. That the corporation have imposed ruinous assessments on private property for uncalled for and unnecessary public improvements, which is a great abuse of their power or of their officers. It is a matter of inquiry, whether these abuses grow or spring from an infraction of existing laws, or from an imperfection in the law itself.

The assessment laws in this city are more arbitrary than any laws in any other country, under either the civil or common law. The few barriers in these laws have been disregarded; malconstructions have been placed upon those arbitrary laws, and many of the evils complained of have arisen from that cause; but those abuses have not been confined to any political party in power, but all have been equally loose in their constructions.

The street powers are first found in Dongan's charter of 1686, in second section of that charter. There is no power to lay any assessments for these streets or sewers; but that power was ineffectual unless the consent of the owner, or under some known law of the Province. Act of October 1, 1691, confirming that charter of Dongan, is in Smith and Livingston, for making streets, wharves, &c. Under this act the expense of lands taken for streets, was by general assessments on the whole city; so for sewers the assessments were to be upon all the houses of the city. This act was approved by William 3d, and continued to be the law until the year 1787.

Montgomerie's charter in 1730, is the next grant of street power, (p. 58, 59, Kent's Notes to Charter.

In 1697, 4,302 inhabitants was the population of the city; in 1731, 8,622; in 1756, 10,381, so that assessments upon all the houses or city at large, would be, in fact, upon all benefitted by the improvement.

Montgomerie's charter gives no power to take private property for streets, but it was done under the act of 1691, and by that charter no assessments, general or local, could be laid.

The act confirming Montgomerie's charter in 1732, closes all the powers with the foregoing charters of the corporation to open streets, make sewers and lay assessments, down to the period of the American revolution. The power to take private property for public purposes, streets, sewers, make the same, and lay assessments for the same, are all statutory grants, and are therefore subject to the action of the Legislature after the revolution. The first enactment for streets is act April 16, 1787, 1 Greenleaf, 441; 2 Webster, 92. (See Municipal Gazette, No. 1. p. 5.) This act follows the act of 1691. This and all previous acts require, that the corporation should attempt to treat with owners. The great importance of this attempt is, that it gives notice to the owner of the proceeding; and one of the greatest causes of complaint under the existing law is, that the proceedings are frequently gone through, or so far that the same cannot be prevented before the owner has any notice.

All proceedings for any matter relating to streets (except the opening or widening), are conducted by the corporation without the intervention of the supreme court, or the appointment of commissioners by any court; the assessment is confirmed by the corporation, and then becomes a lien on property assessed.

The first power to sell land was for filling up vacant lots for the preservation of the health of the city, was in 6th section of act of 1787.

To 3d April, 1801, (3 Webster, 126,) there is no act: on which day is passed an act for opening and regulating streets, reviving in effect the act of 1691. No power to sell yet, except for filling vacant lots. 2d April, 1806, (4 Webster, 514, 17th section,) extends the power to sell for assessments vacant lots, for pitching, paving and regulating *streets;* no power to sell for opening streets or sewers.

5 Webster, 155, act of 1307, for laying out the upper part of the city by commissioners—all above Houston street. The 9th section of the act first provides for the introduction of three commissioners in place of a jury; they must attempt to agree first, before such proceeding for opening streets. Down to this act of 1807, the jury of twelve men had existed from 1691. There was no power yet to sell for assessments for opening streets.

6 Webster, 518, in 1812, act passed almost identical with the act in revision of 1813, now existing law. This act introduced local assessments in place of general assessments, in discretion of Commissioners—no power to sell; (2 Revised Laws, 1813, 407.) This act requires in its true construction, that the assessments for benefit should be irrespective of the expense of opening the streets. It might be that a street opened through a bed of rock would cost more than the benefit to be derived from the making of such improvement to the adjoining land. The act itself shows such to have been the intention by providing that where the expense exceeded the benefit, the surplus expense should be assessed on an extended district, by three freeholders, different from the commissioners.

Section 259 of this act of 1813, contains a sweeping power to sell for *all* assessments; and is the present law, and the origin of it.

Laws of 1816, p. 114, the power to sell is made more explicit, and under that act the sales are now made.

The Supreme Court checked the proceedings, on the ground of being premature.

Kent's Notes on Charter, 283, 297, 310, 311, 330 and 331, the question of assessments was brought before the city convention, and there was a proposition to restore the old jury method.

Municipal Gazette, No. 1, p. 2; New York American, 30th Oct., 1829; showing that the convention deemed two great safeguards, to be in publishing all propositions for assessments, and imposing burthens on individuals, in all the corporation newspapers, and, in also publishing the ayes and nays, as is shown in the address of the convention. The corporation have not complied with these provisions. (See proceedings in the Common Council.) Municipal Gazette No. 3, p. 45; and they have from 1830, violated the law requiring those publications, by their constant practice.

Augustus could not extend the Roman Forum, because he could not compel a private citizen to sell his house. The power of eminent domain, the right to take private property is the highest power which can be exercised by any civilized government. And yet this power may be exercised by this corporation, without the petition of a single individual, and at any time when they may deem it for the public good.

In England, in cities, the streets are generally, if not entirely, opened under act of Parliament, and upon assessments of jury.

Municipal Gazette No. 5, p. 70; Vice Chancellor Hoffman's opinion, showing the laws in Boston, Philadelphia and Baltimore, in opening streets.

1. Upon those evils which have arisen from intrinsic defects in the law.

Up to 1839, no consent was necessary on the part of owners in the upper part of the city, laid out in 1807; but still, evils may arise under such petitions got up for the purpose.

Before such determination to open street, the owners on each side of street should have an opportunity to be heard before common council; the commissioners of estimate to give a 14 days' notice of making their assessments.

Another evil is an ex parte appointment of the three commissioners. Notice should be given of the intention to make such application. Are three commissioners sufficient? they have no regular office, or settled place of doing their business, and you know not where to go. A standing board of commissioners would be better. The mode of appointment is bad, it should be made here, by Supreme Court, Recorder, Vice Chancellor, or by the common council themselves.

3. The ineffectual notice of these proceedings before the commissioners is another evil. For opening streets out of that part of the city not laid out in 1807, the commissioners are not confined in their assessments to the streets, and may extend the same over a large extent of the city, and on property of which the owners would not think of examining the commissioners' report.

These commissioners are not obliged to meet together: it is sufficient they sign the report. The commissioners report can only be opposed in Supreme Court upon facts, and not upon opinions; they would not set aside an assessment as erroneous if fifty persons should swear that in their opinion it was erroneous.

Another evil is that the actual opening of a street may be suspended for fifteen months, but this actual opening is only an act in paper, for the street is not in fact opened and graded so as to be used for years.

It is erroneous to distribute in all cases, the amount of awards and expenses in the shape of assessments for benefit upon the land on each side, to half the extent of the next street; the statute only intended those owners should pay their actual benefit.

In streets graded, paved or repaired in the old part of the city, no allowance can be made for injury done to houses, in which the law is defective.

It is a grievance to impose these assessments entirely upon real estate. Many think the owners of large personal estate should bear some portion of the expense.

Another evil is in construction of sewers. No notice is required to be given of any part of the proceedings unless under the act of 1830 requiring the ayes and noes, &c. to be published; the corporation do in fact publish a notice, although not required to do so. Such an assessment is not and should not be binding unless notice be brought home to the person assessed. The whole proceeding is ex parte. No petition is required, or sometimes where it is made, it is upon the petition of persons no way interested in the property to be assessed.

As to remedies and appeals—

Should there not be some appeal from the decision of the Supreme Court, in cases of confirmation of commissioners' reports, in opening streets?

Should there not be some way devised for trying the question of the legality of the proceedings of the corporation? The Supreme Court have declined to examine the question of the legality of these proceedings upon certiorari, by reason of the great and important interests of the city, which may be affected; and leave the party to his remedy in ejectment, where the stake on the part of the owner is so great as to operate as a penalty. That where the application is in equity for an injunction, and the erroneous nature of the proceeding made out, the court has declined to grant the remedy sought, on the ground that the complainant had a remedy at law.

Another great error is, in the amount of the expenses in opening streets, surveyors' fees, &c. which have arisen in some instances, from the want of some proper auditing board.

The 300 petitioners pay one ninth of the taxes of the city; and of the previous year, were liable for one sixth of the assessments. 7,000 lots in this city were advertised for sale last year, and 30,000 lots advertised for sale this year, for payment of assessments. These lots are sometimes sold for 100, 200, 300, 500, 1000 and 2000 years. And in some instances, the property has been offered for sale on lease for the longest of those periods, and has not met with a purchaser who would take the same, and pay the amount of benefit assessed by three sworn commissioners.

On part of the memorialists, the following witnesses were produced and sworn: (see oath.)

John Leonard being duly sworn, says—he was one of the commissioners of estimate and assessment, in opening Second avenue from Twenty-eighth to Eighty-sixth streets; was associated with Henry P. Robertson and Andrew Mills. Mr. Robertson and the witness were the only two who did any work on such estimate and assessments. Mr. Mills was there once or twice. Mr. Mills may have been there oftener than that, but he never did any thing, except to sign the report. Mr. Mills may have been there three or four times, but witness does not recollect distinctly of his being there more than twice; there was work enough for him to do, if he had attended to it, and had been capable of doing it. Mr. Mills signed the report. He made the same charge for his services that was made by other commissioners; he received the amount of his charge from the comptroller of the city, through the witness. The witness was the chairman of the commissioners, and it was usual for the chairman to receive the whole of the compensation. Mr. Robertson's compensation was not received by the witness; but he believes it was received by his, Mr. Robertson's, assignee, Mr. Francis Fickett. The witness gave his receipt for such compensation, to the comptroller. The witness does not recollect distinctly, but thinks the report of estimate and assessment was confirmed about August or September, 1839. The witness always made it a practice to give all the notice in relation to presenting such report that the law required; and in order to make sure of that, the witness consulted with Mr. Emmett, the corporation counsel, who then had charge of those street proceedings. The witness does not recollect that any notice was given of presenting such report, by posting handbills in the vicinity of the contemplated improvement; nor in how many newspapers the said notice was published; that was left to the counsel of the corporation, who then had charge of the proceedings.

At the time the witness made that report, he was not aware of the existence of any law which required such notice to be posted up in handbills.

The witness thinks the amount charged by each commissioner in that case was over seven hundred dollars, being about seven hundred and fifty dollars. The charge for room hire was a separate charge. The allowance to the commissioners is four dollars per day. None of the fees of the commissioners or surveyors were taxed previous to being paid to the witness's knowledge. Those fees were assessed upon the property supposed to be benefitted by the improvement. The fees were not paid until some time after the confirmation of the report. Mr. Robertson served the same number of days that the witness served. To make that report was a very long piece of work. From four to eight hours were considered a day's service; from five to six hours was the general length of time in a day. The room of the commissioners was in the witness's house. The report of the commissioners was drawn up by the witness. The witness examined the avenues so to be opened personally. The elevation of the ground on the Second avenue between Twenty-eighth and Eighty-sixth streets, was very irregular, some points very high above the city grade, and the soil rocky, and some points wet and below that grade. On some parts, it would be exceedingly difficult to reduce that avenue between those streets to the city grade, and would cost a large amount of money. The said avenue, when the commissioners went over it for the purpose of making their estimate and assessment, could not be travelled by carriages without being graded, by reason of its unequal surface. By awards, the commissioners understand the amounts due to the parties interested for the land taken. In making this assessment, the lots were estimated as to their respective value, in order to put upon each a regular per centage of the benefit to be derived. Corner lots were generally charged a third more than intermediate lots. In estimating the value of the lot, they took into consideration whether the lot was to be dug down or filled up, and upon ascertaining the value of the lots, a regular per centage was laid upon each, to the amount of the awards and expenses; so that the assessments for benefit equalled the whole amount of the awards and expenses. Such has always been the practice of the witness, and he has acted frequently as such commissioner of estimate and assessment. The witness recollects the old Kip's Bay road, which terminated near the line of the Second avenue, on a ledge or precipice of rocks, and that the same could not be travelled farther by reason of those rocks. If the witness owned land in the neighborhood of Kip's bay, he would not thank any body to open the Second avenue for his accommodation. If two commissioners done the work, it was always the practice to charge for the same compensation for the third commissioner, although he was absent. Witness always understood such to be the practice. The witness made out the bill in the case of Mr. Mills. Witness thinks he mentioned the case of Mr. Mills to Mr. Emmet the counsel of the corporation who had charge of these proceedings. JNO. LEONARD.

Adjourned to September 22d, 1841, at 7 o'clock, P. M.—*Senate Doc. No.* 100, *p.* 28.

Martha Amory and others *vs.* The Mayor, Aldermen, &c. of the City of New York.

This case is, in its leading particulars, similar to that of Stuyvesant vs. The Corporation, before noticed. It is distinctly charged as to the proceedings in relation to the Sixth avenue, that when the first publication of the notice of motion to confirm the report was made the act of 20th April, 1839, was in force the rule of confirmation being made on the 6th of June, 1839. Here also the question under the 12th section is of great importance as the costs of the opening exceeds $10,000. Some questions may arise under this section; but this at least is clear: no part of the costs can be levied upon the party or his property, nor can a sale be made to pay them until the taxation has been made.

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MORTGAGEES.

The following Memorials to the Legislature show the very great importance of the enactment of a law to prevent mortgagees being divested of their securities by want of proper notice of sales made of the mortgaged premises for taxes or assessments. In every part and portion of this State, *except the city and county of New York*, the purchaser at an assessment or tax sale, is obliged to give notice to the mortgagee of a sale and purchase of the mortgaged premises for taxes or assessment, and the mortgagee has the right to redeem within six months thereafter by paying the tax or assessment, interest, and expenses, &c. &c.

In the city of New York, there is one hundred and fifty millions of dollars in value of real estate returned by the assessors, which is now UNPROTECTED.

Property on the ocean can be insured against piracy and plunder, but no companies have ever been incorporated to insure real estate against the modern system of land piracy, miscalled assessments, which has depreciated the value of real estate, and decreased the safety of real estate securities.

In the year 1840, the Hon. the Legislature of this State, on the application of Wm. Bard, Esq., President of the New York Life and Trust Co., enacted the following most salutary law :—

An Act authorizing mortgagees to redeem real estate sold for taxes and assessments.

[Passed May 14, 1840.]

The People of the State of New York, represented in Senate and Assembly, do enact as follows :—

§ 1. No sale of real estate hereafter made for the non-payment of any tax or assessment shall destroy, or in any manner affect the lien of any mortgage thereon duly recorded or registered at the time of such sale, except as hereinafter provided.

§ 2. It shall be the duty of the purchaser at such sale to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with the interest at the rate allowed by law thereon, within six months after the giving of such notice.

§ 3. If such payment shall be made, the sale shall be of no further effect, and the mortgagee shall have a lien on the premises, for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per cent. per annum, in like manner as if the same had been included in his mortgage.

§ 4. In case the mortgagee shall fail to make such payment, within the time so limited, he shall not be entitled to the benefit of the first section of this act.

§ 5. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser" shall be construed to include assignees, and real or personal representatives, as the case may be.

§ 6. The notice required by this act may be given either personally or in the manner required by law in respect to notices of non-acceptance or non-payment of notes or bills of exchange; and a notatrial certificate thereof shall be presumptive evidence of the fact of such notice; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner, and with same effect, as is by law prescribed in respect to deeds or other evidences of title of real estate.—*Laws of New York, 63d session*, 1840.

During the session of the Legislature of 1841, the following memorial was presented in the Legislature for a repeal of that law as to the city of New York :—

Memorial of the Mayor, Aldermen, and Commonalty of the city of New York.

To the Honorable the Legislature of the State of New York :—

The memorial of the mayor, aldermen and commonalty of the city of New York respectfully represents—That by the act entitled "An act authorizing mortgagees to redeem real estate sold for taxes and assessments," passed May 14, 1840, it is made the duty of purchasers at sales for taxes and assessments, to give to the mortgagees of the premises sold, notice of such sale, in order that they may be enabled to redeem; and in case of neglect to give such notice, the mortgagees are not affected by such sale.

On sales for taxes and assessments in the city of New York, in case the premises are not redeemed within two years after such sale, by the payment to the purchaser of the amount of his bid, together with interest at the rate of **ten per cent.** per annum, the purchaser becomes entitled to a lease of the premises for the number of years at which they were struck off to him. At the last sale for assessments in the city of New York, the amount to be raised was ***three hundred and twenty-nine thousand dollars.*** This amount was assessed upon *six thousand* separate lots. In a great proportion of the cases, the amount charged upon each lot varied from ***two to six dollars.*** This is a fair example of the sales occurring in the city of New York every year. It will readily be perceived by your honorable body, that the expense of searching the records to ascertain the names of mortgagees will, in most cases, far exceed not only the interest to be received by the purchaser, but also the principal amount of the assessment; and the purchaser, in case of redemption, will lose the whole of this amount. In many cases too, it will be impossible where the lots are vacant, to arrive at any certainty from searching, by reason of the name of the owner being unknown. These difficulties and incumbrances thus thrown in the way of ***purchasers*** will render the sales nugatory, and disable the corporation from reimbursing themselves for advances which they are obliged by law to make. In consequence of the burthens thus imposed upon purchasers, and to prevent the entire failure of the sale above referred to, your memorialists were in that instance obliged to ***guaranty*** on their own part the giving of the requisite notices, in case the ***repeal of the law*** could not in the mean time be obtained; your memorialists well hoping that when the consequences of the provisions of the said law were made known to your honorable body, the same would be speedily repealed.

Your memorialists do therefore pray that the act above referred to may be repealed, and your memorialists will ever pray, &c.

By the common council.

ELIJAH F. PURDY, Act. Mayor.

Sam'l J. Willis, Clerk.

[*Doc. No.* 100 : *in Senate, April* 9, 1842.]

Which resulted in the following act :—

CHAPTER 170.

An ACT in relation to the redemption of land sold for taxes or assessments in the city of New York.—(Passed May 6th, 1841.)

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. In cases of sales of real estate for the non-payment of taxes and assessments in the city of New York, it shall be the duty of the street commissioner of the said city, sixty days before the time limited by law for the redemption of any real estate from the effect of such sales, to cause notice to be given to all mortgagees of the real estate so sold, their assignees or personal representatives, who shall at any time at least *one month* before the time for the giving of such notice, have filed in the office of the register of the city and county of New York, a memorandum of such mortgage, containing a brief abstract, designating the property, with the street numbers, if there be any, or such definite description or diagram as will enable the said street commissioner to designate the said premises upon the city maps, and the name and residence of such mortgagee, assignee or personal representatives.

§ 2. Such notice shall be given by putting the same in the post office in the city of New York, directed to such mortgagee, assignee or personal representatives, with such description and place of residence as shall be contained in such memorandum, and such notice shall require such mortgagee, assignee or personal representatives, to pay the amount of such tax or assessment with all interest and expenses allowed by law before the time limited for the redemption as aforesaid.

§ 3. An affidavit of the service of such notice as is above required, before any officer authorised to take affidavits to be read in a court of record and filed in the office of the said register of deeds, or a certified copy thereof under the signature of such register, shall be evidence of the fact of such notice.

§ 4. It shall be the duty of the said register of deeds to keep in his office a book alphabetically arranged for the registering of all such

tain the amount of the taxes due, and whether they have been paid or not by the mortgagor, which is increased by the distance of the mortgaged premises from the residence of the lender. And your petitioners further represent that the fact of a mortgage creditor having sustained a loss of over $8,000 for money lent, by a sale of the mortgaged premises for the sum of $24, by a collusion between the purchaser and the mortgagor; and also of other large losses on sales for taxes, taken in connection with the large funds loaned by the State in distant counties, exposed to similar risks, which furnish the fraudulent with opportunities of fraud, first attracted the attention of the Legislature to the necessity of enacting said law, and that the said law has had a benign influence in favor of the honest debtor and creditor, and as your petitioners believe, can produce no serious inconvenience to either.

And your petitioners further represent that other States, perceiving the beneficial effects of that law, for the promotion of the ends of justice, and for the purpose of inviting the introduction of foreign capital in their respective States, have adopted that law from the statute book of this State. And your petitioners are informed, and believe, that the honorable the corporation of this city have, by resolution, assumed upon themselves the duty of giving the requisite notice to mortgagees, under the said act of May 14, 1840, and to absolve the purchasers from all obligations arising under said law, as appears in the following notice published in the Evening Post:—

"We are requested by the street commissioner to state, in reference to the sale for assessments to take place on the 16th instant, that the corporation, by a resolution of the common council, take upon themselves the duty of giving the requisite notice to mortgagees, under the act of 14th May, 1840, so as to absolve purchasers from all obligations on that account."

And your petitioners believe that one of the objects of the petition of the honorable the corporation of this city in asking for the repeal of the said law, is to relieve themselves from the responsibility and labor that they, without any sufficient reason, have voluntarily assumed; and your petitioners will ever pray, &c.

Wm. Bard, Prest. N. Y. Life & Trust Co.
B. McEvers, Prest. N. Y. Ins. Co.
Walter R. Jones, V. Prest. Atlantic Ins. Co.
Lewis Curtis, Prest. Farmers' Loan & Trust Company.
R. Ainslee, Prest. N. Am. Ins. Co.
Zeb. Cook, jun. Prest. Mutual Safety Ins. Co.
Thos. Hale, Prest. Merchants' Marine Ins. Co.
Abraham Ogden, Prest. Ocean Ins. Co.
R. Cheeseborough, Prest. Hudson Ins. Co.

Saul Alley,
John J. Palmer,
G. A. Worth,
Edward Prime,
James I. Jones,
Thomas R. Mercien,
F. Sheldon,
Eben Meriam,
John Haggerty,
Edward A. Nichol,
T. W. Thorne,
Samuel T. Tisdale,
John Duer,
James McBride,
George Newbould,
Samuel Ward,
John Rathbone, jun.
Edmund H. Pendleton,
Thomas N. Ludlow,
Josiah L. Hale,
Arthur Bronson,
Alfred Pell,
Robert Ray,
Charles C. King,
J. Van Nostrand,
W. S. Greenleaf,
W. A. Thomson,
B. R. Winthrop,
R. K. Delafield,
Francis Griffin,
Theo. B. Satherwaite,
William Betts,
Samuel M. Fox,
A. R. Wycoff,
Thomas S. Gibbes,
I. & J. Van Nostrand & Co.
W. C. Noyes,
Geo. D. Strong,
Richard Mortimer,
Richard H. Ogden,
James Drake,
Jas. D. P. Ogden,
C. W. Aug. Davis,
E. T. Troop Martin,
Chas. L. Livingston,
Frederick Bronson,
Jno. Lorimer Graham,
J. S. Bowen,
Robert Dyson,
H. Laight,
James McBrair,
W. H. Harrison,
Thomas N. Pearsall,
Henry Wycoff,
James A. Hamilton,
Thomas Glover,
E. W. Leight,
John Ward & Co.
A. G. Thompson,
Garret Storms,
Wm. Mandeville,
E. D. Hurlbert,
Geo. W. Strong,
Joshua Coit,
Samuel B. Ruggles,
Moses Tucker,
C. L. Grim,
W. Robinson,
Thomas Glover,
Nevins Townsend & Company,
Chas. & R. Werdell,
Burr Wakeman,
Joseph Strong,
H. Curtis,
Richard D. Wells,
W. G. Wood,
J. Brouwer,
George Rapelye,
Philip R. Kearney,
W. C. R. English,
Wm. Van Hook,
Thos. E. Davis,
John McBrair,
Isaac A. Johnson.

Remonstrance of John A. Schuyler and R. V. R. Schuyler, heirs at law of John Schuyler deceased, against the passage of any law authorizing the corporation to purchase lands at their own sales for unpaid assessments, and also, asking that the corporation of the city of New York, may be prohibited from thus confiscating landed estates.

To the Honorable the Legislature of the State of New York:—

Your Memorialists beg leave most respectfully, to represent to your honorable body, that an application has been made to the Legislature of the State, by the corporation of the city of New York, for the passage of a law authorizing said corporation to become purchasers of lands at their own sales, for the non-payment of assessments.

Your memorialists beg leave most respectfully to remonstrate against the passage of such a law; and also, to represent to your honorable body, that the proceedings of the corporation of the city of New York, in imposing oppressive and extraordinary assessments upon real estate on the island of New York, have become of that character, that legislative protection to the owners of lands, has become absolutely necessary.

Your memorialists have to state an instance of an assessment upon the estate of their deceased father, made upon a piece of ground culivated as a garden, and situate on the corner of Twenty-eighth street and the Seventh avenue. This piece of ground is ninety-six feet ten inches in length, on Twenty-eighth street, and fifty-eight feet ten inches in width, on the Seventh avenue. The commissioners appointed to make an estimate of the expense of opening Twenty-eighth street, and to assess the amount as benefitted on the adjoining property, assessed this piece of ground for benefit,

ten hundred and thirty-nine dollars and five cents; as will be seen by referring to the street commissioner's advertisement, which is annexed to one of the memorials, presented to the Senate by Mr. Verplanck, (page 38, of that pamphlet.) This piece of ground was offered for sale, for the term of a thousand years, and then for five thousand years, to any person who would take it for that term of time, and pay the assessment and charges; but no one could be found willing to accept it on these terms, or for any other number of years to the end of time. This same piece of land has been again assessed for the pretended opening of the Seventh avenue; and the commissioners appointed to make an estimate of the expense of opening the Seventh avenue, and to assess the same upon adjoining property, assessed this same lot or piece of ground for benefit of opening the Seventh avenue, two hundred and nine dollars and ninety-eight cents; which added to the other assessment, makes the sum of one thousand two hundred and forty-seven dollars and three cents, exclusive of interest; and also of two dollars which is charged in addition for a single advertisement, of a fraction over one line.

The commissioners for making the estimate of the expense of opening the Seventh avenue have included in their estimate, some expenses of a most extraordinary character, viz:

Commissioner's fees, - -	$4,920 00
Room hire for do. - - - -	410 00
Carriage hire, - - - - -	30 00
Clerk hire, - - - - - -	250 00
Stationery, &c. &c. - - - -	48 00
Counsel fees, - - - - -	3,977 77
Surveyor's fees, - - - -	2,801 00
Collector's fees, - - - -	1,115 00
	$13,550 77

The total amount of awards for lands required to be taken for opening the Seventh avenue is $28,141 41.

Your memorialists further represent, that the commissioners have thus allowed to themselves pay at the rate of four dollars each, per day, for the period of sixteen months, and one dollar per day for room hire during that time, (exclusive of Sundays.)

Your memorialists further state, that this large sum of money has been paid to the commissioners, corporation counsel, and surveyor, by the officers of the corporation of the city of New York, without being furnished any bill of items, or particulars, and without having ever been taxed by any officer whatever, without auditing, and without any action upon the same, by the common council of said city.

Your memorialists believe, the whole expense of these proceedings, ought not to have been one-twentieth part of the sum stated above.

Your memorialists, further state that the Seventh avenue, has not been opened nor has Twenty-eighth street, and will not be for many years to come, and that the said piece of land is in no respect benefitted by those pretended openings.

Your memorialists further state, that in their opinion, this piece of land is not worth one thousand dollars, and that it could not be sold for that amount.

Your memorialists insist that those assessments are in violation of the Constitution of the State; that it is in effect, and in fact, taking private property for public use, without just compensation, and without any compensation; and that the proceedings, if sanctioned by any legislative enactment, amount to absolute confiscation of the property.

Your memorialists further state, that the report of the commissioners, in both cases, is on file in the clerk's office of the Supreme Court at Albany, and can be placed before the Senate without any delay.

Your memorialists ask that this memorial may be printed, and that relief in the premises, may be granted, and that no law may be passed giving legislative sanction to the proceedings complained of; and that the sale of the premises may be suspended until a full and complete investigation shall be had in the matter, and that this memorial may be referred to a special committee with power to send for persons and papers.

Your memorialists state that the property in question, is described by two different arbitrary map numbers in the assessment list of the commissioners. And in duty bound, &c.

JOHN A. SCHUYLER,
R. V. R. SCHUYLER.

New York, May 14, 1841.

Remonstrance of Peter A. Jay, Robert C. Cornell and others.

To the Legislature of the State of N. York:

The undersigned, citizens of the city of New York, beg leave respectfully to represent to your honorable body, that they have understood that an application has been made to the Legislature to repeal the *seventh section* of the act of May 6th, 1841, and the act passed May 14th, 1840, which act requires that notice shall be given to mortgagees of lands sold for assessments and taxes, by the person purchasing such lands before he can obtain a lease, by which means the mortgagee has the opportunity to redeem the land from such sale by paying that tax or assessment, and by that means preserve his mortgage security.

Your memorialists represent, that the practice of corporation officers to assess houses and lots by an arbitrary map number, instead of the known street number, and by as many different numbers as there may chance to be different assessments, leads to great difficulty, and that the property is oftentimes assessed in the name of a wrong owner, and the loose manner in which the whole proceedings are carried on, and the very inadequate mode of giving notice of the assessment to the persons interested, lead to great difficulties and troubles, and require to be remedied by legislative enactments.

Your memorialists represent, that assessments upon private property for what are oftentimes miscalled public improvements, have been excessive and oppressive, and are a drawback upon security which real estate upon this island would otherwise afford, as it is most evident that the power to assess land to an amount beyond its value, must render a mortgage upon such land of little value; in fact, oftentimes of no value.

Your memorialists represent, that various public improvements are undertaken by the corporation of the city of New York, under the authority contained in the 175th section of the act of April 9th, 1813; (see 2d vol. Revised Laws, page 407); and that those who are by that section required to pay the expense, have no voice in the matter, and no adequate or sufficient notice of the proceedings.

Your memorialists ask, that it may be provided by law, that in all such cases as authorized or contemplated by the 175th section above referred to, that a majority of the persons to be assessed for the work, shall consent thereto, or apply therefor, before it can be undertaken.

Your memorialists beg leave to refer your honorable body to the proceedings of the Revised Statutes, as respects lands sold for taxes by the Comptroller of the State of New York, as respects notice required to be given by the purchaser to owners and occupants of lands which have been so sold, and of the deed, and requiring the same to be redeemed, and of the service provided for of such notice, and ask for the like provisions to be extended to the city of New York, in the sales by the corporation. (See 1st vol. Revised Statutes, page 400, sec. 84 and 85.)

Your memorialists most respectfully remonstrate against the repeal of any portion of the mortgagee law of May 14th, 1840, and also against the repeal of the *seventh section* of the act of May 6th, 1841, or of any portion thereof; and against the passage of any law in the premises, which will impair real estate securities. And your memorialists, in duty bound, &c.

Peter Lorillard,	James W. Beekman,
Robert C. Cornell,	J. Boorman,
Jn. Rathbone, jun.	P. A. Jay,
Wm. Browning,	David C. Colden,
Maturin Livingston.	

Memorial and remonstrance of John R. Murray, Benjamin Townsend and others, for protection to landed estates in the city of New York, from ruinous and oppressive assessments; and against the passage of any law authorizing the corporation of the city of New York to purchase lands at their own sales, assessed by themselves more than the value of such lands.

To the Honorable the Legislature of the State of New York:

The undersigned, citizens of the city of New York, most respectfully represent to your honorable body that they understand that an application has been made to the State Legislature for an act authorize the corporation of the city of New York to purchase lands advertised for sale for non-payment of assessments imposed thereon by said corporation, or by their means.

Your memorialists most respectfully insist that the imposition of assessments upon real estate by the corporation to so great an amount that the purchaser cannot be found, even for a lease of ten thousand years, who is willing to pay the assessment, is most conclusive and indisputable evidence that the power to assess private property has been most shockingly abused by the corporation, and ought not to receive legislative sanction or indulgence.

CHAPTER 230.

An ACT in addition to the acts respecting the collection of taxes and assessments in the city and county of New York. [Passed May 25th, 1841.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:—

§ 1. All owners, lessees or persons otherwise interested in any lands or tenements sold for taxes or assessments in the city of New York, who shall file in the manner and within the time specified in the act entitled "An act in relation to the redemption of land sold for taxes and assessments in the city of New York" passed May 6th, 1841: a memorandum containing a like description of such lands and tenements and of the name and residence of such owners, lessee, or persons otherwise interested therein, or their legal representatives, as is required in and by the said last mentioned act with regard to mortgagees, assignees or their personal representatives, shall be notified in the same manner as such mortgagees, assignees or their personal representatives are required to be notified in and by the provisions of the said last mentioned act.

§ 2. No person shall be entitled to the benefit of the provisions of the first, second and sixth sections of the act entitled "An act authorizing mortgagees to redeem real estate sold for taxes and assessments," passed May 14th, 1840, or of the act entitled, "An act in relation to the redemption of lands sold for taxes and assessments in the city of New York," passed May 6th, 1841, for any land or tenements in the city of New York sold for assessments, unless the memorandum required by the first section of *the act last mentioned* shall have been filed as therein required, and in such case it shall only be necessary to give the notice mentioned in the manner designated in the last mentioned act.

§ 3. Whenever any land or tenement sold for assessments or taxes in the city of New York and conveyed in the manner provided by law, shall at the time of conveyance be in the actual occupancy of any person, the grantee, to whom the same shall have been conveyed, or the person claiming under him shall serve a written notice on the person occupying such land or tenements, and the person last assessed as owner stating in substance the sale and conveyance, the person to whom made, and the amount of consideration money mentioned in the conveyance, with the addition of forty-two per cent. on such amount as the said lands or tenements were struck off for at the time of the sale, and the further addition of the sum paid for the lease *and advertisements*, and stating also that unless such consideration money and the said forty-two per cent. together with the sum paid for the lease, shall be paid to the street commissioners for the benefit of the grantee, in case the said premises shall have been sold for assessments, or to the Comptroller if the same shall have been sold for taxes within six months after the service of such notice that the said conveyance will become absolute, and the occupant and all others interested in the land or tenements be barred from all right or title thereto during the term of years for which such lands or tenements shall have been conveyed.

§ 4. Such notice shall be served personally or by leaving the same at the dwelling house of the occupant or person last assessed as owner, with any person of suitable age or discretion belonging to his family.

§ 5. The occupant or any other person, may at any time within the six months mentioned in such notice, redeem the said land or tenements in the same manner as now provided by law for the redemption of land sold for taxes and assessments in the city of New York, by paying such purchase money with the addition of forty-two per cent. thereon, and the amount that shall have been paid for the lease, and every such redemption shall be as effectual as if made before the conveyance of the lands or tenements sold.

§ 6. In every such case of actual occupancy the grantee, or the person claiming under him, in order to complete his title to the land conveyed shall file with the street commissioner if sold for assessments, and with the comptroller if sold for taxes the affidavit of some person who shall be certified as credible by the officer before whom such affidavit shall be taken, that such notice as is above required was duly served, specifying the mode of service, and a copy of such notice shall be attached thereto.

§ 7. If the street commissioner in case of a conveyance on account of assessments, or the comptroller in a case of conveyance on the account of taxes shall be satisfied by such affidavit that the notice has been duly served, and if the moneys required to be paid for the redemption of such lands or tenements shall not have been paid as herein before provided, they shall respectively certify to the fact, and the conveyance shall thereupon become absolute, and the occupant and all others interested in the land or tenements shall be barred of all right or title thereto, during the term of years for which the same shall have been conveyed.

§ 8. In cases of sales of any lands, tenements or real estate for taxes in the city of New York, the comptroller of said city shall do and perform all the acts and duties required by law of the street commissioner of said city in cases of the sale of any lands for assessments in the said city.

§ 9. This act shall be construed to authorize the computing of the forty-two per cent. named therein on the amount of sale and expenses authorized by law and not to be in addition to or upon the interest accruing after the sale.

1—

Remonstrance and Memorial of Stephen Whitney and others.

To the Honorable the Legislature of the State of New York:—

The undersigned, citizens of the city of New York, having learned that the officers of the corporation of said city are applying to the Legislature for the repeal of the law passed May 14th, 1840, requiring notice to be given to mortgagees of the sale of lands for taxes and assessments, and also for the repeal of the seventh section of the act of May 6th, 1841, which section leaves the act of May 14th, 1840, in force, in favor of those who cannot record abstracts of their mortgages:

We do most specially remonstrate against

the repeal of the said seventh section, and also against the repeal of the act of May 14th, 1840, or any part thereof; and against the passage of any law in the premises impairing real estate securities.

We do most respectfully ask that the provisions of the Revised Statutes as respects land sold for taxes by the Comptroller of the State, may be extended to the city of New York, and applied to lands sold for taxes or assessments by order of the corporation; and that no lot shall in any case be advertised for sale for assessments or taxes, unless the same is described by the known street or ward number.

And as in duty bound, &c.

Stephen Whitney,	James I. Jones,
Edgar Harriott,	Edmund H. Pendleton,
Smith Harriott,	B. Skidmore,
L. W. Kip & Isaac Young,	H. R. Dunham,
	John Anthon,
James Fellows,	J. Phillips Phœnix,
Gerardus Clark,	Lewis H. Sandford,
Jacob Drake,	Nevins & Townsend,
Wm. M. Holland,	W. W. Chester & Co.,
Anthony Lamb,	Geo. C. Thorburn,
Hamilton Fish,	E. R. Tillou,
R. Whiley,	John H. Cornell,
D. Codwise,	D. D. Williamson,
James Lovett,	Peter Pinckney,
John Ridley,	Wm. C. Rhinelander.
P. G. Stuyvesant,	

(Senate Document, No. 100, page 302.)

We have thus given the memorials and remonstrances in relation to the mortgagee law—that of Stephen Whitney and others should have preceded the Act of 25th May, 1841, in its order, in these pages.

The memorials were all presented in the Senate of this State in the months of April and May, 1841, except that of the Acting Mayor, which was presented first in order.

There was also a memorial of the acting mayor presented to the Senate in 1841, asking for a provision of law to authorize the Mayor, Aldermen and Commonalty to become purchasers at their own assessment sales of lands, which were not bid for by others.

The presentation of the two petitions of the acting mayor were accompanied each by a brief bill, one of which is the Act of May 6, 1841, herein set forth, the other a bill merely authorizing the Mayor, Aldermen and Commonalty to purchase without furnishing them the means to pay for the land thus attempted to be acquired.

On the presentation of these two memorials, one was referred to a committee of which Mr. Verplanck was a member, the mortgagee petition to some other committee.

Wm. Bard, Esq., the President of the New York Life and Trust Co., addressed a letter to Mr. Verplanck asking that these two subject matters might be retained under consideration until a delegate of the Anti-assessment Committee should be in attendauce at Albany to explain to the Committee objections which were making to these two measures of the corporation. The proceedings were suspended accordingly.

Subsequently, one of the delegates of the Anti-assessment committee proceeded to Albany, and placed in the hands of Mr. Verplanck a printed bill and the memorial of Robert O. Cornell and others asking that the provision of the Revised Statutes in relation to notices to owners and occupants of lands sold for taxes by the State Comptroller, should be extended to owners, &c. of lands sold for taxes and assessments in the city of New York, and from which resulted the bill which constitutes the Act of May 25th, 1841, herein set forth.

Subsequently, three delegates from the Anti-assessment Committee attended at Albany, and were there met by Mr. Bedient, the deputy comptroller, and Mr. Ewen, the street commissioner.

Both parties attended before a Committee of the Senate a short time. The street commissioner then and there stated to the Senate Committee that a committee from each board composing the Common Council had been appointed to investigate assessment abuses in the city of New York, that these committees had met several times, and that the then delegates from the Anti-assessment Committee had attended before the committees of the Common Council, and that these committees of the Common Council had found on investigation that there existed no cause of complaint.

The delegates from the Anti-assessment Committee did not deem it their business to engage in a personal controversy with the per son making this statement, they therefore drew up the following memorial, which was presented to the Senate:—

Memorial of Benjamin Townsend and others for a reference of all the remonstrances and memorials in relation to assessments in the city of New York, which have been presented in the Senate, may be referred to the special committee appointed on the 18th inst.

To the Honorable the Legislature of the State of New York:—

Your memorialists, delegates from the Anti-assessment Committee of the city of New York, having in charge the numerous memorials and remonstrances which have been presented to the Senate, in relation to the repeal of the mortgagee law of 1840, and the *seventh* section of the law of May 6th, 1841, and in relation to the amendments of the existing laws as to assessments and taxes in the city of New York; and also the remonstrances against the passage of a law authorizing the corporation of the city of New York to become purchasers of lands sold for assessments at their own sales, most respectfully ask that all the said remonstrances and memorials, and the public documents accompanying the same, may be referred to one and the same committee.

And your memorialists, &c.,

EBEN. MERIAM,
BURTIS SKIDMORE,
BENJA. TOWNSEND.

(Senate Doc. No. 100, page 299.)

This memorial was presented in the Senate in May , 1841, and the prayer of the memorialists granted by a unanimous vote.

Subsequently, one of the Delegates from the Anti-assessment Committee called on the respective chairman of the committees of the Common Council referred to by the street commissioner in his testimony [*See Senate Document, No. 100, page 270*] for a disavowal of the verbal statement of the Street Commissioner, in relation to their Committees, made before the Committee from the Senate, which they signed, and which is as follows:—

TO THE LEGISLATURE OF THE STATE OF NEW YORK.

Your memorialists, citizens of the city of New York, most respectfully pray your Honorable Body to empower the Special Committee, to whom was referred the numerous memorials and remonstrances from the citizens of the city of New York in relation to assessment abuses, *to sit after the termination of the present session of the Legislature, and that they have power to send for persons and papers, and that the said committee be authorized to examine into all the abuses in the premises which the memorialists or any of them may bring before them* or to their notice.

Your memorialists believe that abuses and impositions have been practised in these matters, and the consequences will be highly injurious to the public welfare, the safety of titles to real estate, and the sacredness of private property, unless remedied by legislative enactments, and require legislative action.

And your memorialists, &c.

John A. Underwood,	Robert Jones,
Dow D. Williamson,	Abel T. Anderson,
Robert Smith,	Samuel G. Raymond,
John A. Schuyler,	Eben. Meriam,

on behalf of the Anti-assessment Committee.

(Senate Doc. No. 100, page 275.)

The above memorial was presented in the Senate by the Hon. GULIAN C. VERPLANCK, a distinguished member of that body, on the 22d day of May, 1842.

THE PRAYER OF THE MEMORIAL WAS GRANTED BY THE UNANIMOUS VOTE OF THE SENATE.

ROBERT JONES, Esq., one of the memorialists, was at that time and is now a member of the Board of Aldermen of the city of New York, and at the time that he signed this memorial was chairman of a special committee appointed by the President of the Board, Hon. Elijah F. Purdy, on the *25th of January*, 1841 [See printed proceedings of the Board of Aldermen, vol. 20], *to investigate assessment abuses.*

JOHN A. UNDERWOOD, Esq., another of the memorialists, was at the time he signed the memorial a member of the Board of Assistant Aldermen, and chairman of the Assessment Committee, to which committee was referred a memorial asking for an *investigation into assessment abuses.* Mr. Underwood is now a member of the Board of Aldermen.

The special committee appointed by the Board of Aldermen, and the Assessment Committee of the Board of Assistants, met as one committee, and commenced an investigation, but finding that they had not the power of compelling the attendance of witnesses, the chairman of the respective committees *signed the above memorial to the Legislature for the appointment of a committee* WITH POWER *to send for persons and papers.*

The Committees of the common council did not make a report, but their opinions can be gathered from the recitals in this memorial, which are in part that—

"*They believe that abuses and imposition.*

case, for he had paid assessments on all that property made out to him. Witness then went to street commissioner's office to see if he could not find out anything of this Mr. Paulding, and when witness got there, there were a number of people looking over maps, and when an opportunity offered witness looked at map and saw on the assessment roll, that Mr. Gantley was put down for a dozen or fifteen lots on that block, for the sewer in Thirteenth street, and in looking over the map witness noticed that the lot which he had thus bought was put down as unknown owner. It being adjoining Mr. Mollan's and Mr. Gillepsie's lot, witness saw that their lots were in the same situation, and put down on that map to unknown owners. After that, witness looked at the sales book and there he found the lot put down to Mr. McIlvaine or Mr. McIlbaine, as the owner of that property, and George Paulding was the purchaser at such assessment sale. Mr. Ewen was not in the office at the time, Mr. Smith was in, who represents him, and he said that Mr. George Paulding was alderman Paulding, and he thought witness could make an easy settlement with Mr. Paulding, he was a man who bought a great deal of property of the corporation, and he knew him very well, and he called in there very frequently. In the evening, witness called in on Mr. Mollan, being a neighbor of his, and told him, his, Mr. Mollan's property had been sold; and witness told him what it was sold for. The next day witness called again at street commissioner's office and saw Mr. Ewen, and stated his case to him. He said it was a hard case, and as he was acquainted with Mr. Paulding, and as he had promised Mr. Mollan that he would write to the man who had purchased his property, he would also write to Mr. Paulding who had purchased witness's property, to see if some arrangement could not be made; and that witness should call again to see him on the subject. Witness told Mr. Ewen, that he would go and see the comptroller, to get him to withhold the leases for some days; witness being under the impression that the leases were made out. And Mr. Ewen told witness that the leases must go through him; and that Mr. Paulding, when he got his lease, must get it through him. Witness then said if arrangements could not be made with Mr. Paulding, it was his intention to get an injunction laid upon the corporation, to withhold that lease. And witness requested Mr. Ewen, if it should be made out, that he would withhold it for two or three days, to see if such arrangement could not be made; and if not, to get such injunction laid. And he said he had no authority to withhold it; but yet, under this case he would accommodate witness; he said, said lease was not made out, and it probably would be some days before it would be made out. Witness then left the office; and the next day he called again, Mr. Ewen was not in. The following day witness thinks he called again, and saw Mr. Ewen, and asked him what arrangement could be made with Mr. Paulding. He said Mr. Paulding had got the lease. "Why," says I, "Mr. Ewing did you not tell me that he would have to get it through your hands?" He replied that Mr. Paulding had been to the corporation counsel and got it himself, and got it signed by the mayor himself. Witness asked where corporation counsel lived, or had his office, as witness was not acquainted with Mr. Cowdrey then. Witness left street commissioner's office to see if he could find out how Mr. Paulding got possession of that lease. Before witness got out of the building he met Mr. Cowdrey; witness did not know him, but seeing him make his way towards street commissioner's office, witness followed after him, and found it was Mr. Cowdrey; and asked him how Mr. Paulding got that lease. He said he could not tell, but that Mr. Paulding was entitled to it. Witness told Mr. Cowdrey that was a quick way of taking a man's property. He said witness could afford to lose it. And that expression has stuck in witness's crop ever since then, and he well remembers it. Witness left the office then. Witness called on Mr. Mollan, his neighbor, after that, and told him how the witness had been defeated in attempting to stop that lease, in order that he might be more cautious on his part. Witness compromised with Mr. Paulding, ***and finally paid him two hundred dollars.*** The lot of witness was assessed for five dollars. Witness paid $1,000 for the vacant lot, and with the buildings witness put on it is worth $2,000; and rents for the annual sum of $200.

RICHARD MORTIMER.

Cross examined by counsel for the corporation.—The lot was on Twelfth street, next to stable of Mr. Gillespie. There were other lots on Twelfth street, that Mr. Gantley owned, besides that of witness's. There was no other lot but this on Twelfth street, which had belonged to Mr. Gantley, assessed for sewer in Thirteenth street. Witness does not think Mr. Paulding was an alderman at the time of that purchase; witness never knew he had been an alderman; but on enquiry, ascertained he had been assistant alderman of the eighth ward. Mr. Paulding bought witness's lot for nine years. When witness first heard of his purchase, the time for redemption had actually expired. Witness understood that in point of time, Mr. Paulding was entitled to his lease when witness first heard of the assessment. Witness had no conversation with, nor left any word at the office of the counsel for the corporation, before the lease was delivered to Mr. Paulding. Witness could never find out how Mr. Paulding got that lease. Witness asked the counsel for corporation, and he replied he did not know how he got it, but that he was entitled to it. There were very few words between the witness and said counsel; witness thinks he has stated all the words he heard him say. The said counsel did not go with the witness, to the street commissioner's office. It was in the hall of the hall of records, that witness first saw the corporation counsel, and he followed the counsel into the street commissioner's office. The conversation alluded to, was in that office. The remark of the said counsel, was not that "it was fortunate the witness could afford to lose it." It was rather sharply said; it was that the witness could afford to lose it. The witness left the office with considerable feeling. Witness thinks Mr. Ewen was present at the time of that conver-

sation. The witness cannot say whether the lease was endorsed as approved by the counsel, he had the lease at home, and will produce it. RICHARD MORTIMER.

September 30, 1841, the witness, Richard Mortimer, produces the lease referred to in his annexed testimony. And upon the inspection of which, it appears that said lease is not endorsed as having been approved of by the counsel, which is customary, before the delivery of such leases to the purchasers. It also appears by inspection of said lease, that the premises were assessed to James McIllvaine. It is dated December 20, 1840, and signed by Elijah Purdy acting mayor, and under seal of the city.—*Senate Doc. No.* 100, *p.* 56.

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(Senate Doc. No. 100, p. 86, 87.)

November 1, 1841.

The committee met pursuant to adjournment, at the Clinton Hall in the city of New York, upon notice of the chairman.

Present, Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

Alexander T. Stewart being called on the part of the memorialists, and duly sworn, says he is a citizen of New York; on or about the 25th of February last, received a letter signed T. Valentine, corner of Grand and Governeur streets, stating, that understanding he was owner of a stable No. 181 Ninth street, between Second and Third avenues, on the south side; that property had been sold for assessment for Avenue C. sewer, and time for redemption had passed and lease had been given to purchaser, which was the first intimation witness had of any assessment on that property, which property was in the sole occupation of witness from 20th September, 1836, to date of letter; the assessment appears, by lease to purchaser, to have been confirmed May 31, 1837; no demand was ever made on witness for that assessment, and no notice did he ever receive until said letter from Valentine. No other building on said lot but the stable. The amount of the assessment for which the property was sold was $3.94, as appears by the lease; the whole amount the property was sold for was $16.37, for the term of three years; ***witness paid Valentine 175 Dollars to transfer his said purchase to the witness***; witness resides now, and when the assessment was made, upon Eighth street, and paid an assessment for same sewer on his house in Eighth street.

ALEX. T. STEWART.

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James S. Carpentier, having been called upon the part of the memorialists, and duly sworn, says that he is a counsellor at law in the city of New York; while examining papers in the office of the clerk of the common council and of street commissioner, in June, 1840, for the purpose of obtaining necessary information to file a bill on behalf of the owners of property on the island of New York, on Irving Place and Seventeenth street, witness found that resolutions had been introduced and passed for regulating and grading Seventeenth street, between Third and Fourth avenues, and setting curb and gutter stones; that an ordinance had passed thereon and a contract made by the street commissioner with George A. Furst to do the work previous to December 1, 1837, and which by a report appeared to have been done before that time. The assessors named in the assessment roll were the street commissioner, **Mr. Ewen, Jacob Warner and M. D. L. Gaines; from witness' examination he could not ascertain that they had taken any oath for the faithful performance of their duties as required by the one hundred and seventy-fifth section of the Act of April 9, 1813, at any time previous to entering upon the duties of that appointment. They made their report as assesors upon that matter on or about December 1, 1837**; the assessment was confirmed and approved by the mayor, December 6, 1837, as appeared by the paper; witness found a printed oath signed by those assessors and purporting to have been sworn on January 6, 1838, either before the mayor or recorder, which the witness does not now recollect.

It was charged in the bill prepared by witness as counsel, that the assessors never took any oath until after the expiration of more than one month after all their duties as such assessors had been performed, and a month after the consummation of such assessment. The answer of the corporation to that bill was sworn to by Mr. Ewen, the street commissioner, and admits the fact which the witness has above stated as to the want of an oath and all the matters charged in the bill, except that the bill charged that an ordinance did not exist, and it was afterwards found to be in existence.

J. S. CARPENTIER.

Cross-examined by the street commissioner on the part of the corporation.—If the assessors had complied with their duties faithfully in making such assessment under their general oath of office as officers of the corporation, it would not probably have induced them to perform their duties with more faithfulness, by taking such additional oath; but the law requires them to take such oath as assessors previous to entering upon their duties as such.

J. S. CARPENTIER.

Direct examination on the part of the memorialists resumed.—The bill charged that no estimate or assessment had been made previous to the work having been done; which fact was admitted by the corporation in their answer, and that it had not been the practice to make such estimate and assessment previous to the work having been done. The contract contained a provision that the work should not be paid for until the assessment should be made and the moneys collected, and all interests accruing on such assessments should be deemed to accrue for the benefit of the contractor and paid over to him; and witness regards this provision as operating injuriously on the interests of the owners of real estate, as contractors would not engage to do the work on such favorable terms where they were compelled to wait a long time for their pay, as they would if they were to be paid when the work should be completed; and this allegation was substantially charged in said bill sufficiently so to appear as one of the matters of complaint. And such has also been a frequent matter of complaint, as the witness has heard from others. J. S. CARPENTIER.

Adjourned to November 6th, instant at 7, P. M.—(Sen. Doc. No. 100, p. 108, 109, 110.)

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John A. Schuyler having been called on the part of the memorialists, and duly sworn, says: That he resides in the city of New York; that his father's estate is the owner of a piece of land on corner of Twenty-eighth street and Seventh avenue in said city; the deed is for 50 feet by 100 feet. They have examined the property, and ***find there is but thirty-seven feet six inches instead of the fifty feet,*** the other portion being probably ***cut off*** in the street. The deed is dated in the year 1814. That piece of land is assessed for opening Twenty-eighth street, $1,037 5-100ths; and for opening the Seventh avenue, $209 98-100ths. Those assessments have not been paid, and are now drawing interest and have been for some time as witness believes. The said street and avenue are ***not actually opened,*** or were not when witness was there last summer. The heirs have made up their minds to let the piece of land go, as *THEY DO NOT CONSIDER IT WORTH THE ASSESSMENTS* with the interest. It is assessed as 58 feet 10 inches. J. A. SCHUYLER.

Cross-examined by the street commissioner on the part of the corporation.—Witness does not know who the commissioners of estimate and assessment were. Witness, when he heard of the assessments, supposed there was some mistake about it and went to the collector, and he referred witness to the street commissioner's office; and he went there, ***and some person in that office took down a map and then told witness*** that *THERE WAS NO HELP FOR HIM.* He does not know who it was he saw in that office. Witness may have signed a petition to the common council, but he does not now recollect. J. A. SCHUYLER.

[The commissioners names in Twenty-eighth street appeared by document to be C. Dusenbury, Thomas Dolan and John Colvil. This is one of the streets opened under the resolution of Holden up to and including Forty-second street.]

Direct examination on the part of the memorialists resumed.—Has understood from the auctioneer who put up that property for sale for that assessment, that he offered it *FOR ONE THOUSAND OR TEN THOUSAND YEARS*, which witness does not now recollect, and could not obtain a bidder. That sale was the sale previous to that now making by the corporation, which was about a year ago. It is now advertised again for sale at the present sale. J. A. SCHUYLER.

Adjourned to November 8th, instant at 7, P. M.—(Sen. Doc. No. 100, p. 115, 116.)

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Andrew Warner, having been called on the part of the memorialists, and duly sworn, says—That he resides in the city of New York, and is assistant clerk of the county of New York; he was one of the commissioners of estimate and assessment in the opening of

brance would be paid if notice was given previous to the delivery of deed, or of a certain day which had not passed. Witness took with abstract of title, deed and other papers, with street number of property, containing a full description of the premises. Witness's client went with him. They made the enquiry whether any assessments remained unpaid or there were any incumbrances on that property in that office, of the person in office who was pointed as the proper person who appeared to have charge of the books and maps, and who exhibited them and examined them; after being there half an hour or more, measuring over the map and looking at the book, they were informed there was nothing against the premises in question. It was necessary to make this inquiry of persons in the office, because they have numbers of their own differing from those of the streets, and marks of their own which will render it difficult for counsel to find very readily, whether premises are incumbered or not. And on another occasion witness asked for a certificate from that office, that property was not incumbered by assessment, and they refused to give it, saying it was not customary or usual to do so; which the witness regards as a great grievance, as they have charge of the maps and books, and have numbers and marks of their own. After receiving the aforesaid information and relying upon it, they called at the master's office, paid the money, between $4 and $5,000, and got their deed. Shortly after that, they received information that the house had been sold for twenty years, for an assessment remaining unpaid, and that the time for redemption had expired; but fortunately that the lease to the purchaser had not been delivered. He remarks it is fortunate, as the delivery of the lease covers all previous defects in the transaction. In this case there were several gross errors which the witness will specify. Not deeming it prudent to make any application to any of the officers of the corporation, witness filed a bill in chancery, against the corporation, praying among other things for an injunction restraining the delivery of the lease, which was granted, and served on the purchaser; but thinks not on the mayor. It appeared that the property was assessed to the wrong person, and that the affidavit required by law, of the service of notice, &c., was irregular and informal. The assessment witness thinks, was about $300, to the best of his recollection. The annual rent of the property was, he thinks, $600; there was a front and back building on the lot. The purchaser became a little frightened when served with the injunction and subpœna, judging from his appearance; came to the house of witness's client, and after a long conversation compromised for $500, perhaps a little more, he thinks it was $500. He then assigned his rights to witness's client. Witness thinks the assessment was about Chapel street. J. B. PURROY.

The Act of May 25th 1841, it will be seen extends the time of redemption six months beyond the two years previously allowed by law for all such lands, &c. as are occupied. The 42 per. cent is in lieu of all charges and all interest accruing after the sale.

MORTGAGEES

By a careful perusal of these eight pages, will see the necessity of applying for the repeal of the act passed May 6, 1841, and the two first sections of the act passed May 25, 1841, leaving the law of 1840 in full force, which affords security to mortgagees against any sale for assessments or taxes.

The present Numbers, 10, 11 and 12, contain in all fifty-two pages; of these we publish fifteen hundred, and we also publish one hundred additional of the first eight pages for the immediate perusal of those interested as mortgages, &c., with a view to call public attention to the necessity of **an immediate repeal** of the present law as to the city of New York, **leaving the law as it was passed in 1840** as to mortgagees, and making such a change as to that of owners of **unoccupied lands** as will give all needed protection. The value of lands depends on the sacredness of title, and the security of loans depends upon the sacredness of private property and the notice of all proceedings which may affect the title to the land and thereby affect the security upon such lands.

Persons who have need to obtain loans have also need of these guards to facilitate, and those who grant the loans require these provisions.

The Municipal Gazette is circulated GRATUITOUSLY. The desire is to give information to gentlemen in our own immediate community —to eminent men throughout the civilized globe—that, in the language of that distinguished American lawyer, GEORGE WOOD, OF OUR CITY, "*mind may influence mind.*"

These humble sheets are forwarded to all distinguished Jurists in this country and in Europe, and to several of the great public Libraries, and to distinguished individuals at the head and in the administration of the civil governments throughout the world. Our object is the greatest good to the greatest number. It is well said that the best of men have need to be put in remembrance of what they already know.

WILLIAM M. HOLLAND.

This worthy and accomplished citizen, who has for some time been one of the legal advisers of the Anti-assessment Committee, has recently returned from the island of St. Cruz, where he has been staying some months for the benefit of his health.

We are pained to say that his health is not improved.

Mr. Holland bids fair to become one of the brightest ornaments of the American bar, and should good health return to him, will fill an important sphere in our community.

With the Anti-assessment Committee, the casual opportunity of an interview with him, was so convincing, that it was his introduction to the place he filled with so much credit to himself and so much advantage to the people—for it is the public's interest we serve—and such are the strongest recommendations which any individual can offer. The surest commendation to employment is the ability to discharge the required duties or services.

(J. B. Purroy's examination continued.)

Cross examined by counsel for the corporation.—Witness don't know how long before the sale was made by the master, that Chapel street was widened. Witness knew Chapel street had been widened, and particularly called the attention of the officers of the corporation to that matter of Chapel street. When witness goes to the register's office, if his client requires him to examine the title, he examines the records himself; whether he makes this personal examination depends upon various circumstances. Witness has found errors in the certificates of the register, one recently where a certificate was given of no mortgages, and there was a mortgage, which error was made by one of the best examiners. This search was made at witness's request in a hasty manner, but the examiner called the next morning and stated that he had made an error, and corrected. Witness in the register's office does not depend entirely on the clerk's examination, but also examines himself. He pursued the same course in the street commissioner's office, and looked over the books and maps at the same time that the clerks went over them. It would be impossible for a person without very minute and extensive knowledge, to make such examination in the street commissioners office. If the witness was then showed the map of Anthony, and Chapel street, and it was accurate, he thinks he could have pointed out the lot, and provided they would show the map, which they would not always do, *for they are at times quite bearish; they point out to a parcel of assessment maps of various parts of the city, and say there are the maps, look at it. It is not the complaint alone of the witness, but of the profession generally. Mr. John Anthon has also agreed with the witness on this subject of complaint. It is the most difficult office in which to make examinations, and should probably be the easiest, if things were properly organized.* To answer particularly, whether witness asked for the Chapel street map, at this distance of time, he cannot do. He went there and asked whether there were any assessments or incumbrances on that property, and he called their attention especially to Chapel street, as he feared that; and they showed him books and maps which they said contained all the information, and they examined the same with the witness. The lot in question was pointed out upon some map, it had a different number from the street number; witness did not ask particularly for the assessment book of Chapel street, he did not go upon any particular inquiry in the first place. The witness cannot recollect whether he examined the assessment book for the number of property he found upon the assessment map, and he examined over all the books which were shown to witness upon his inquiry whether there were any assessments upon that property for Chapel street, and he was told there were no assessments upon the same, after an examination of about three-quarters of an hour. Witness does not recollect whether he found the map number in any of the assessment lists, if any were shown to him. Thinks it was in 1839, or 1840, that this examination was made, but cannot recollect which. Witness believes the clerks in the office of the street commissioner receive no fees for such services, witness never paid any. Witness does not now recollect what the defect in the affidavit was, but the same is set forth in the bill now on file. J. B. PURROY.

Adjourned to Sept. 28th, inst. at 10, A. M. —(*Senate Doc. No.* 100, *page* 55.)

September 27th, 1841.

The committee met pursuant to adjournment. Present, Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

James Gillespie being called, and duly sworn on the part of the memorialists, says—the witness is owner of a lot on the north-east corner of Twelfth street and Broadway; has owned it for eight years. On Twelfth street, it is 90 feet, on north-east side it is 120 feet, with stable on rear in Twelfth street. Witness was absent a year ago last summer in Europe. On his return was told by a neighbor that the rear of his said lot with the rears of other lots had been sold for an assessment for a sewer in Thirteenth street. Witness was very much surprised, having paid an assessment for that sewer and having a receipt for the same. Witness was told in the street commissioner's office, that he had only paid the assessment on that part of the lot fronting on Broadway, that the rear part of the lot had been a separate assessment, and of which last assessment the witness had no notice. The witness went with Mr. Wallis, the lawyer, to the street commissioner's office. Mr. Ewen was not present, some of his subordinates were, and they told witness and Mr. Wallace, that they ought to know what assessment they had paid for, and that they should have come up to the office and looked at the map. They subsequently saw Mr. Ewen; he said it was a hard case, and he would afford them every facility to obtain redress; witness asked whether the lease had been made to the purchaser, and was told it was not; and then witness and Mr. Wallace said they wanted time to have the case laid before the common council. Also, called on Mr. ———, and heseemed to give them assurance that he would grant all the facilities in his power, to obtain justice. They also called on the acting mayor, Mr. Purdy, and stated the case to him, and he said he would stay signing the lease until they had had a hearing before the common council; and he stated that this lease had to be returned to Mr. ———, the counsel for the corporation, previous to its delivery. Upon which, the witness apprised Mr. Purdy that they had seen Mr. ———. They rested then secure, supposing that they were fortified on all points, until the action of the common council should be had. In the meantime witness called on the chairman of that committee, alderman Benson, and he examined the witness and Mr. Mollan who was concerned in the same assessment, and they were led to believe they would have a report in their favor. During this time, while the matter was thus pending, the witness understood that the purchaser, Mr. ———, had obtained his lease, notwithstanding all these promises. This —— ——— is a contractor under the corporation. After having understood that the lease was thus delivered, the witness called upon Mr. Purdy, and complained to him of the act. Witness afterwards called on alderman Benson, and told him that the attorney of Mr. ——— had written to him and told him that a suit would be commenced unless peaceable possession was given of the premises thus purchased by said ———, and urged the necessity of the committee reporting immediately, whether for or against the petitioners; and that if they were to pay the purchaser what he demanded, the sooner he knew it the better; and that witness expected a report, in not to exceed one week. Alderman Benson told witness he considered that a threat, and he would not report at all. Witness told him he did not intend it as a threat, he merely wanted to show him the urgency of the case, as they were threatened with a law-suit, and wanted the matter settled so far as the common council were concerned, and that they might make the best bargain they could with the purchaser. No report was ever made by the chairman of that committee or by the committee, and the witness has settled with Mr. ——— the purchaser, under that assessment sale. The amount of the assessment was ten dollars for each lot, which they paid. ***The witness paid to said purchaser One hundred and twenty Dollars.*** The ordinary assessment for city taxes, was for the whole of witness's said property, one lot, and was assessed in the witness's name. It was bought as one lot, and always taxed as one lot, and witness could not know it was cut in two, as two lots. It was assessed to a Mr. McIllvaine, who never owned it or any part of it. The premises were sold for said assessment for ten years. Witness understood the time for redemption had expired some months before he first heard of said assessment; in fact he never heard of it or of said sale, until the purchaser called for possession. Witness receives for his said stable, $125 per annum. And he would value such stable and premises at $2,500. The witness believes the assessment and expenses at the time of sale, was from $18 to $22. JAMES GILLESPIE.

Cross examined by counsel for the corporation.—The rear of the two lots of witness and his neighbor Mollan, were occupied by two stables; the stables were adjoining each other, but separate, as the dwellings were on Broadway. There were nothing but stables on the rear of the lots. There was a partition fence between the two lots from front to rear. There was a fence across the rear of the two lots between Broadway and the stables, with a door leading from the yard of each house to the stables; there is a space between the fence and the stables. That fence across said lots, witness and his neighbor Mollan put up on their respective lots after their purchase. Standing on Twelfth street, a man cannot see the doors leading through those fences across the said lots, because the fence on Twelfth street is too high for any man to see over it. Witness owns the corner lot, it is 17 feet 10 inches wide in front, on Broadway, it is wider in rear than in front, and longer on north than south side. Stewart Mollan owns adjoining lot, it is 25 feet 1 inch wide on Broadway, by 120 feet deep, one stable is on rear of witness's lot, and one on rear of Mollan's lot. Witness did not pu

To the Honorable the Legislature of the city of New York:

Your petitioner a citizen of the city of New York, states that some years since he purchased a lot of ground in Fourth street, near the Second avenue, in said city, upon which he erected a three story brick house, in which he has since resided with his family.

In the month of February, 1840, a person by the name of Reed, called on your petitioner, at his said house, and after many preliminary remarks, stated to your petitioner that he owned the said house, that he had purchased it at a corporation sale for an assessment, for the term of years, and wanted possession.

Your petitioner stated to him that he had paid all the assessments on said property which had ever been demanded of him by the corporation, and that he would look into the matter, Your petitioner on enquiry and examination, ascertained that his said property had been assessed for building a sewer in avenue C., a great comparative distance from his premises, the sum of $5,98, that it had been described by a fictitious number, and not by the true street number, was assessed in the name of "***Reed***," and no christian name mentioned, and so advertised, to be redeemed, in one newspaper of limited circulation, which he never saw; and had he seen it, would not have supposed it was his premises.

Your petitioner, also found, that the corporation had made ***Sixteen dollars and eighty cents cost,*** on this assessment, which was made up in the following manner, viz: four dollars for the lease, three dollars for the certificate, ***and Five Dollars for advertising,*** and four dollars and eighty cents interests on these costs.

Your petitioner is informed that the State Comptroller charges eighty cents for the same services in which the city corporation officers demand sixteen dollars and eighty cents.

Your petitioner further represents, that the said purchasers demand of him one half the rent of the house for the term of ten years or possession of the premises.

Your petitioner further states that the assessments and all the proceedings in relation to said sewer are illegal, but that the Supreme Court refuse to give relief in these matters, on account of the inconvenience it will give the corporation of the city of New York, and that the Chancellor is unwilling to interfere for the same reason.

Your petitioner represents that such a state of things is injurious to the value of real estate in the city of New York; injurious to titles, and a great public evil and requires immediate redress.

Your memorialist asks that his case may be investigated, and that he may be protected in his possessions, and saved from vexatious and expensive litigation, and that the corporation of the city of New York may be required, in all cases, to give personal notice of the imposition of assessments, to both owners and occupants, and that the fees of advertising may be limited by law to the price charged by the Comptroller of the State for similar services.

And your memorialist, &c.,

DANIEL VAN REED.

(Senate Document, No. 100, page 316.)

(Senate Doc. 100, pages 322–'24.)

Petition of Martha Amory for relief from assessments.

To the Honorable the Senate of the State of New York:

The petition of Martha Amory, of the city of New York, widow, respectfully showeth; that her late husband, James Amory, deceased, was the owner of certain real estate in the 12th ward, of the city of New York, lying adjacent to the Sixth and Seventh avenues, between, the income and use of which, he gave to your petitioner, for the support of herself and family.

That since his death, and sometime in February, 1835, an application was made to the corporation of the city of New York, by certain persons not being a majority of the land owners, on the line on the proposed improvement, to have the Sixth avenue opened, and worked up to One hundred and twenty-ninth street, in the said city, and that in June, of that year, the said corporation adopted a resolution to open the said avenue, from Thirty-fourth street, to One hundred and twenty-ninth street, and commissioners of estimate and assessment were appointed accordingly.

That your petitioner did not take part in the said application ***and had no knowledge or notice thereof, or of the proceedings thereupon until after the report of the*** *Commissioners had been confirmed by the Supreme Court.*

That in adopting the said resolution, the said corporation acted arbitrarily, and in direct violation of the seventh section of the amended city charter, and wholly neglected to publish the said resolution, in the city newspapers, and also omitted to call and publish the aves and noes, as by said charter, and by law, they are bound to do, and as ought to have been done.

That the said commissioners of estimate and assessment, caused a map to be made of the land supposed to be benefitted or damaged by the opening of the said Sixth avenue; that that part of the estate of the said James Amory, thereon known as lots Nos. 183, 184, 187, 188, 190, 191, 192, and 194, was assessed four thousand eight hundred and sixteen dollars, and lots Nos. 189, 193, and 197, awarded one thousand eight hundred and eighty-three dollars for said proposed opening.

That the said commissioners adopted a most unjust, unreasonable and arbitrary principle (if any at all was followed by them) in determining whether property was benefitted or damaged by said proposed improvement, and imposed on the estate of James Amory enormous and unnecessary assessments, for what has been of no advantage whatever.

That in illustration of their oppressive proceedings, your petitioner states that two of the said lots, i. e. Nos. 190 and 191 lie directly opposite of each other, on the said avenue, between Sixty-ninth and Seventieth streets, in front on the said avenue about two hundred feet, and are each assessed six hundred and one dollars, making more than one thousand dollars assessment for an imaginary benefit, in a distance of two hundred feet, and both sides of the street belonging to the same proprietor.

That lots Nos. 188, and 199, on the said avenue, between Sixty-eighth and Sixty-ninth streets, lie directly opposite each other, and

are equally affected by the said proposed opening; yet the said commissioners assessed upon lot No. 188, six hundred and three dollars for benefit, and awarded six hundred and one dollars to lot No. 189, for injury. That lots No. 192 and 193 are similarly situated, between Seventieth and Seventy-first streets, and an assessment of six hundred and three dollars is imposed on No. 192, and an award of six hundred and one dollars given to No. 193. And that in other respects, the proceedings of the said commissioners were grossly inequitable and improper.

That the expenses attending the said assessment amounted to ten thousand five hundred and sixty-eight dollars and seventy-seven cents; a sum vastly greater than could be honestly expended for the same; that the charge for the surveyor's bill alone, is almost twenty-five hundred dollars, and the counsel fees and court charges exceed three thousand five hundred dollars.

That all the expenses charged are enormously high, and your petitioner believes, that it will appear upon inquiry that the same has been fraudulently swelled and increased much beyond what would be a fair and reasonable compensation for the services rendered.

That the costs of such alleged opening of Sixth avenue were never taxed in the manner, and after giving the notice required by the act of April 20th, 1839, as ought to have been done.

That the said Sixth avenue has not been actually opened, although the said corporation have collected a considerable portion of the said assessments, and insist upon the payment of the aforesaid assessments, on the estate of the said James Amory, and have advertised said land for sale, to realize said assessment with interest.

That other, and equally unjust and fraudulent assessments have been imposed on the estate of the said James Amory, for the pretended opening of the Seventh avenue and Manhattan square; the whole amount of the sums assessed on the said estate being upwards of eight thousand dollars, and leaving at least **SIX THOUSAND DOLLARS TO BE PAID IN CASH**, after all the awards have been allowed, and for which large sum of money, your petitioner states, no adequate or corresponding benefit, indeed no benefit whatever, has resulted to the said estate.

Your petitioner further states, that she has been informed, and believes, that her only hope of relief in the premises, is by the interference of the Legislature; and she therefore prays your honorable body to take her case into consideration, and grant to her, and the freeholders of the said city, who may be in the same unfortunate condition with her, such relief as under circumstances will be right and proper.

And your petitioner as in duty bound will ever pray, &c. MARTHA AMORY.

New York, February 10, 1842.

(From Senate Doc. No. 100, page 313.)

Memorial of Garrit H. Striker, for relief from exorbitant assessment.

To the Honorable the Legislature of the State of New York:

The undersigned respectfully represents to your honorable body that he is the owner of landed estate upon the island of New York, which he inherited from his ancestors, which estate has been in the family about one hundred and sixty years, and has ever been and is now cultivated as a farm; this land is situated about four miles from the City Hall and borders on the Hudson river.

That in the year 1836 the corporation of the city of New York, upon the application of eighteen individuals who had no interest in the opening of the avenue, and who were not awarded or assessed therefor, ordered the Ninth avenue opened so far as to apply to the Supreme Court for the appointment of commissioners to make awards and assessment for the same Forty-fifth street to the B'oomingdale road, a distance of about three quarters of a mile. The application to the Supreme Court was ex parte and without notice to the owners of land on and near said avenue; the persons appointed as commissioners were either unacquainted with the property, or in other respects disqualified to make the proper assessments.

That your memorialist's property, designated on the map accompany this petition (and colored red) was assessed by said commissioners for benefit to the same in consequence of opening the said Ninth avenue, the sum of $3, 927 00; that, together with the costs and interest at the present time amounts to about $6,686 54, and for the payment of said sum it has been sold by said corporation for the term of 1000 years, a term equal to the fee.

That your memorialist's said property so assessed, does not any of it lie within two hundred feet of the said Ninth avenue; the Tenth avenue on one side, and the Eighth avenue on the other side being opened and worked, supersede entirely the necessity of the opening of the Ninth avenue.

And your memorialist further represents that Fifty-first, Fifty-second, Fifty-third and Fifty-fourth streets have also been ordered open by the said corporation, for which your memorialist's property on the westerly side of Ninth avenue and marked on the accompanying map in red and blue has been further assessed the sum of $1,109 96, besides costs and interest; this last assessment was over and above the land necessarily taken for said streets. That the whole of your memorialist's said lands have been sold for said assessments for the term of 1000 years; that the time of redemption of the first mentioned assessment has expired.

And your memorialist further represents that his said pieces of land have not in the least been benefitted by the said assessments, or the pretended opening of the said streets or avenue; nor would the same be benefitted if the said avenue and streets were actually opened and worked; and that the costs and charges of commissioners' fees, attorneys' fees, surveyors' fees and contingent expenses constituted a very large portion of the said assessments, which your memorialist represents was illegal and wrongfully assessed upon his said property.

Your memorialist further represents, that his said property would not bring more than the said assessments.

And your memorialist further represents, that the opening of said streets and avenue was not called for by any persons affected, or owning lands on said streets or avenue, or any person affected by the assessments, or for the use and convenience of the citizens of the city of New York, and that these enormous assessments amount to a total confiscation of his said lands, and it is believed that the opening of said avenue and streets will not be required or called for, for public use, for a great many years to come.

And your memorialist further represents, from the advice of eminent counsel who have examined the proceedings of the common council in the matter, that the actings and doings of the common council are in strict violation of law, and that an application has been made to the Supreme Court for a certiorari to review the proceedings of the opening of the Ninth avenue, and which was refused upon the ground that the granting a certiorari was entirely within the discretion of the court, and notwithstanding the corporation may have acted illegally and oppressively in the matter, the court would not interfere to set aside the proceedings of the corporation. That your memorialist has since instituted proceedings in the Court of Chancery for relief, which last tribunal withholds its aid, if it has any, for fear of transcending its jurisdiction, or for fear it may bring into said court such a multiplicity of business as to block it. And your memorialist further represents as an evidence of the fact, that the opening of the said avenue was not called for or necessary. He refers your honorable body to the document hereunto annexed, being Document No. 12, of the board of assistant aldermen, which contains the veto of the mayor.

And that the selling of his property for one thousand years, is equal to selling the fee simple absolute; and is in fact taking private property for public purposes, without "just compensation," and therefore a violation of the Constitution.

That such an excess of power by the corporation of the city of New York over the property of the citizens, is destructive to its value, and ruinous to its interests, possession, and owners, and a great and alarming public evil, requiring legislative interference.

Your memorialist has no doubt, that had the Supreme Court granted a certiorari in the case, the assessment would have been properly reviewed and corrected, and that entire relief would have been given in these matters. But your memorialist believes he could be restored to his rights, if the Court of Chancery could be vested with jurisdiction in the case.

Your memorialist now asks your honorable body to protect him in the right and possession

To the Honorable the Legislature of the State of New York:

The undersigned complains to your honorable body of various public officers, who, claiming to act under the authority of the laws of this State, have imposed the lands belonging to the heirs of the estate of the father of your memorialist, two several most arbitrary and extraordinary, and (if legal) most ruinous assessments for the pretended opening of streets and avenues, which together far exceed in amount the value of the land assessed.

Your memorialist states that one of the assessments is for the pretended opening of Twenty-eighth street, and a piece of ground cultivated as a garden, measuring 58 10-12 feet by 96 feet, is assessed for benefit the sum of *one thousand and thirty-seven dollars and five cents.*

The same piece of ground is assessed for the pretended opening of the Seventh avenue from Twenty-first street to One hundred and twenty-ninth street, the sum of *two hundred and nine dollars and ninety-eight cents*, making together the sum of *twelve hundred and forty-eight dollars and three cents.* The interest on these two assessments will increase the amount to about *fifteen hundred dollars.*

In order that your honorable body may be able to form an opinion of the reckless manner in which these assessments are constituted, the undersigned refers you to an official document of the common council of the city of New York, known as Document No. 45, of the board of aldermen of 1839, which states that the commissioners' fees for making the assessment for opening the Seventh avenue, are four thousand nine hundred and twenty dollars, which is for three commissioners $1,640 each, and at the highest rate allowed by law, which is four dollars per day, it is pay for four hundred and ten working days, near one year and one-third of a year.

The amount paid commissioners for room hire was four hundred and ten dollars, which is equal to the rent of any mansion on that part of the island for two years; two hundred and fifty dollars for clerk hire; thirty dollars for carriage hire, and forty-eight dollars for contingencies; three thousand nine hundred and seventy-six dollars and seventy-six cents for counsel fees; twenty-eight hundred and one dollars for surveyor's fees; and eleven hundred and fifteen dollars for collector's fees; amounting for fees to the enormous sum of $13,550 76 for services not worth a thousand dollars.

Your memorialist refers to the report of the commissioners on file in the clerk's office of the Supreme Court at Albany, for the amount of the assessments and awards, and the particulars of this assessment stated in avenue report as No. 44, and in the street report as No. 101½. The fees, &c. do not appear in the reports, but have been paid by the street commissioner as appears by the receipts in his office. No bills of items were rendered by the officers to whom these enormous fees were paid; the same were not taxed by any officer, or audited or approved, yet the corporation of the city of New York seek to collect these fees out of the lands assessed, and have advertised the same for sale therefor.

The undersigned states that no such services to the extent for which these enormous fees were paid, were ever rendered.

Your memorialist further states that the proceedings in the matter of Twenty-eighth street are also of an extraordinary character, and the fees proportionably exorbitant; and moreover, that no application was ever authorized by the common council of the city of New York to the Supreme Court for the appointment of the commissioners who made the assessment, and therefore the said proceeding is a high-handed usurpation of power, and one of the most dangerous character, and demanding of summary proceeding by the representatives of the people. The property of the citizens is not safe under such a state of things.

Your memorialist refers to the papers and documents laid before your honorable body by Anson G. Phelps, Esq. in relation to that portion of the island of New York in which Twenty-eighth street is located.

Your memorialist complains of the Supreme Court in confirming such assessments, and more particularly in their refusal of an application for a certiorari requiring the proceedings to be brought up for review.

Your memorialist complains that the Supreme Court urge as an objection, the doctrine of "public inconvenience." Surely such a doctrine ought not to be pleaded in such a case, to take the lands of citizens from them in such a way as here set forth, and then deny them any redress.

Your memorialist most respectfully asks that your honorable body will interpose, that the representatives of the people, who are the guardians of the commonwealth, may vouchsafe to him the safeguards of the constitution, which holds private property sacred even in cases of public necessity, and will not permit it to be taken from the owner but on making him just compensation; and that the Supreme Court may be required by the Legislature to review these extraordinary proceedings.

Your memorialist represents that the said street and the said avenue are in the same plight and condition as they were before the assessments were thus shamefully imposed.

Your memorialist insists that said piece of ground should not in the event of the actual opening of the said street and avenue, be assessed as many shillings for benefit as the assessments complained of are hundreds of dollars.

Your memorialist complains of the corporation of the city of New York for attempting to enforce the collection of such an odious and atrocious assessment, and begs that the Legislature will not permit such an act to be proceeded in.

This assessment is not alone an error of judgement in the excessive amount of the assessment, but it is a seizing of the lands of a citizen and converting the same to the use of public officers in a most extraordinary manner. Such a proceeding will scarcely find a parallel in the jurisprudence of any government on the habitable globe.

This property is worth very little more than double the amount of the interest of the assessments.

Your memorialist states that other parties

who have suffered from these same proceedings made application to the Chancellor for relief, but that officer has refused to interfere, on the ground that inconvenience will result to the corporation.

Your memorialist submits that the position assumed by the Supreme Court in this case, is exercising the legislative powers of this State vested in the Senate and Assembly.

And as in duty bound, &c.

JOHN A. SCHUYLER.

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The following is a certified copy of one of the rules entered in Street cases in the Supreme Court, as certified by the clerk, evidencing that these important doings, involving hundreds of thousands of dollars, need some more systematic mode of proceeding:—

(From Senate Doc. No. 100, *p.* 312.)

IN SUPREME COURT,

JANUARY 4, 1841,

In the matter of the application of the Mayor, Aldermen and Commonalty of the city of New York, relative to opening Twenty-ninth street from the East river to the Hudson river, in the Sixteenth ward of said city.—R. Emmet, Attorney.

On filing the report of John Leonard and Lovell Purdy, two of the commissioners of estimate and assessment, duly appointed in the above entitled matter, made to this Court and signed by them, and bearing date the 18th day of May, 1840, which said report is in the words and figures following, to wit: (Here take in report.) And on filing the additional report of said two commissioners of estimate and assessment, made to this court and signed by them, and bearing date the 3d day of June, 1840, which said additional report is in the words and figures following, to wit: (Here take in additional report.) And on filing the usual affidavits of publication of notice of this motion; and on filing the usual affidavits of publication of notice of this motion; and on filing certain objections to the confirmation of said report; and on motion of Mr. Emmet of counsel for the mayor, aldermen and commonalty of the city of New York; and after hearing counsel opposed, It is ordered that said report of estimate and assessment be and the same is hereby confirmed. (Copy.)

JNO. KEYES PAIGE, Cl'k.

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(From Senate Doc. No. 100, *p.* 85.)

October 14, 1841.

At the request of the committee of citizens on the assessment laws of the city of New York, this committee met this day at the call of the chairman, in the committee room of the Senate chamber in the city of Albany, having previously, October 10th, inst., written to said committee of citizens, and directed them to notify the mayor of the city of New York and the counsel for the corporation of said city of this meeting.

Present, Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

John Keyes Paige being called and duly sworn on the part of the memorialists, says, he is clerk of the Supreme Court in the city of Albany. Witness produced the report and additional report of the commissioners of estimate and assessment in the matter of opening Sixth avenue in the city of New York, which was filed in his office June 6, 1839, and appears by endorsement to have been confirmed on that day. It appears by affidavits annexed to said report, that notice of presenting said report for confirmation was published daily in the New York Evening Star and Evening Post, respectively, commencing on the 18th day of May, and continuing to the 3d day of June, 1839 inclusive, Sundays excepted; and in the New York Times and Commercial Intelligencer daily, from the 20th day of May to the 3d day of June, 1839 inclusive, Sundays excepted. There does not appear to be any evidence that said notice of presenting such report for confirmation was published in handbills, annexed to said report, or additional report. Witness never knew any bill of items of the expenses in opening streets or avenues, or public squares in the city of New York, presented to the Supreme Court for taxation when the reports of the commissioners of estimate and assessment were presented to that court for confirmation, though it is possible when such confirmation was opposed, such bills of items may have been presented to the court with the the report and other papers, and the judge may have passed upon them; but the witness never saw any such bills, and none have fallen under his observation in his office. There is an endorsement on this report to the following effect: "Deposited in county clerk's office 18th May, 1839."

There is a charge upon each opening street, avenue or square, for the extended rule, including the whole report of the commissioners of estimate and assessment, with a certified copy thereof, which extended rules have not yet been entered in many cases, and in making witness' return to the Comptroller he would not include the fees for the prospective services in making out such extended rule and the certified copy thereof.

Witness produced the reports of the commissioners of estimate and assessment in the opening of the Seventh avenue from Twenty-first to One Hundred and Twenty-ninth street, which is on file in his office, filed and confirmed February 9, 1839. There does not seem to be any endorsement upon it of having been filed in the county clerk's office in New York. Witness never knew a case of opening a street or avenue where the proof of publication did not accompany the presentation of the report; such proof is not attached to this report, but witness has no doubt it is upon some other paper in his office. There is no abstract or summary accompanying said reports so far as the witness has examined the same. The report of estimate and assessment in the Seventh avenue contains, as numbered, eleven hundred and ninety-six pages. Sixth avenue about nine hundred pages.

JOHN KEYES PAIGE.

Upon closing the examination of the preceding witness, John Keyes Paige, the committee adjourned to meet at Clinton Hall, in the city of New York, on such day as shall be fixed by the chairman thereof in his notice to the members of said committee.

From printed proceedings of the Board of Assistants, vol. 16, page 341.

November 9th, 1840.

BOARD OF ASSISTANTS.

By Mr. Adams—The following resolution, to wit:—

Resolved, That the counsel of the Corporation, in the matter of opening the Seventh avenue, from Twenty-first street to One Hundred Twenty-ninth street, furnish this board with a bill of the items constituting his bill of Three thousand nine hundred seventy-six dollars and seventy-seven cents, counsel fees and court charges in said proceedings; also that he furnish a bill of the charges of the commissioner of estimate and assessments, and the surveyor's bill in said matter, and that he furnish said papers at the next meeting of the board. Adopted.

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(From Senate Doc. No. 100, p. 278.)

New York, November 12, 1840.

To WILLIAM ADAMS, ESQ.

Asst. of the Fifth Ward.

SIR—I have received a copy of a resolution offered by you and passed by the board of assistants on the 9th inst. requiring me to furnish that board with the items of the bill for counsel fees and court charges, in the matter of opening the Seventh avenue; also a bill of the charges of the commissioners of estimate and assessment and the surveyor's bill in the same matter. I had determined to send back the copy of the resolution, enclosed in a short communication, to the president of the board of assistants, respectfully denying the right of that board, or of the common council, to require any such information from me; but being informed that the resolution was not drawn by you, and believing that you might not have well considered its fitness or propriety, when you introduced it, I have thought it due to you to make this personal communication to yourself on the subject.

A very brief statement will, I think, satisfy you that as a matter of *strict right* the common council are not entitled to make any such demand; and I can hardly suppose that any member of that body could desire that its aid should, *without right*, be made subservient to the investigating spirit, however laudable it may be deemed, which may have suggested this resolution in any other quarter.

The proceedings for opening the Seventh avenue, were conducted and concluded under the act of April 9th, 1813, the 189th section of which provides that the commissioners of estimate and assessment (who are appointed by, and are the officers of the Supreme Court,) shall be entitled to receive the sum of not more than four dollars for each day actually employed by them in their duties, besides all reasonable expenses for maps, surveys and plans, clerk-hire and other necessary expenses and disbursements. The law directs that these expenses shall be paid by the corporation, and included in the assessment, by the subsequent collection of which, it was intended that the corporation should be reimbursed. There is no provision in this act for the taxation of these expenses, or for regulating them by any other rule than the discretion and good faith of the commissioners who are authorized to incur

avenues, and about five miles from the City Hall;

That your memorialist, Joseph Alexander, owns a piece of land of about two acres, on Seventy-ninth street between the Ninth and Tenth avenues, and about five miles from the City Hall; and

That your memorialist, John H. Tallman, owns a piece of land of about two acres, between the Sixty-seventh and Sixty-ninth streets and between the Seventh avenue and the Hudson river, and near five miles from the City Hall.

That on the 18th day of April, 1836, Ald. Benson, of the Second ward of the city of New York, offered a resolution in the board of aldermen to open a public square called the Manhattan square, on the island of New York, between Seventy-seventh street on the south and Eighty-first street on the north and the Eighth avenue on the east and the Ninth avenue on the west, which forms a space of fifteen acres of land; that said resolution was pretended to be adopted by the common council, and received the sanction of the mayor on or about the 4th day of April, 1836. That in pursuance of said proceedings of the common council, an application was made to the Supreme Court for the appointment of three commissioners to make a just and equitable estimate and assessment of the benefit and injury in consequence of the opening of said square; that said commissioners did make a report of the estimate and assessment, which was confirmed by the Supreme Court, on an *ex parte* application, on the eleventh day of March, 1839; that said commissioners estimated the value of the land so taken for the said square at $47,449 00, and which was assessed by them, on your memorialists and others owning lands in the vicinity of the said square, together with $7,100 52, being for costs and expenses in the making of said estimate and assessments, as follows, to wit:

Commissioners' fees, - -	$1,582 00
Room hire, - - - - - - -	186 00
Carriage hire - - - - - -	3 00
Clerk hire, - - - - - - - -	20 00
Surveyors' fees, - - - - -	3,070 39
Attorneys' fees, - - - - -	1,449 13
Collectors' fees, - - - - -	800 00
	$7,100 52

The whole amount of the said assessment is $54,549 42.

That your memorialist, James McBride's said property, has been assessed for the opening of the said square the sum of $790 50, which is more than the value of the land;

That your memorialists, L. and V. Kirby's said property has been assessed for the opening of said square, $1,674 50;

That your memorialist, John H. Tallman's said lands have been assessed for the opening of the said square the sum of $270 00; and

That your memorialist, Joseph Alexander's said property has been assessed for the opening of said square the sum of $418 00.

And your memorialists further represent, their said lands are now and have been for many years used for farming and grazing purposes, and are not in any way benefitted by the pretended opening of the said square.

That said square is not opened, or any thing done therein, since the confirmation of said report, except an attempt on the part of the common council to force the collection of the said assessments.

And your memorialists further represent, that according to the natural and legitimate course of improvements, and the growth of the city, their said lands cannot be benefitted by an actual opening of said square in fifty years to come. That said lands so taken for a public square, are now an open common in connection with many hundred acres adjoining the same and of the same quality.

That said land so taken for said square presents a very haggard, rough and uneven surface, and is a field or ledge of rocks, and is unfit for a public square or any other purpose, without a much greater sum being laid out upon it than the land is worth; that the said land is not worth for farming or any other purpose as many hundred dollars as the owner was paid thousands, and so assessed upon your memorialists and others.

That your memorialists further represent, that said commissioners acted without proper judgment, or with great partiality, in the making of said estimate and assessment, and in the allowing of said fees and costs; and that from the advice of respectable counsel who have examined the proceedings of the common council in the matter, they believe the proceedings in the said opening of said square are illegal and void; and that your memorialists have caused an application to be made to the Court of Chancery for an injunction restraining the corporation of the city of New York from selling their said property, which had been advertised for sale for the payment of said assessments, which application the Chancellor denied, on the ground that the proceedings of the common council being void, he had no jurisdiction in the matter, not even to relieve them from the cloud which the pretended although illegal proceedings of the common council had cast upon their rights and property.

And your memorialists further represent, that almost every tribunal in the State having jurisdiction in the county of New York have been applied to for relief in assessment cases, and while the different courts have held the proceedings of the common council illegal, each court has shrunk from the responsibility of the case, and declared that some other tribunal entertained the proper jurisdiction. Your memorialists believe that the only court which could give the adequate relief in these assessment cases, is the Court of Equity, provided it is or could be vested with proper jurisdiction.

Your memorialists now appeal to your honorable body for relief, and to protect them in their rights, possession and property, so guaranteed to each citizen by the constitution of the State, and for such other and further relief as the Legislature in their wisdom shall see fit to grant.

And your memorialists shall ever pray, &c.

James McBride, John H. Tallman,
Joseph Alexander, L. & V. Kirby.

Dated New York, February 4th, 1842.

(From Senate Doc., No. 100, page 87 to 89.)

Philip Milledoler being called on the part

of the memorialists, and duly sworn, says that the witness now resides in the city of New York, and is a minister of the gospel; that he has been charged on his property a series of assessments, commencing about the year 1837, which is a small tract of land at Harlem, in the city of New York, about thirty-three acres in all, bounded by Harlem river, opposite Barn Island; it is and has been rented to a gardener for many years, for $200 dollars per annum, the corporation tax falling upon the witness. In the year 1840 the property was taxed as one house and twenty-four acres, valued at $43,000, and the tax $198 23. The tax in 1837 was $165 24; in this year it is assessed as one house and twenty-seven acres, valued at 45,000. In 1839 it is taxed as one house and twenty-four acres, valued at $43,000; tax $191 89. The house is a small farm-house with a barn. In 1840 the property rented for $300, and this year the rent is reduced to $250. October 4, 1838, witness paid on that property, for regulating One hundred and twenty-second street from Third avenue to Harlem river, an assessment of $1,852 62, with interest $66 99, making a total of $1,919 61.

The Evening Post of July 23, 1841, contains an advertisement of lands, advertised by the corporation of New York, to be sold for assessments, in which advertisement is the following: March 28, 1838. 107. Piece of land: Philip Mildollar; regulating One hundred and twenty-second street from Third avenue to Harlem river; One hundred and twenty-second street south to Second and Third avenue, 56 6; 104 68."... Witness called at the collectors' office in the hall of records to inquire about that advertisement and was told the book was not there; that Mr. Sharpe had it. and witness was directed to call upon him; witness examined the map in that office, and also the map made by Brydges of witness's property and could not ascertain by that comparison what the situation of the witness's property was; he made the examination several times, and could derive no satisfactory information from it.

The assessments imposed upon the said property of the witness and paid by him are as follows, viz:

Sept. 23, 1836—Feb. 14, 1837. Opening 2d avenue from 109th to 123d street,	$44 00
April 5, 1837—Oct. 4, 1838. Opening 119th street from 4th avenue to Harlem river,	741 00
Interest,	22 00
June 28, 1837—Aug. 19, 1837. Opening 122d street from 3d avenue to Harlem river,	313 00
Nov. 28, 1837—Jan. 27, 1838. Regulating 114th street from 5th avenue to Harlem river,	37 81
Jan. 26, 1838—March 16, 1838. Curb and gutter for 114th street from 3d avenue to avenue A,	93 81
Feb. 9, 1838—Jan. 3, 1839. Opening 117th street from 4th avenue to Harlem river,	192 54
April 26, 1838—Oct. 4, 1838. Opening 123d street from 3d avenue to Harlem river,	317 45
Interest,	7 90
Carried forward,	$
Brought forward,	$
May 1, 1838—Oct. 4, 1838. Opening 120th street from 4th avenue to Harlem river,	235 50
Interest,	7 06
July 1, 1838—Oct. 4, 2838. Opening 118th street from 4th avenue to Harlem river,	600 00
Interest,	17 85
Dec. 6, 1838—Jan. 3, 1839. Building a sewer in 122d street from 3d avenue to Harlem river,	2,064 92
March 14, 1839—April 16, 1839. Regulating 2d avenue from 109th to 123d street,	210 99
Nov. 1, 1839—March 6, 1840. Opening 1st avenue from 109th to 123d street,	1,405 00
Interest,	32 78
Nov. 4, 1836. Opening 116th street from 4th avenue to Harlem river,	630 00
Oct. 4, 1838. Regulating 122d street from 3d avenue to Harlem river,	1,852 62
Interest,	66 99
	$8,994 30

By the assessment and award for opening First avenue from One hundred and ninth to One hundred and twenty-third street, witness was entitled to an award of $2,107, and charged with an assessment of $1,547 78, leaving a balance of award coming to the witness of $669 22; the witness called to receive that balance and was told that he could not receive it, that he must pay the whole assessment of $1,437 78 and wait until some future time to receive his said award; and when at some future period the witness called to receive his said award he was charged with and paid interest on his said assessment, from the time it was said to be payable, although less in amount than the award that was so coming to him: witness does not recollect that any reason was given for so doing; the witness was then residing out of the city of New York, at New Brunswick in New Jersey, where he had a heavy charge of a public nature, which necessarily occupied his time and prevented him from investigating those matters as he otherwise would have done. Owing to witness's non-residence he cannot tell whether all the streets, which have been thus paid for, have been opened and regulated or not; the witness could not lease or sell any part of said premises, and has been obliged to take up, by mortgage on the same, money to pay said assessments, the interest of which now amounts to about $500 per annum, which amount is nearly all sunk every year, as the ordinary corporation tax swallows up almost the whole of the yearly rent. The witness has not to his recollection ever been consulted in any one case as to the making of said improvements, for which said assessments were so imposed; One hundred and sixteenth street was opened one hundred feet wide through witness's property, taking the best part of it, and for which they awarded the witness $21 over and above his assessment. ***No use is made of those roads or streets thus opened; the lots in the vicinity of One hundred and twenty-second street the witness would be willing to give away to any one who would take take them and fill them up, they are so much below the level Of the sewer.*** Mr. Brydges, the surveyor, made a map of witness's property and laid it out in town lots for the witness; he probably suggested it to the witness and he consented to it; a copy of this map is on file in the City Hall. When the witness was so referred to Mr. Sharpe, as he has before stated, he was directed to him at his house and out of the City Hall. P. MILLEDOLER.

Cross-examined by street commissioner on part of corporation.—The map made by Mr. Brydges for the witness laid out the property in town lots. Witness believes the map in the collector's office had on it lots and streets. The witness tried, but he cannot tell to this day, whether he may not, in some instances, have paid assessments on other people's property or not; the collector examined the map, and told witness it was all correct, and he paid the assessments. ☞ *When witness found his property advertised for sale, for assessments which he believes he has paid, he called at the collector's office, and they told him IT WAS A MISTAKE AND SHOULD BE CORRECTED; but he afterwards found, to his surprise, it was still advertised for sale, and he believes it is for an assessment which he has paid.* ☜ Witness has never sold any of the lots laid out on Brydges' map; but he has given several of them to his sons and daughters, and he believes they have sold some of them, but what prices they brought witness does not know. The award which the witness thus applied for was in the same proceeding that the assessment was made. The sewer of One hundred and twenty-second street was made partly over a salt marsh nearly on a level with high tide. When witness was told to call on Mr. Sharpe, he was not told he was removed from office, but was told he had the books, and that he must call on him.

P. MILLEDOLER.

Direct examination on the part of the memorialists resumed.—The witness has owned this property for thirty or forty years; he inherited it, and it has been in the family for nearly a hundred years. The value of that property as town lots depends upon contingencies. Now it is only valuable for farm property.

P. MILLEDOLER.

We ask the reader to carefully peruse the testimony of the Rev. Dr. Milledoler. This venerable divine was one of the professors of the College of New Brunswick, New Jersey. The annual taxes upon his estate, it will be seen, are within a few dollars of the annual rental, and the money to pay the assessments he was under the necessity of borrowing, the interest of which he paid out of his salary which he received as a professor of the college.

It is easy to see that the assessments and the interest will soon equal the value of the land, so that the venerable sufferer will soon, at this rate, be divested of both his land and his money.

The corporation, and their officers, in this case, indirectly take the "Lion's Share" of this good old gentleman's estate.

the City Hall, on the east and west side of the Ninth avenue; that your memorialist's property, situated on the east side of the Ninth avenue, and marked in blue on the accompanying map, contains one acre and three perches of ground, and has been assessed by the common council of the city of New York, the sum of $1,800, including interest, for the pretended opening of the Ninth avenue, for the payment of which your memorialist's said property has been sold for ONE THOUSAND YEARS.

That your memorialist's said property, situated on the west side of the Ninth avenue, and marked on the accompanying map in yellow, contains three acres and thirty-one perches, and has been assessed by the common council of the city of New York, for the pretended opening of Fifty-third and Fifty-fourth streets, the sum of $635 28, and that a small piece on the Hudson river has been assessed the sum of $233 for the pretended opening of Fifty-fifth street.

And your memorialist further represents, that the said Ninth avenue and said streets have not been opened, nor has any thing been done therein since the assessment was made; nor is it necessary, in the opinion of your memorialist, that said avenue and streets should be opened.

That the opening of said avenues and streets, and the working and grading of the same, if done by the corporation, will cost more than all the land is worth that can be assessed for the same.

That your memorialist's said land, situate on the east side of the Ninth avenue, is at the nearest point 170 feet from said avenue; and in the firm belief of your memorialist, it would not bring, at public or private sale, the amount of the assessment.

That her said other lands have not been benefitted by said assessments; and your memorialist further says, that the said opening of said streets and avenue, and said assessments, were opposed, but without any effect.

And that your memorialist has applied both to the Supreme Court and the Court of Chancery for relief, but without success. The Supreme Court say they have no power, by certiorari, to interfere; nor will the Court of Chancery give any redress by injunction, for want of jurisdiction, the proceedings of the common council being void.

Therefore your memorialist appeals to your honorable body for relief, in hopes she will find protection and be restored to her rights, guaranteed to her and every other citizen, by the Constitution of the State.

And your memorialists will ever pray, &c.

WINIFRED MOTT.

New York, Feb. 10th, 1842.

Preamble and Resolutions for paying contractors and applying to the Legislature for act to buy under sales for assessments.

Whereas, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule, prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the common council, and which were to be paid for by assessments on the property benefitted, and as soon as the amounts of said assessments were collected.

And whereas, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same only in part made, and most of them returned as unpaid and uncollected, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state, advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; but the amount due on said assessments could not be realized, by reason of their being no bids at such sales for said property, *THE AMOUNT OF SAID ASSESSMENTS BEING MORE THAN THE PRESENT MARKET VALUE OF SAID PROPERTY SO LIABLE*, in consequence whereof the said contractors are still unpaid; the common council, in order to relieve them, and anticipating the collection of said assessment, and which may hereafter be made, and trusting that they may be authorized by the Legislature, to raise by tax the amount which they may so advance, and to secure themselves and city treasury, from any loss, by being authorized to purchase in at any sale, such property, for which there may be no bids; do adopt the following resolutions:

1. *Resolved*, that the counsel prepare a law, under the direction of the law committee, to be applied for, to the Legislature, authorizing the corporation to become purchasers of property which may hereafter be offered for sale, for payment of assessments agreeable to law; to refund them for any advances which may have been made them, to contractors or others, for the improvement for which, such assessments were imposed. Such law to contain all needful provisions to secure the rights of parties interested therein, and that such property be held as a trust fund to repay such advances.

2. *Resolved*, that the comptroller be authorized to pay the several contractors the amounts respectively due them, for the several improvements made in pursuance of the ordinances of the common council, in all cases where the property assessed therefor, was benefitted by such improvement, has been offered for sale, and could not be sold by reason for the want of any bid, at the recent sale of property for assessments, or in cases in which the sale of such property has been enjoined by the Court of Chancery, such payment to be made on the first day of October next.

3. *Resolved*, that the comptroller include the estimated amount required for the above payment, in the amount of the next annual tax bill, to be applied for to the next Legislature.

4, *Resolved*, that the counsel to the corporation, under the direction of the law committee, **take measures to obtain a revision of assessments**, mentioned in the annexed schedule as may be judged expedient, and agreeable to law.

Adopted by board of ass'ts Feb. 25, 1841, by board of aldermen Feb. 22, 1841, and approved by the acting mayor Feb. 25th, 1841.—*Sen. Doc.* 100, *p.* 276.

SUPREME COURT.

JANUARY TERM OF 1823.

Le Roy and others against The Mayor, Aldermen, and Commonalty of the City of New York.

This Court has a general superintending power to award a certiorari, not only to inferior Courts, but to persons invested by the legislature with power over the property and rights of others, for the purpose of supervising their proceedings, even in cases where they are authorized finally to hear and determine.

As where the Corporation of the City of New York were authorized by statute, to cause sewers to be made in the city, and to make a just and equitable assessment of the expence thereof, on the owners and occupants of houses and lots intended to be benefitted thereby: though the commissioners, appointed for the purpose of making such assessment, have a discretion in determining the quantum of benefit which each owner or occupier of a house or lot, within the district, may derive from the common sewer, and with the exercise of which discretion this Court cannot interfere; yet, as to the persons who are to be assessed, which must depend on the sound construction of the law, as applied to the circumstances of the case, the Court has power to establish the principle on which the assessment is to be made, and to compel the Corporation to act on such principle.

A WRIT of *certiorari* was issued, directed to the Mayor, Aldermen, and Commonalty of the city of *New York*, returnable in *August* term, 1820. The certiorari recited, that the Corporation of *New York*, by virtue of the "Act to reduce the several laws relative to the city of *New York*, into one statute," passed *April* 9, 1813, (2 *N. R. L.* 342—460,) had caused a common sewer to be made in *Canal street*, in the said city, from *Washington street* to *Collect street*, for the purpose of receiving the water from a large and extensive district, or section of the city, (particularly described,) and conveying the same to the *Hudson* river, and appointed *Peter Hawes*, *Roger Strong*, and *John Targee*, to make a just and equitable assessment of the expense thereof, (amounting, with the incidental charges, to about 98,000 dollars,) among the owners and occupiers of all the houses and lots intended to be benefitted thereby, in proportion, or as nearly as might be, to the advantage which each should be deemed to acquire That the commissioners named, accordingly proceeded to make the assessment, by which they assessed the whole expense of building the sewer on the plaintiffs, the owners and occupiers of houses and lots upon *Canal street*, and within about four hundred feet thereupon, being a small part of the houses and lots within the district or section of the city from whence the water is to be received into the sewer, to be conveyed by it to the *Hudson* river; to which assessment, objections, in writing, were made by the plaintiffs; but the assessment had, nevertheless, been confirmed by the Corporation, and a collector appointed to collect the sums assessed upon the parties named therein. That the district or section of the city, from which, by the permanent regulation of the streets and grounds, the water was to run into the sewer, and be conveyed to the river, contained about 500 acres; and the sewer was intended for the use and benefit of all the lots and grounds, to which such permanent system of regulation extended. But the assessment made for building such sewer, has been made upon a small part only of the houses and lots, and owners of lots, within such district. That *Canal street*, in which the sewer was to be built, was intended, laid out, and opened, for the purpose of forming a common outlet and passage way for the water from the said district to the *Hudson* river; and that street, and the sewer therein, conjointly, form the place of such outlet for the water, and are both necessary for its accomplishment. That the cost and expense of the ground, forming the street for that purpose, was assessed upon and paid by the owners and occupants of all the houses and lots within the district or section; that the sewer was necessarily made of its present dimensions, at a very great and increased expense, for the very purpose of giving to it a sufficient capacity to receive and carry off the vast quantity of water which must collect from the extensive district the sewer was intended to drain. That common sewers have been made under the direction of the Corporation, at different times, in other parts of the city, where the regulation of the grounds rendered them necessary, and the uniform rule and practice, in such cases, had been, to assess the expense of building the sewer among the owners and occupants of all the houses and lots from whence the water was received into the sewer. That such assessments have been made by persons appointed by the Corporation, who have confirmed such assessments; and that this rule and principle had been applied and acted upon, not only before the assessment in question, but subsequently, in cases which were mentioned, &c. The writ of certiorari *commanded* the Corporation to certify and return the assessment made by the persons above named, the objections in writing thereto, and all the proceedings respecting the same, with all the estimates and assessments of the expense of making the sewer, and all acts and proceedings touching the same, before the Corporation, or in their possession, custody, or power, &c.; and all and singular the acts, orders, minutes, reports, process, and proceedings, relating to the forming, laying out, and opening of *Canal street*; and all estimates and assessments of the expense of forming and opening that street, or of acquiring the ground for that purpose; and all minutes, orders, reports, acts, and proceedings, touching the same, before the Corporation, or in their possession, custody, or power; together with the maps, profiles, documents, and papers, in their possession, custody, or power, designating and describing the district or part of the city from whence, by the permanent and existing regulation thereof, the water runs and is conveyed into the sewer in *Canal street*, to be conveyed through it to *Hudson* river, with the time when these regulations were adopted and made, and all things required of them by the exigency of the said writ, in the premises, &c., before the Justices, &c.

In *August* term, 1820, *Edwards*, in behalf of the Corporation, moved to quash or supersede the *certiorari*, on the grounds stated in affidavits, which he read: 1. Because, of *laches* in the plaintiffs; the assessment having been confirmed by the Common Council in *November*, 1819, and no *certiorari* was sued out until *July* following. (6 *Johns. Rep.* 131.) 2. Because, a bill had been filed by the plaintiffs in the Court of Chancery for an injunction, which was refused by the Chancellor, (see 4 *Johns. Ch. Rep.* 352.) from whose decree an appeal had been entered, which was pending. 3. Because, the *certiorari* was irregular, on the face of it, requiring the defendants to return, not only all matters relating to the sewer, but proceedings which took place ten years ago, relative to *Canal street*. 4. Because, many of the persons assessed had paid to the amount of about 20,000 dollars. He said, that this was an application to the sound discretion of the Court; that a *certiorari* was not a writ of right; but the Court might quash the writ, if before them, or supersede it, if it was not returned. (2 *Atk.* 318, 319. *Sayre's Rep.* 156. 4 *Term Rep.* 499. 7 *Mod.* 18. 8 *Mod.* 331. *Viner's Abr.* tit. *Certiorari*, B. C. 5 *Term Rep.* 251.) The Corporation were not parties in these proceedings, but judges merely; and as long as the *commissioners* appointed to make the assessment acted within the scope of their authority, their judgment was final and conclusive. The statute left the matter to the judgment and discretion of the commissioners; and where that discretion had been exercised according to the act, no Court of law or equity could properly interfere to overhale their judgment. (1 *Johns. Ch. Rep.* 21. 2 *Comyn's Dig.* 487. *Finch's Rep.* 320. 2 *Atk.* 144.)

S. Jones, and *D. B. Ogden*, for the plaintiffs, to show that this Court had a superintending power over these proceedings, and that it ought to be exercised in this case, cited 2 *Caines' Rep.* 179. 15 *Johns. Rep.* 538. 16 *Johns. Rep.* 50. 1 *Lord Raym.* 469. 580. 1 *Salk.* 145. 2 *Term Rep.* 234. 1 *Bac. Abr.* tit. *Certiorari*, (B.) *Styles's Rep.* 13. 3 *Maule & Selw.* 447. *Callis' on Sewers*, 1[illegible]. 223, 224. 151. 161.

The Court denied the motion to quash or supersede the writ, with costs, and ordered a return to be made to it. The Corporation, afterwards, made a return to the *certiorari*, but the plaintiffs not deeming it sufficiently full, applied to the Court, on a notice of a motion and affidavits, in *January* term, 1821, for an order upon the defendants to make a new or further return to the writ. This motion was opposed by the counsel for the Corporation, who cited 2 *Johns. Cases*, 108. 2 *Caines' Rep.* 106. 2 *Burr.* 1042. 3 *Maule & Selw.* 447.

VAN NESS, J., delivered the opinion of the Court. The objects of this application, as stated in the *notice* of the plaintiffs, are, 1. That the return on file be taken off the file. 2. That the rule entered to assign errors, be vacated for irregularity. 3. For a rule that the defendants make a further return, in the following particulars: (1) That the defendants set forth, state, and describe the district or section of the city of *New York*, and the bounds and limits of the said district or section of the said city, from which the water runs, and is received, or, by the permanent or the existing regulation thereof, is to run and be received into the common sewer in *Canal street*, to be conveyed and carried to the river. (2) That they state the time when such permanent or existing regulation was adopted or made, and the nature and cause thereof, with the maps, profiles, documents, or papers in the possession, custody, power, or control of the defendants, designating, describing, or showing such said district or part of the said city, or

formity with that which the plaintiffs contend ought to have been pursued in this case, and it requires a return of the proceedings in such cases. To this, I am inclined to think, the defendants are not bound to make any return. Whether the Corporation has adopted a wrong principle of assessment in this case, is not to be determined by their practice, even in former analogous cases, but by the law under which they acted. The rule is justly stated by the defendants' counsel, that nothing is to be returned but what can be legally required to be returned, without reference to the command of the *certiorari*.

We, therefore, direct a rule to be entered, that the defendants make a further return to the *certiorari*, as to the first and second points stated in the notice; and that in the mean time, the proceedings on the rule for the plaintiffs to assign errors, be stayed, until twenty days after such further return is made. We give no costs of this application. They must abide the final event.

The defendants, accordingly, made a further return, which being objected to by the plaintiffs as insufficient, the counsel for both parties, to obviate the necessity of any further application to the Court on the subject, agreed to an additional statement, to be annexed to, and taken as part of the return. And in *May* term, 1822, the cause came before the Court, on the returns to the *certiorari* and the proceedings thereon, and upon a *notice* from the plaintiffs to the defendants of an application to the Court, that the estimate and assessment of the expense of making the common sewer in *Canal street*, mentioned in the return, be set aside, vacated, and annulled, with costs, or that such other order be made, or judgment rendered, by the Court in the premises, as justice might require.

The argument of the cause was commenced in *May* term, but, for want of time, was continued to *August* term last.

S. Jones, and *D. B. Ogden*, for the plaintiffs, contended, that the defendants, and the commissioners acting under their direction, had not conformed to the authority and direction of the act, or to the rule of assessment given by it. The 175th section, (2 *N. R. L.* 407.) says, they are "to cause estimates of the expense to be made, and a just and equitable assessment thereof among all the owners or occupants of *all the houses and lots intended to be benefitted thereby*, in proportion, as nearly as may be, to the *advantage* which each shall be deemed to acquire." They have no arbitrary discretion on the subject. The law is imperative. The only discretion to be exercised by them is in apportioning the amount of the assessment among the persons intended to be benefitted by the improvement. This act, in regard to the powers given to the Corporation, is very similar to the *English* statutes relative to the *Commissioners of Sewers*, in regard to whom, it has been decided, that they are bound to exercise a *legal* discretion, that is, the exercise of given powers. (*Callis on Sewers*, 112, 113. 145. 223, 224. 3 *Maule & Selw.* 447. 2 *Str.* 11. 47.) Then, who were the persons intended to be benefitted by this common sewer? Certainly, *all* those from whose grounds the water is carried off to the river, by means of the sewer. They are persons intended by the Corporation to be benefitted, when they directed the improvement to be made, not those intended by the commissioners.

Edwards, and *H. Bleecker*, contra, insisted, that the proceedings of the defendants had been, in all respects, in conformity to the act; and that the Court had no power to vacate or control the proceedings under it, unless they were irregular or fraudulent. The Court cannot take notice of any matter that does not appear in the return to the *certiorari;* nor of any thing which the defendants were not legally bound to return. And if any matters have been improperly returned, or ought not to have been returned, the Court will disregard them. (5 *Term. Rep.* 341. 6 *Mod.* 90. 4 *Viner's Abr.* 356. pl. 11. 2 *Salk.* 493. 5 *Mod.* 159. 7 *Johns. Rep.* 23. *Cases temp. Hardw.* 169. 2 *Johns. Cases*, 108.)

The office of a writ of *certiorari*, is to remove, or bring up from an inferior jurisdiction, a matter of record, or something in the nature of a record. When it is brought up, this Court do not look into the merits of the case, but merely whether it appears on the face of the proceedings, that the inferior tribunal has exceeded its jurisdiction. They do not interfere with the exercise of any power within the acknowledged jurisdiction of the inferior Court. If the return is false, the party may have an action for a false return, or an action of trespass. (1 Comyn's Rep. 80. Tidd's Pr. 455. 3 Maule & Selwin, 447. 2 Bl. Rep. 717. March's Rep. 196. 2 Caine's Rep. 182. 4 Mod. 66. 165. 1 Ch. Cas. 309. 1 Vesey, 58. 1 Vernon, 58. 1 Johns. Ch. Rep. 21. 1 Sid. 296. 3 Atk. 673. Skinner, 480. 14 Johns. Rep. 111, 112. 2 Vernon, 390. Prec. in Ch. 530. Bull. N. P. 75. Peake's Evid. 294, 295. 4 Johns. Ch. Rep. 352.

Woodworth, Judge, delivered the opinion of the Court.

A return having been made to the *certiorari*, directed to the defendants, application is now made to set aside the assessment of the expense of making a common sewer in Canal street, on the ground that it has not been made in conformity with the 175th section of the act relating to the city of New York. (2 *N. R. L.* 407.)

The general superintending power of the Court to award a *certiorari*, not only to inferior courts, but to persons invested by the legislature with power to decide on the property or rights of the citizen, even in cases where they are authorised by statute finally to hear and determine, has been frequently exercised, is considered as well established by the common law, and can only be taken away by express words. (2 *Caines' Rep.* 182. 8 *Term Rep.* 542.) The question of jurisdiction came up, when the defendant moved to quash the *certiorari*. The Court then decided that they had a supervisory power in cases of this description. This power will be exercised when the duty to be performed, and the manner of executing it, is clearly pointed out by the law, and there shall appear to be an essential de-

parture from it. On the application for a further return, we considered it indispensably necessary to have before us the whole of the proceedings in the possession of the defendants, to enable the Court to settle a principle, upon which an assessment of the expense ought to be made. On examining the return, it does not contain more than a fair compliance with the rule; it is admitted that the Court will only notice what can legally be returned, and will reject extraneous matter.

By the 175th section of the act the Corporation are authorised to cause common sewers to be made, and a just and equitable assessment thereof among the owners or occupants of all houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantages which each shall be deemed to acquire. In order to determine on what principles the assessments in the present case ought to be made, it is necessary to look into various regulations of the Corporation, in relation to improvements in this part of the city, and notice in what manner the inhabitants of the district, whose waters are carried off, are connected together, in respect to such improvements. It appears that there was an original outlet of the water from the grounds comprising the district in question, from time immemorial, a considerable part of which was along the present route of the common sewer. Had this part of the city remained unimproved, those who owned property in the lower part of the district, must have submitted to the consequences arising from the flow of the water, in its course to the natural outlet, and could not have supported a claim for damage sustained or for contribution against the owners of the lots lying in the upper or higher parts of the district.

The present question arises on a very different state of facts. The City of New York, within a very few years past, has extended rapidly; a waste and barren territory has been laid out into streets which have been paved and drained. Houses have been erected, forming an integral part of the city; the spirit of improvement is progressing; acts of the Legislature have been passed from time to time to enable the Corporation to regulate and conduct the necessary operations incident to such a state of things, and without which, disorder, irregularity, and great public inconvenience, would be the inevitable consequence. Persons owning property, which is to be diverted from its original destination, or applied for the purpose of building up a city, stand in a new relation to each other, arising from new interests, and a necessity of taking a comprehensive view of the whole in order to legislate wisely and discreetly as to a part. Laws for these purposes are procured to have been passed with the express or tacit consent of those whose interests may be affected. When improvements are directed, and expenses incurred which are required by a peculiar situation of a part of a district, and such improvements are essential to protect a part, from injuries growing out of the change from vacant lots to streets and houses, they ought to be considered as in some measure, beneficial to all, although not equally so. The quantum of benefit rests in the discretion of the assessors, with which the Court cannot interfere. Who are to be comprehended in an assessment, depends on the principle on which it is made; that must be determined by a sound construction of the law, applied to the facts. It does not rest in the discretion of those who are to execute the law. The superintending power of this Court is competent to establish the principle, and compel the inferior authority to be governed by it, leaving to its discretion, the manner of levying and the amount of contribution, to be exacted from each individual. It is no answer to this view of the subject, to say, that the waters which are now carried off through the present covered common sewer were as effectually carried off by the open drain that was previously used. To the inhabitants on the high grounds it may not be material in what manner the water is discharged into the river, but when streets are paved, the water descending on the surface, from the high ground, must necessarily expose those in the valley to inconvenience and injury. It being the common right and duty of all, to cause the water to be conveyed through the streets, so as to occasion as little injury as possible to the inhabitants near it. The expense becomes a common charge on all; from this it results that owners of lots on the high grounds, are benefitted by a sewer rendered indispensably necessary to protect the inhabitants on the low grounds. The benefit thereby is, that those on or near Canal street, are not incommoded or annoyed by the water. This protection to them, is a discharge of the duty previously existing, and obligatory on the whole districts, and, consequently, those owning property in the district and not included in the assessments are benefitted by this sewer.

It appears that the regulations of the city for carrying the water from this district into the river, through Canal street, by making a common sewer, and taking the ground for making Canal street, were made prior to 1809, that this street was laid out and opened for the purpose of making a common outlet and passage way for the water, and as a substitute for the original outlet; that the expense and cost of the ground purchased for forming the street, was assessed upon the owners and occupants of all the houses and lots from whence it was supposed the water was, by the permanent regulation, to run, and be received into the common sewer, as being benefitted thereby. There was an open drain, before 1815, through Canal street, which was designed mostly for a temporary passage, and continued until the common sewer in question was made. The whole of the proceeding in relation to Canal street appears to be one continued operation for the original laying out, building the sewer, and covering it.

The principle of the assessment, adopted by the Corporation in purchasing the ground for Canal street, I consider as applicable to this case, and ought to be pursued. It is stated, in the return, that the covered sewer was constructed, as well for carrying off the waters, as for correcting the nuisance, which existed during the time the drain or open sewer remained, and which was caused by it, but that it was not necessary in draining off the water. Admitting that the covered sewer became necessary, in order to correct the nuisance, it would not change the principle of assessment. The permanent regulations respecting this district required the purchase of ground and a common sewer. An open drain was used for several years; it was found materially to affect the health and comfort of those whom the waters passed, in its passage to the river: to remove this nuisance, the covered sewer was built; the canal was a part of the plan of operations for this section or district, and made for the benefit of all. The whole district were bound to make it as little prejudicial as possible. When found to endanger the health of the inhabitants, it was the duty of all to contribute toward the expense of removing it. The covered sewer was constructed for that purpose. How far the nuisance extended does not appear; its removal may have been beneficial to the whole district; but I do not rest the principle on that ground; it is enough that all are bound to protect, to a reasonable and necessary extent, those who were exposed.

When grounds, owned by various individuals, became the subject of regulation, in respect to laying out streets, and making improvements, which are considered by the proper authority necessary for carrying into effect the plan adopted for a particular district, as a whole, regard must be had to the rights, privileges and advantages of every part, and all are liable to share in the burthen which may be thrown on a part.

We are clearly of opinion, that by a just construction of the act, the assessment ought to have been made upon all the owners or occupants of houses and lots included within the district, designated on the map, from whence the water flowed into the sewer, and consequently that the assessment made ought to be set aside and vacated. Rule accordingly.—20 *Johnson*, 430.

SUPREME COURT,

OCTOBER TERM, 1829.

Ross and others vs. the Mayor, Aldermen, &c., of New York.

Under an ordinance of the corporation of New York, directing the filling up, altering or amending a public slip, the assessment should be made under the 269th section of the act relative to that city; and property in the vicinity belonging to the corporation is equally liable to assessment as the property of individuals, notwithstanding that the statute directs that one third of the expense of the improvement shall be borne by the corporation.

The corporation of New York, by an ordinance passed the 5th May, 1828, ordained "that a bulk-head be built in and across the slip or basin at the foot of Spring street, on the westerly line of West street; and that the space between the present bulk-head and the one to be built, be filled in under such directions as shall be given by the street commissioner and one of the city surveyors," and appointed assessors to make an estimate of the expense, and to make a just and equitable assessment thereof, among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion as nearly as might be to the advantages which each should be deemed to acquire. An assessment was made, which was apportioned amongst the owners of lots on Spring street, as far east as Clark street, and amongst the owners of lots on the streets intersecting Spring street, half

tation in lieu of all other charges and assessments, and established to prevent disputes as to the extent of their liability.

The common council have a right to make an alteration in a slip, as well for the benefit of navigation as for the promotion of the public health. If not done solely for the promotion of the public health, it does not necessarily follow that *all property equally near to the slip* should be assessed. The property in Canal street was exempted because it had its *own burthens* to bear of a similar character, to defray which the property in Spring street contributed nothing.

By the Court. The assessment in this case was correctly made under the 269th section of the act, (2 *R. L. p.* 445,) but in the application of the principle the assessors erred. By this section it is directed that in all cases where the by-laws or ordinances (of the common council) shall require any thing to be done in relation to the filling up, altering, or amending any of the public slips in the city, the corporation shall cause the expense of such works to be estimated and assessed in the same manner as is directed by the act with respect to the paving or regulating the public streets in the city, except that one third of the expense attending the same is to be borne by the corporation, and the residue by the persons in the vicinity who may be benefitted thereby. The manner of estimating and assessing the expense of paving and regulating the public streets is to make "a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion as nearly as may be to the advantage which each shall be deemed to acquire." (§ 275.) The direction given to the assessors by the ordinance of the corporation was in conformity to this provision of the statute, but the assessors did not obey it when they omitted to assess a proportion of the expense on the lot owned by the corporation, on which the market is built. The property of the corporation, if benefitted by the improvement, is as much the subject of assessment as the property of individuals. The intention of the legislature is manifest, that the property in the vicinity shall contribute two thirds of the expense, and whether that property belongs to the corporation of the city, or any other body corporate, or to individuals, is immaterial. The charge of one third of the expense to the corporation in improvements of this kind is made by the statute, without reference to the owning of property by the corporation in the vicinity. It is a charge upon the funds of the city generally, in consequence of the general benefit derived from the improvement, and the profits accruing to the corporation from warfage, &c. In this respect, therefore, the assessment is erroneous, and must be set aside. As to the lot lying upon *West* street, in the north corner of Spring street, returned as belonging to George Watkins, the relators have mistaken the fact. That lot *is assessed* as No. 10, fronting on *West* street, and therefore is properly omitted from the assessment, as fronting on *Spring* street; on that street it is designated in the map as No. 11, and no assessment appears in return to have been made on it as No. 11, which probably misled the relators; but the lot having been assessed as No. 10, *it* would have been erroneous to have made a second assessment upon it.—3 *Wendell*, 334.

End of non-enumerated cases of October term, 1829.*

* Mr. Justice SUTHERLAND was prevented by indisposition from attending court during the greater part of this term.

EQUITY COURT.

BEFORE THE CHANCELLOR.

JANUARY TERM, 1837

Oakley vs. The Trustees of Williamsburgh and Moore.

The trustees of the village of Williamsburgh are not authorized by the village charter to alter the grade of a street, after the grade thereof has been regulated and established by them as directed in the act of incorporation. And where such trustees were proceeding to dig down and alter the grade of a street, which had been regularly graded and regulated; HELD, that the owner of adjoining lands, whose property would be seriously injured by an alteration of the grade, was entitled to an injunction to restrain such illegal proceedings of the trustees.

The Court of Chancery *has* jurisdiction to interfere by injunction to restrain the defendant from proceeding in an illegal act which will necessarily cast a cloud upon the complainant's title to real estate, and will naturally diminish its value.

THIS was an appeal from the vice chancellor of the first circuit, refusing to grant an injunction. The bill of complaint in this case, *which was filed by the complainants in behalf of themselves and all others having a common interest with them*, after setting out that part of the act of incorporation of the village of Williamsburgh which made it the duty of the trustees to cause a survey and map of the village to be made, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting on such map all the gradations and regulations which might or should be required in the *roads*, alleys and streets, accompanied by such remarks and explanations as the nature of the subject might require, to be kept by the clerk, subject to the inspection of the freeholders and inhabitants of the village, so that no person could plead ignorance of the plan to be adopted for opening, laying out, levelling and regulating the streets of such village, (*Laws of* 1827, *p.* 276, § 19,) stated that, in pursuance of their act of incorporation, the trustees of the village caused such survey and map to be made, signed and filed, as directed by the act, except that the gradations of the streets were not exhibited on the map; that such gradations were omitted on the map because the formation of the surface of the ground rendered it impossible o comply with that part of the provisions of the statute immediately; for which reason the grading of the streets was left to be established by actual survey from time to time, as it should become necessary to open such streets; that in 1828, the trustees caused a survey and profile to be made of the southerly section of *First* street, running from Grand street along the margin of the East river to the south bounds of the village; and caused such survey and profile to be filed with their clerk, and caused the street to be graded and levelled in conformity thereto; and setting out the certiorari, &c. in the Supreme Court upon which these proceedings of the trustees were confirmed; (See Coles v. The Trustees of Williamsburgh, 10 Wend. Rep. 659;) and that the trustees subsequently caused similar sections of Second and Fourth streets and several other streets intersecting the same to

be laid out, and surveys and maps and profiles thereof to be made and filed in the same manner, and caused the said streets, or certain sections thereof, to be levelled in conformity with such surveys; and that one of them, South Second street, had been paved and the assessment therefor had been made and collected or paid. The complainants then charged or alleged, in their bill, that one of them owned large and valuable tracts of land on the southerly section of First street, and on the other streets which had been so graded and levelled; and that others of the complainants respectively owned lands on such other streets; some of which lands had been purchased since the regulation and surveys of the said streets, and upon the faith thereof as the permanent plan for the grading and levelling of those streets; and that no change or alteration in the gradation of such streets could now be made without serious detriment to the rights and interests of the complainants in relation to their lands; but that the trustees of the village, upon the petition of the majority of the land owners on the south easterly section of First street, in June, 1836, passed an ordinance or resolution to alter the grade of that street as thus permanently settled, and to re-regulate and pave the street; and that they had employed the defendant Moore to cut down and alter the grade of the street about six feet; which, if permitted, would require a corresponding alteration of the grading of the other streets, upon which some of the complainants' property was situate, and which intersect the south section of First street; and that the re-grading of First street, if carried into effect in the manner contemplated in the ordinance, would materially impair and injure the value of the complainants' property. They therefore asked for an injunction to restrain the defendants from proceeding to alter the grade of the street as theretofore established, and from digging down the street or removing the earth therefrom. An order to show cause why an injunction should not issue having been granted, the defendants introduced affidavits showing that the alteration of the grades of the streets was necessary for the benefit of the village, and more particularly for the convenient use of the waters of the East river for commercial purposes; whereupon the Vice Chancellor made an order denying the application for an injunction.

J. H. Lee & D. B. Ogden, for complainants.

Ebenezer Griffin, for the defendants.

The Chancellor. If the trustees of the village of Williamsburgh have the power, under their act of incorporation, to alter the grade of the streets of the village, after it has been once regulated and established by them as required by the 19th section of that act, the case before me is not one in which it would be proper for this court to interfere; as there is no pretence that the trustees are acting in bad faith, and without reference to what they honestly believe to be for the interest of the inhabitants of the village. On the other hand, however, if they have no such power as they have assumed to exercise by the ordinance in question, then this appears to be a very proper case for the allowance of an injunction, to restrain an illegal proceeding by them to dig down and alter the grading of the street as originally established, which, as alleged in the bill, will be a material injury to the value of the property of these complainants. The assessments upon their lots for the expenses of the proceedings to alter the gradations of the streets, although they might be so far void as not to affect their legal title to the land, would of themselves be a cloud upon that title which must necessarily diminish the value, if it did not entirely prevent the sale of such lands as village building lots; ***as a prudent man would not be likely to buy a city or village lot for the purpose of building thereon, and pay the full value of the lot, while a cloud like this was hanging over the title,*** *which might thereafter subject him to litigation if not to actual loss of the property.* And as this court sometimes exercises its jurisdiction for the purpose of removing a cloud from the complainant's title to real estate, it may also, in a proper case, interpose its authority to prevent the illegal act from which such a cloud must necessarily arise. (Petit v. Shepherd, 5 Paige's Rep. 493.) The decision of the present case, therefore, depends upon the question whether the trustees of Williamsburgh have the right, as claimed by them, to alter the regulation and grading of their streets after it has been once adopted and established. For it is judicially settled by the decision of the Supreme Court, in reference to this particular street, that the grade thereof had been legally established by the trustees, before the institution of the proceedings now in question to re-regulate the street and to grade the same anew.

The object of the legislature, by the 19th section of the statute, appears to have been to have a permanent plan of the village made and adopted by the trustees, not only as to the location of the streets, roads and alleys, but also as to the regulation or gradations thereof; to which plan all subsequent proceedings should conform. Hence, it was made the duty of the trustees to cause a survey and map of the village to be made and filed, as soon as conveniently might be, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting all the gradations and regulations which would be required in such roads, alleys and streets. And it appears to me that the making of this survey and map of the locations and gradations of the streets, roads, &c. of the village was not only a useless proceeding, but was also calculated to deceive those who might thereafter become the owners of village property, if it was not intended to confine the proceedings of the trustees to the opening and improving the streets, &c. according to the locations and gradations as thus established. And I think there could not have existed a reasonable doubt as to the intention of the legislature thus to restrict the power of the trustees, if it had not been for the introduction of the word *altering* into the subsequent sections of the act.

The 21st section of the act provides that it shall be lawful for the trustees to order and direct the pitching, regulating and paving the streets according to the map and survey, and the *altering*, amending and cleansing any street, vault, sink, &c.; and to cause estimates of the expense to be made, assessed and collected, &c. And the 24th section contains a similar power as to the widening and altering streets and highways already laid out, and as to the laying out and making other roads and streets, conformable to the map, as the trustees might think necessary and convenient; with a provision for compensating the owners of lands for the property thus taken for new streets, or the alteration of the old ones, and for raising the amount by assessment upon the owners of lands benefitted thereby. It is under the power of altering streets, as given in the 21st and 24th sections, that the counsel for the defendants claim the right to change the location or to alter the grade of streets which have been located or graded, in conformity to the general map and plan of improvements, subsequent to the act of incorporation. In this I think the trustees have entirely mistaken the meaning of the legislature in relation to the alterations which they were, by these sections, authorized to make. At the time when this act of incorporation was passed, there were roads or streets already existing within the chartered limits of the village. And as a general plan of improvements was to be made and adopted by the trustees, both as to the location and the grade of every street, alley and road in the village, it was anticipated by the legislature that it might become necessary for the trustees to alter the grades and locations of the old roads and streets, so as to render them conformable to the general and permanent plan of the village, as well as to pitch, regulate, pave and open the new streets, according to the map and survey. Hence the necessity for providing for the alteration of streets in the 21st section, which relates to the pitching, regulating and paving, as well as in the subsequent section regulating the manner of altering and widening old streets and opening new ones. The word *altering*, therefore, in both of these sections, related to the old streets and roads which existed at the time of passing the act of incorporation, and not to the new streets which might thereafter be laid out, opened or graded in conformity to the map and survey, and to the grade as first adopted by the trustees. And these trustees have no power or authority to change or alter the grade or location of any such new street after it has been once established by them, in conformity to the map and survey and gradation first established, or of any of the old streets after they have been made to conform to such general plan. The defendants have no legal power therefore to alter the grade of this southerly section of First street, or of the adjacent streets which have been thus regulated and graded.

The inhabitants of this village, however, are not without remedy if the interest of the public requires a correction of any mistake which the trustees may have made either in laying out streets or in fixing the gradations thereof. For it is perfectly competent for the legislative power which directed a general plan of the village to be adopted and adhered to by the trustees, to authorize them to make such alter-

Chapel street by taking off twenty-five feet from both sides, commencing at a point about half way between Leonard and Franklin street and extending to Reed street, a distance of about one thousand feet, and on the easterly side from Reed street to Murray street by taking off twenty-five feet from the said easterly side. This latter distance is about seven hundred feet. Application was subsequently made to the Supreme Court for the appointment of Commissioners of Estimate and Assessment for to make an estimate of the expense of the widening, and assess the same upon the owners and occupants of houses deemed to be benefitted thereby. One of the Commissioners, Peter Stagg, Esq., refused to serve alleging as a reason that the property could not be found benefitted sufficient to pay the expense. Another person was appointed Commissioner in his place. The Commissioners were appointed on an exparte application to the Supreme Court. This application was made by the Counsel of the Corporation, who subsequently received $3,443 00 in fees for his services, which sum was assessed upon the property deemed by the Commissioners to be benefitted, &c.

In December, 1835, the Commissioners gave notice in two newspapers that they had completed their assessment and had lodged their report in the office of the Clerk of the County for examination of those who are interested, and that it would remain there ten days for such examination. The report was very voluminous, was destitute of any index or abstract, and was a perfect wilderness to explore. The houses were described by arbitrary map numbers, of which the owners had no knowledge whatever, nor any body else except the Commissioners and Surveyor. No map or design accompanied the report, and a person might have to look through near one thousand pages of manuscript to find his name and the description of his property. The total amount of the assessment thus made was $210,810 40, about one $100,000 of which was for buildings destroyed. The Commissioners had a right by law to assess one third of the amount of the buildings upon the Corporation of the city of New York, but were prevented from so doing by an intimation from public officers that if they did so, the proceedings would be suspended. The provisions of the statute are, that when a street is to be widened, &c., the Commissioners shall be furnished by the Corporation with a profile of the intended change of grade of the street and the intersecting streets affected thereby, that the Commissioners may be able to judge of the damages to buildings erected conformable to a former grade. No profile was furnished the commissioners in this case. The Report of the Commissioners was presented to the Supreme Court at Albany at the January term, and was on the 5th day of that month confirmed by the court. The objections to the confirmation were confined to two persons, we believe. Very few persons who were assessed had any knowledge of the assessment until after the confirmation. Had the notice of the assessment been as extensive as the assessment itself, its confirmation would have been successfully opposed before the court.

We have thus briefly passed over the proceedings as to the widening of Chapel street, and now come to the following most extraordinary proceedings in relation to the changing of the grade of Chapel and adjoining and neighboring streets.

On the 18th of January, 1836, a few days subsequent to the confirmation of the report of the commissioners of the assessment for widening Chapel street, a member of the Board of Aldermen offered a resolution in the following words:

Resolved, That the Committee on Streets, with the Street Commissioners, be requested to inquire into, and report upon the expediency of altering the present grade of Chapel street, and that the same be done when the said improvement is carried into effect, with a plan or profile of the same."—*Pro. Bd. Ald., vol.* 10, *page* 158.

On the 25th of April, 1836, the Street Committee of the Board made a report in favor of changing the grade of Chapel street from Read to Canal street, and the adjoining streets from Duane to York streets, both inclusive. In this report the committee suggest "the present sewer be taken up and reconstructed of a proper size and form;" that "it is consequently much too small in size for the free delivery of the water which it necessarily has to receive." The committee also state, "and although this branch of the subject was not *specially* referred to them," &c. The committee include, as a part of their report, the following resolutions:

Resolved, That the graduation of Chapel street be changed by filling up and elevating the surface thereof from Read street to Leonard street, according to the blue lines drawn on the accompanying profile marked No. 1, and from Leonard street to Canal street by filling up and elevating the surface thereof according to the red lines drawn on the same profile.

Resolved, That the graduation of all such portions of the intersecting streets, from Duane street to York street, both inclusive, be changed in conformity with the proposed change of Chapel street, by filling up and elevating the surface thereof according to the lines drawn on the accompanying profile marked No. 2, that is to say, according to the blue lines drawn for Duane, Thomas and Anthony streets, and according to the red lines drawn for Leonard and the other intersecting streets up to York street.

Resolved, That the present sewer in Chapel street be taken up, and that a new sewer of *proper size and form*, according to the recent improvements, be constructed in Chapel street, from Duane street to Canal street, with lateral culverts at such of the cross streets as may be required, and with proper receiving basins at all the corners, the expense to be incurred by the before mentioned alterations of gradations and constructing the sewers, culverts and basins, to be assessed in the usual manner on the property benefitted, according to the provisions of the statute of the State in such cases made and provided.

Resolved, That the Street Commissioner prepare and present for passage the ordinances

necessary and proper to carry into effect the object of the preceding resolutions.

Adopted by the Board of Aldermen April 25th, 1836; by the Board of Assistants, May 2d, 1836.

Approved by the Mayor May 4th, 1836.

(Signed,) J. MORTON, Clerk.

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This report was adopted, and resolutions passed the same day and the same evening, without suspending the rule, sent to the Board of Assistants for concurrence, and was the same evening referred by that Board to the Street Committee, which at the next meeting reported upon the report of the street committee of the other Board, which was at once adopted, and was subsequently sent to the Mayor for approval, and by that officer signed as approved.

On the 10th of May, which was the second Tuesday of May, 1836, the members of the Board of Aldermen and of the Board of Assistant Aldermen, elected to office on the 2d Tuesday of April, 1835, for one year, and sworn into office on the 2d Tuesday of May, 1835, convened in the respective chambers, and notwithstanding that their previous terms of office had expired with the last moment of the day previous, actually proceeded to business in defiance of the laws of the State, and pretended to pass, among other matters, two ordinances in the following words:

Be it ordained, by the Mayor, Aldermen and Commonalty of the city of New York, in Common Council, *convened*, this sixteenth day of May, One thousand, eight hundred and thirty-six, That the graduation of Chapel street and adjoining streets be changed agreeably to lines drawn on the profiles in the Street Commissioner's office, and that the streets be repaved in conformity to the same, under such directions as shall be given by the Street Commissioner and one of the City Surveyors.

And be it further ordained, That John Ewen, junior, J. S. Warner, and M. D. L. Gaines, be, and they are hereby appointed to make an estimate of the expense of conforming to the provisions of this ordinance, and to make a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantages which each shall be deemed to acquire.

—

CITY OF NEW YORK, ss.:

We whose names are hereunto subscribed, do severally swear that we will make the estimate and assessment directed by the above ordinance, fairly and impartially, according to the best of our skill and judgment.

JOHN EWEN,
J. W. WARNER,
M. D. L. GAINES, } Assessors.

Sworn to by John Ewen, Jr., J. S. Warner, and M. D. L. Gaines, on the 28th day of January, 1837, before me,

C. W. LAWRENCE.

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Be it ordained, By the Mayor, Aldermen, and Commonalty of the city of New York, in Common Council convened, this 10th day of May, 1836, that the present sewer in Chapel street be removed, and that a new sewer be constructed from Duane to Canal street with lateral culverts, &c., under such directions as shall be given by the Street Commissioner, and one of the City Surveyors.

And be it further ordained, That Lovell Purdy, Joseph N. Lord, and Richard B. Fosdick, be, and they are hereby appointed to make an estimate of the expense of conforming to the provisions of this ordinance, to make a just and equitable assessment thereof, among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantages which each shall be deemed to acquire.

—

City of New York, ss.

We, whose names are hereunto subscribed, do severally swear, that we will make the estimate and assessment directed by the above Ordinance, fairly and impartially, according to the best of our skill and judgment.

LOVELL PUBDY,
JOSEPH N. LORD,
RICH. B. FOSDICK, } Assessors.

Passed the Board of Aldermen, May 10, 1836.

Passed the Board of Assistants, May 10, 1836.

Approved by the Mayor, May 16, 1836.

J. MORTON, Clerk.

Sworn before me, this 31st day of October, 1836, by Lovell Purdy and Richard B. Fosdick; Joseph N. Lord, sworn November 1st, 1836. C. W. LAWRENCE, Mayor.

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The resolution of the 18th of January, the report and resolutions of the 25th of April in the Board of Aldermen, the vote of concurrence in the Board of Assistants of the second May; the ordinances of the 10th May, in both boards, were all pretended to be passed by the respective boards at the several times here named without calling the ayes and noes and publishing the same, and without publishing the resolutions, or reports, or the said ordinances, in all *or any* of the newspapers employed by the Corporation, as required by law.

The persons interested were therefore without notice, and were wholly ignorant of all these said proceedings.

The members of the Board of Aldermen, of the Board of Assistants and the Mayor of the city, who were elected to office on the 2d Tuesday of April, 1835, were on the first moment of the 2d Tuesday of May, 1836, *functus officio*, the new members being at that moment entitled to their seats.

The act of 1830 provides that the members then in office should continue in office until their successors should be elected and entitled to be sworn into office, and they shall be elected on the 2d Tuesday of April, 1831, and sworn into office on the 2d Tuesday of May of the same year. Their successors were on that day elected, and were sworn into office on the day designated, and were elected for one year.

The law knows no division of a day in the computation of years.

The ordinances claimed to have been so passed by both boards, were, on the 16th day of the said May, sent to Cornelius W. Lawrence, Mayor of the city of New York, who had been elected to office as Mayor on the second Tuesday of the month of April, immediately preceding. And the said Cornelius W. Lawrence signified his approval of the said ordinances by signing his name on the back of the following communication, which are claimed to have been envelopes to the said respective ordinances:—

The Street Commissioner herewith covers the draft of an ordinance for removing the present and constructing a new sewer in Chapel street, from Duane to Canal street, with lateral culverts, &c., in order that it may be passed and assessors appointed thereto.

Respectfully submitted.

JOHN EWEN, Street Commissioner.

Street Commissioner's Office, May 10, 1836.

JOHN EWEN, jun.
J. S. WARNER,
M. D. L. GAINES, } Assessors.

Endorsed

Ordinance for removing the present and constructing a new sewer in Chapel street, from Duane street, to connect with the sewer in Canal street, with lateral culverts, &c.

LOVELL PURDY,
JOSEPH N. LORD,
RICH. B. FOSDICK, } Assessors.

Passed the Board of Aldermen, May 10th, 1836. J. MORTON, Clerk.

Passed the Board of Assistants, May 10th, 1836.—Concurred in.

WM. HAGGERDON, Clerk.

Approved, May 16th, 1836.

C. W. LAWRENCE.

—

The Street Commissioner herewith covers the draft of an ordinance for changing the grade of Chapel and adjoining streets, and for paving the same, agreeable to such alteration, from Duane street to Canal, in order that it may be passed and assessors appointed thereto. Respectfully submitted.

JOHN EWEN, jun., St. Com.

St. Com. Office, May 10, 1836.

JOHN EWEN, jun.,
J. S. WARNER,
M. D. L. GAINES, } Assessors.

Endorsed

Ordinance for changing the grade of Chapel and adjoining street, and for repaving Chapel and adjoining streets, from Duane to Canal street, as may be necessary to conform to the new grade.

JOHN EWEN, jun.,
J. S. WARNER,
M. D. L. GAINES, } Assessors.

Passed the Board of Aldermen, May 10th, 1836. J. MORTON, Clerk.

Passed the Board of Assistants, May 10th, 1836.—Concurred in.

WM. HAGGERDON, Clerk.

Approved, May 16th, 1836.

C. W. LAWRENCE.

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On or about the 20th day of the said month of May, an advertisement, purporting to be of the Street Commissioner of the city of New York, was published in the Evening Post, inviting proposals to contract for removing the then existing sewer in Chapel street, and for constructing a new sewer over or on the bottom

of the former, and of less size. By means of this said advertisement, the proceedings of the Common Council and officers of the Corporation, in these matters, first became known to the owners and occupants of property to be affected thereby, and inquiry was at once set on foot which developed the mischief.

A remonstrance was immediately drawn up against the proceedings in question, stating that the advertisement for a contract was the first information that the parties interested had in the matter; that the then existing sewer in Chapel street was of the very best, large and well built, of the best of hammered stone laid in cement; that it was then in good condition and answered every needed purpose, and the pavement was also good and required neither alteration nor repair, and also stated that the grade required no change. The remonstrance further stated that all the persons interested were opposed to the changes of grade —the destruction of the sewer and pavement; that it would damage the property of the citizens at least one hundred thousand dollars, and cause an expense of fifty thousand dollars in addition. The remonstrants complained of the act of the Corporation in the premises as being illegal, arbitrary, oppressive and unjust, and asked the Common Council forthwith to repeal the obnoxious ordinances. This remonstrance was signed by E. Meriam and fifty-seven others, owners of property affected by the proceedings, and was, on the 15th day of June, presented in the Board of Assistants by Mr. Tallman—as follows:—"Memorial of E. Meriam and others against building a new sewer in Chapel street. Referred to the Street Committee." (See Pro. B. Asssistants vol. 8 p. 36.) The Street Committee had two meetings: the remonstrants appeared before them and objected to the proceedings. One of the officers of the Corporation, who was also one of the assessors also one of the members of the Common Council, stated at one of these meetings to the remonstrants that they would be at little or no expense, inasmuch as the owners in the burnt district had a surplus of earth which would raise the grade of the street, and that they would pay a large sum for the privilege of placing it in Chapel street; that this sum would pay the expense of the sewer, and that the paving belonged to be paid for by the Corporation. This statement was made *in bad faith*, for the Corporation had already contracted to pay about fifty thousand dollars for the materials and work, and to pay for it when the money should be collected from the citizens, for which an assessment was to be aid, as appears by the following contract:—

SPECIAL CONTRACT.

Street Commissioners's Office.

This agreement, made and concluded this 21st day of June, 1836, between the Mayor, Aldermen and Commonalty of the city of New York, by their Street Commissioner John Ewen Jun. of the first part, and Thompson Price of the second part, Witnesseth, that the said party of the second part hath agreed, and doth hereby agree, under the penalties expressed in a bond this day given to the parties of the first part, to furnish materials and build a sewer with the requisite culverts and receiving basins, in Chapel street, from Thomas street to the sewer in Canal street—said sewer to be built on or over the bottom of the old sewer, and so much of the old sewer to be taken up as may be essential to construct the new, also a latteral sewer with culverts and necessary basins in Thomas street, to connect with the sewer in Chapel street—the whole to be placed at the depths as represented by the plan in the Street Commissioners' office, for the consideration herein after named.

1. The sewer and culverts to be built as follows: To be of circular form, the main to be one brick or eight inches, four feet eight inches in the clear, and about 1790 feet long. The latteral sewer to be one brick or eight inches thick, three feet six inches in diameter in the clear, and about 175 feet long.

2. The brick used must be of the best kind of hard brick and laid on good lime and sand mortar, and the upper part to be keyed with slate and grouted with lime and sand mortar. The stone used must be good blue building stone, laid in such manner as to form a solid bed to receive the brick of the sewer agreeable to the plan in the Street Commissioners' office.

3. Openings of eight inches square to be inserted in the wall, at the distance of 25 feet apart, to receive the house drains; these openings to be made one foot above the bottom of the sewer inside, and to be be covered with a flat stone, to prevent the earth from going into the same.

4. The openings to be worked in the top of the intersections of the streets, as they cross from the east side, and midway between the intersections, to be 20 inches square, and finished with four hammered, wrought, blue, cut stone, to be covered with a blue flagging stone four inches thick, and projecting on all sides at least three inches, then are to be filled over to the heighth of the street, and have four strong blue curb stones set on edge to designate where the opening may be found.

5. The lower part of the sewer, for the distance of 200 feet, to be built and time allowed for the mortar to set before the upper part is worked on.

6. Two or more culverts, as shown in the plan, to extend from the sewer to the circular corner of the curb; the culverts to be underlaid with a course of small-sized blue building stone, laid in lime and sand mortar, and are to be two feet six inches in diameter. The receiving basins are to be built conformable to the model to be seen at the Street Commissioners' office.

7. For completing the main sewer, including all the materials and workmanship, the excavating, filling up the trench and ramming the earth, the sum of $4, 97 per lineal foot.—For completing the latteral sewer, in like manner as the main sewer, the sum of $3, 30 per foot. Openings in the top of the arch, $7,75 each. Receiving basins complete, $87.

8. All the materials shall be of the best quality, and every thing shall be supplied, whether mentioned in this contract or not, that shall be required for the construction of the sewer.—The whole shall be done under the direction of the Street Commissioner, or such person as he shall appoint as Inspector, who shall cause any material or work which he may disapprove to be done over, and other material and other work to be substituted.

9. Payments shall be made as soon as the money is collected on the assessment to be laid for that purpose, and all interest money paid in by the collector in the assessment shall be laid for the benefit and account of the contractor.

10. The said contractor doth hereby further agree, that he will not sub-let or contract any part of the above mentioned work to any other person, but that he will keep the whole solely under his own control.

11. The said contractor hereby further agrees that he will commence the said work on or by the 15th July, and complete the same by the 1st October, 1836.

In witness whereof, the parties to these presents set their hands and seals, the day and year first above written. Signed,

THOMSON PRICE.

Sealed and signed in presence of
J. S. WARNER.

—

CONTRACT FOR PAVING CHAPEL AND ADJOINING STREETS.

This contract was made in June, 1836, with Messrs. Pettigrews. The work was to be completed by the 15th November, 1836, and Ten dollars forfeiture for every day which should elapse beyond that time that the work should remain incomplete. The price for *paving* to be forty cents per square yard, curb fifty-eight cents per foot, gutter stones forty-six, bridge stone twenty-eight cents, corners Eight dollars, filling in six cents per load; the rubbish, &c., to be removed from off the ground by the contractors. The work to be paid for when the money is collected from an assessment to be laid for that purpose. We have detailed the price of the curb, gutter, bridge and corner stone from memory. The prices of these may differ two cents, not more. The substance of the contract is stated, which is all that is material for our present purpose.

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The Street Committee subsequently made a report, which is to be found in the documents of the Board of Assistants vol. 8, p. 58, as follows: "By Mr. Woodhull. Report of the Street Committee, adverse to the petition of E. Meriam and others, for a REPEAL OF THE ORDINANCE FOR GRADING CHAPEL STREET—adopted" (See Doc. 19.) The title is stated in the preamble of the report thus—"The Street Committee to whom was referred the memorial of E. Meriam and others for a repeal of the ordinance for the raising and grading of Chapel street, and for constructing a new sewer through the same."

The Committee among other things say—"That it would be extremely improper and unsafe as a *precedent*, and altogether unnecessary and unwise in point of fact, or in reference to its results, to open anew the subject of a law, and commence a review of its merits, immediately after its passage."

This report was adopted by the Board of Assistants. The Board of Aldermen not having been able, in consequence of being equally divided 8 to 8, to elect a President, from the first meeting on the 2d Tuesday of May until the month of July.

In July, the contractors for removing the then existing sewer and building a new sewer, for re-grading the street, &c., commenced the work of destruction. When the workmen had reached the stone sewer, the Superintendant, John Shephard Jun. Esq., forbid them to proceed—insisting that the sewer was then far better than any new sewer could be made, and that it would be both a sin and a shame to destroy it. The Street Commissioner was sent for, and came, and said such was the profile, such the contract, and such was the ordinance, and the sewer must be taken up.

The sewer, which at that time was demolished, was in perfect good condition: it was examined when broken up by Smith Bloomfield Esq., by whom it was constructed, by John Shepherd Esq., the inspector of the building of the new sewer, and by others. This said sewer, thus destroyed, was six feet wide in the clear at Canal street, and five feet wide in the clear at the corner of Franklin street. The height at Canal street was six feet in the clear, and at Franklin street 4 feet high in the clear. The bottom or floor was laid with best Connecticut blue flagging stone, four inches thick, laid sloping, two inches to the foot, from the sides to the centre. The walls were made of best hammered stone, two feet thick at the bottom and twenty inches thick at the top, sloping to the springing of the arch. The arch was thirteen inches thick, and keyed with slate. The openings for the house-drains were eight inches from the bottom of the inside. The foundation on which this structure laid, was heavy and substantial stone masonry. The whole was a piece of work of extraordinary good quality, and would have lasted for a thousand years. The specifications here given can easily be compared with those of the contract herein before set forth, as to size, materials and workmanship of the new sewer. It will be seen by a reference to width and height of the former sewer that, as the sewer continued toward Canal street, as it increased in length it increased proportionally in size. The shape of this sewer for an under-drain is preferable to a circular sewer, inasmuch as a greater quantity of water will run in the sewer below the openings for the house-drains, below eight inches from the bottom of the inside, and eleven inches from the centre, than below the first twelve inches in the lower part of a circular sewer of the specified size of the new sewer, besides, take the capacity in feet of measurement of the inside of the two sewers as herein specified, and it will be seen that the former sewer was *double* the size of the present one! A circular sewer cannot be advantageously entered by an under-drain below its centre—to perforate such a sewer below the centre would be like perforating the lower part of a barrel with a view to filling it.

We will state as a complete illustration of the comparative usefulness of the two sewers, some facts as to Mr. Riley's cellars, at the corner of Chapel and Franklin streets.

At this point the former sewer was four feet deep in the clear, the centre of the floor of the sewer two and a half inches lower still, making four feet two and a half inches; the thickness of the arch was thirteen inches, the covering of earth and pavement over all, 16 inches: thus we have from the surface of the street to the surface of the floor of the sewer in the centre, in all, six feet seven and a half inches. The new grade of Chapel street is raised at this point three feet and one inch: therefore, had the former sewer been left as it was, and the street raised as it is, the bottom of the sewer would have been nine feet eight and a half inches below the surface of the present pavement.

The top of the arch of the present sewer is now sixteen inches below the surface of the pavement; the contract states that the wall is eight inches thick, and the sewer four feet eight inches in diameter; all these added together make a total of six feet eight inches. Thus it is from the surface of the present pavement to the bottom of the inside of the present sewer, six feet eight inches; and this calculation agrees, within an inch, with the actual measurement by an iron rod inserted in the crown of the arch of this sewer, through the perforations made in the iron ventilators at this point. *Thus we have a mathematical demonstration.* The openings for the house-drains in the former sewer were four inches lower than in the present sewer; add to this the difference between six feet eight inches and nine feet eight and a half inches, and the result is, three feet four and a half inches in favor of the *former sewer*, and against the *present sewer*. Mr. Riley could therefore have a cellar three feet four and a half inches deeper with the former than with the present sewer. Since the present sewer has been in use, Mr. Riley's premises have been inundated with water, whereas with the former sewer, they were not troubled with the water at all. The damage to his premises by the raising of the street, and removing the sewer, is at least FIVE THOUSAND DOLLARS, and for this *so-called improvement* he has been assessed near one thousand dollars.

Mr. Andrew Lockwood is the owner of fourteen houses on the next block, toward Canal street, which are also damaged several thousand dollars; he also has been assessed, and near two thousand dollars, for this so-called improvement. A very great number of others were also damaged to a very great amount, and instead of being awarded for such damages as they should have been, were assessed for a pretended benefit.

We have rather departed from our stating of the proceedings to make these remarks, and will now proceed with the entire stating part, until we have finished up to the time of applying for the certioraris.

As we before observed, the contractors commenced work in July, and the sewer was completed in October following, but the grading and pavement were not finished until the month of June, in the year following. The streets remained in an unfinished and almost impassable state during the fall of 1836 and winter and spring of 1837.

Subsequent to the completing of the sewer, the surveyor, as it now appears, made out a certificate of the measurement, &c. of the sewer &c., as follows:—

This certifies that the length of the sewer in Thomas street is 362 feet, with six openings—$3. 30.

The length of the sewer in Chapel street, south of the north side of White street, 1622 feet—$4. 97.

The length of same from White street where it enters the sewer in Canal street, 782 feet—$5. 37.

There are fifteen openings in Chapel street sewer—7. 75.

There are twenty-eight receiving basins in both sewers—$87.

550 feet culverts in both sewers—$2. 55.

DANIEL EWEN, City Surveyor.

New York, Oct. 20, 1836.

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The surveyor also made out an assessment list and map, all but extending the columns of dollars and cents.

The assessors append to this an abstract in the words following:—

Abstract of assessment for building a sewer in Chapel and Thomas streets.

Sewer in Thomas street—362 feet, at $3. 30 per foot - - - -	$1194. 60
Six openings in top of sewer in Thomas street, at $7. 75 - -	46. 50
Sewer in Chapel street south of the north side of White street—1022 feet, at $4. 97 per foot - -	5079. 34
Sewer in Chapel street from White street to sewer in Canal street—782 feet, at $5. 37 per foot -	4199. 34
Fifteen openings in sewer in Chapel street, at $7. 75 - - - -	116. 25
28 receiving basins, at $87. 00—these openings on both sewers	2436. 00
550 feet of culverts on both sewers, at $2. 55 per foot - - -	1402. 50
	14474. 53

Contract,	$14474. 53
Advertising,	5. 00
Surveying,	585. 00
Inspecting,	291. 00
Assessing,	560. 00
Collecting,	473. 89
Damage water pipes,	181. 66
	$16,571. 08

LOVELL PURDY,
JOSEPH N. LORD,
RICHARD B. FOSDICK, } Assessors.

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In the proceedings of the Board of Aldermen, vol. 12. p. 121, see the following:—

January 4th, 1837.

"The Street Commissioner presented an assessment for constructing a sewer in Chapel street and Thomas street, which was confirmed, and Asher Martin appointed Collector, and ordered to be sent to the Board of Assistant Aldermen for concurrence."

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In the proceedings of the Board of Assistants, vol. 9. p. 67, is the following:—

January 9th, 1837.

"Assessment for construction a sewer in Chapel and Thomas streets, confirmed and concurred in."

—

Proceedings Board of Aldermen, vol. 12.

March 27th, 1837

"For a sewer in Chapel and Thomas street. Warrant to issue to Asher Martin, Collector." p. 447.

"A petition of A. Lockwood and others, to have the sewer in Chapel street examined and repaired, was referred to the Committee on Roads and Canals."—*Page* 468.

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Same volume, page 593.

In the report of the Committee on the Petition of A. Lockwood and others, they ask to be discharged from the further consideration of the subject. They say, among other things in the said report, as follows:

"The new sewer was placed upon the bottom of the old one, where the same has not settled, and is elevated but eight inches above it. *The Street Commissioner* has made an examination into the cause of the complaint, and has found that the WHOLE difficulty proceeded from neglect, on the part of the owners, to construct drains from their cellars to the sewer, the sewer being dry and two feet below the level of the cellars."

—

In the month of June the surveyor made an assessment map and an assessment list, for the grading, paving, &c., and a certificate which makes the caption of the list, was made by two of the assessors who signed their names at the end of the list. It is in the words following:

WE THE SUBSCRIBERS, the persons appointed by the Mayor, Aldermen and Commonalty of the city of New York, in Common Council convened, by an ordinance passed on the sixteenth day of May, one thousand eight hundred and thirty-six, to make an estimate of the expense of conforming to a certain order and direction of the said Common Council for grading, regulating and repairing Chapel street, and the adjoining streets from Murray to Canal street, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire, having taken the oath required by law, which is filed in the Street Commissioners' office—

Do hereby certify to the said Mayor, Aldermen and Commonalty in Common Council convened, that we have, according to law, estimated the expense of conforming to the aforesaid order and direction of the Common Council, for grading, regulating and repaving Chapel street, and the adjoining streets between Murray and Canal streets, at the sum of thirty-three thousand six hundred and thirteen dollars and forty-six cents, as follows, that is to say:—

CONTRACT,	$31,979. 28
Surveying,	603. 61
Advertising,	3. 00
Inspecting,	452. 00
Collecting,	259. 77
Profiles,	272, 00
Cleansing privies,	43. 80
	$33,613. 46

And that we have, according to law, made a just and equitable assessment, as follows that is to say.

JOHN EWEN,
M. D. L. GAINES, } Assessors.

The assessment list embraced that part of Varick street which lies between North Moore and Franklin streets, and St. John's lane, which lies between Leight street and Beach street. Varick street and St. John's lane run nearly parallel with Chapel street, but *do not intersect it or adjoin it.* The list also embraced that part of Chapel street extending from Duane street to Murray street. The amount of work stated to be done in these sections is about six thousand dollars.

The assessment list shows that several persons owning lots &c. on the north side of Leonard street near Chapel, and also several persons on the north side of Franklin, east of Chapel street, were not charged any sum whatever for filling in, the profiles showing however that the streets opposite these respective premises were filled in near three feet. The amount of contracts, it will be seen, is stated in gross, and thus apportioned.

Portions of Chapel street had been re-paved at the expense of the owners subsequent to 1824, and was by the following ordinance exempt from further assessment for paving or re-paving.

—

November 21th, 1824.

"Whenever the carriage-way of any of the streets in the city of New York, or part of the same, not less than the space or distance between and including the intersection of two streets, shall be re-paved or newly paved, and the cross-streets and side-walks laid, and the side-walks extended to the width required by law, at the expense of the individual owners of the lots on the same, and the work approved by the Street Commissioner, such streets, or parts of streets, shall forever thereafter be paved, repaired and repaved, at the expense of the Common Council."

It shall be the duty of the Street Commissioner to prepare and keep in his office a book alphabetically arranged, in which shall be entered the names of the streets so paved or repaved and accepted by the Corporation.

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Chapel street had most of it been repaved in 1820 and 1822, at an expense of about *nine cents* the square yard and not 40 cents.

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Proceedings of the Board of Assistants, vol. 10, *page* 148.

September 4th, 1837.

"By Mr. Franklin. Remonstrance of sundry inhabitants of the Fifth Ward in relation to the assessment for the regulation of Chapel street. Referred to Committee on Assessments."

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October 2d, 1837.

Same volume, page 176.

By Mr. Hyde. "Report of the same committee, in favor of confirming the assessment for regulating and paving Chapel street.—Adopted."

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The Committee on Assessments of the Board of Assistant Aldermen, to whom was referred the annexed assessment lists for filling, grading and paving Chapel street and intersections, together with remonstrances and objections, beg leave respectfully to report—

That your committee have carefully examined the subject, having duly notified the parties to appear before your committee, in order to obtain all necessary information touching the premises. The Contractors and Superintendents of the said work were severally examined as to the manner and time in which it was completed. Their evidence given was satisfactorily conclusive that the delay in the completion of said work was caused by unavoidable circumstances, over which the contractor had no control, and that the work was as well done as the nature of the ground would admit of. Although your committee had notice sent to several of the remonstrants, yet but one of them appeared before us, viz. Andrew Lockwood, Esq., who stated that he was proprietor and owner of thirteen houses, situated on the premises, and that he suffered in loss of rents about several hundred dollars in consequence of water running into the lower part of his houses. Furthermore, that he filled in his sidewalks at his own expense. Your committee have also made enquiries of Mr. Ewen, Street Commissioner, who states that in his judgment the completion of said contract was protracted by unavoidable circumstances. Mr. Bolster, Superintendent of Pavements, has given his certificate, certifying that the pavement was as well done as the nature of circumstances would admit of. Your committee have, therefore, under consideration of all the facts that they have been able to elicit, come to the conclusion to recommend the following resolution:

Resolved, If the Board of Aldermen concur, that the assessment for filling, grading and paving Chapel street, be, and the same is hereby confirmed.

WM. F. HYDE,
WM. WELLS HOLLY,
PHILIP SNEDICOR, } Committee on Assessments.

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Proceedings of the Board of Aldermen, vol. 13, *page* 400.

October 4th, 1837.

From the Board of Assistants. "A report of the Committee on Assessments relative to an assessment for filling, grading and paving Chapel street, was referred to the Committee on Assessments."

—

November 27th, 1837.

The Committee on Assessments, to whom was referred the accompanying remonstrance against confirming the assessment for regulating and paving Chapel street, and the streets intersecting the same, respectfully report—

That Chapel street has been widened between Murray and Leonard streets; that, subsequently, resolutions and ordinances were passed by the Common Council to build a sewer therein, and elevate the grade of Chapel street, between Reed and Canal streets, about three feet, and so much of the intersecting streets, intermediate, as were affected thereby; that, in pursuance of these resolutions and ordinances, contracts were made the Street Commissioner to carry into effect these improvements.

The contract for regulating and paving Chapel, and adjoining streets, contemplated the work to be finished in November last. It was not, however, fully completed until the

early part of the succeeding summer, and then not in as satisfactory manner as could have been desired.

The committee have been attended by a large number of persons on this subject, some of whom object to the confirmation of the assessment on the ground that the work has not been well and faithfully done, and within the time limited by the contract. They complain that the pavement has partially settled in many places between Leonard and Canal streets, occasioned, as they believe, by improper filling; that the bridge stones are unusually rough, and that, in consequence of delay in the filling, they were, in some instances, obliged to fill in their own sidewalks to get access to their premises.

Mr. Lockwood, who owns several houses situate on Chapel, North Moore and Varick streets, also complains that the work, being left in an unfinished state during the winter, exposed his premises so that his cellars were partially filled with water, and he was deprived of their use. The greater number of persons who oppose the assessment state that their object, in opposing the same, is not to prevent the contractor from being paid for the work, but to shield themselves from the expense which, they contend, ought to be borne by the corporation, they having been already heavily assessed for widening the street, and for building the sewer, improvements which the public were greatly interested in, and benefitted by, and which were effected without cost to the city, and in opposition to some of them.

The committee consider that the question referred to them is as to the manner in which the contract has been performed, and whether or not the contractor is fairly entitled to be paid for his work. It was stated by Mr. McKibbon, jun., that a portion of the filling was done previous to his being placed on the street as Inspector; that the filling done by Mr. Pettigrew, the contractor, under his superintendence, was good and wholesome; that earth of an improper character was frequently placed on the street during the night by cartmen unknown, which was always carted off by the contractor at his own cost; that the materials used for paving were of a good quality, and were placed down according to contract; that the partial settling of the pavement, in some places, was occasioned by being paved immediately over the new filling; and that the work was, under the circumstances, well done. Alderman Banks stated that he was upon the works daily during the progress; that the contractors were imposed upon by individuals placing improper earth in the streets during the night, which they, in the instances noticed by him, removed at their own expense; that the contractors are probably delayed by the difficulty of obtaining earth, and by buildings remaining in the street which ought to have been removed, and that the filling was, under all the circumstances, as good as could have been expected.

The present Superintendent of Paving informed the Committee that there were ridges in the pavement in front of the houses on Chapel street, and in some places it was sunken, occasioned, as he supposed, by drains being placed across the street which he required to be altered previous to giving a certificate approving of the work, although it strictly might not have belonged to the contractor to do it.

The committee have fully considered this subject, and, under all the circumstances, recommend the assessment to be confirmed.

It amounts to about $34,000, the greater portion of which the contractor has out of one year and upwards.

ISAAC L. VARIAN,
EDWARD TAYLOR,
JOSEPH HOXIE.
} Committee on Assessments.

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Same volume, page 44.

December 4th 1837.

"Petition of John Johnson and James Styles and others, to be relieved from the assessment for grading Chapel street, was referred to the Committee on Assessments."

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Same volume, page 124.

December 22d, 1837.

"On motion of Alderman Varian, Document, No. 40, being the report of the Committee on Assessments in favor of confirming the assessment for regulating and paving Chapel street, and the intersecting streets, was taken up, and the same was adopted, and directed to be sent to His Honor, the Mayor, for approval."

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After the organization of the Common Council of 1838–9, in May, 1838, a memorial was presented in the Board of Assistants.

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May 28th, 1838.

"By Mr. Anderson. Petition of owners and lessees of property in Chapel street, and the streets intersecting, for correction of assessment and relief. Referred to committee on assessments."—*Pro. Bd. Assist., vol.* 12. *p.* 6.

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July 23d, 1838.

"*Reports.* By Mr. Tiemann: Report of the assessment committee on the assessment for regrading and repairing Chapel street, together with the various petitions and remonstrances thereon, accompanied with a resolution as follows, viz.:"

"Resolved, That the expense of re-paving Chapel street be paid by the Common Council, and that the Comptroller draw a warrant for the amount thereof."

On motion of Mr. Graham, the report was laid on the table and ordered to be printed.—*Pro. Bd. Assist., vol.* 12, *p.* 75.

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October 15th, 1838.

Mr. Tiemann moved to take up the report of the Committee on Assessments, on the petition praying that the Common Council pay for the repaving of Chapel street, for the purpose of referring back to the committee—Adopted."—*Pro. Bd. Assissts., vol.* 12, *page* 148.

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November 26th, 1838.

By Mr. Tiemann. Report of the Committee on Assessments, upon a former report upon the petition of sundry persons asking to be relieved from the assessment for repaving Chapel street."

"Accompanying the report is the following resolution, viz.—

"*Resolved*, That the Comptroller be directed to draw his warrant for $30,413 34, being the amount of the repaving, after deducting so much as has been added to the street by widening and grading."

"On motion of Mr. Anderson, laid on the table and ordered to be printed."—*Vol.* 13, *Pro. Bd. Assistants, page* 25.

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January 7th, 1839.

"The President, (*Caleb S. Woodhull, Esq.*) called up the report of the Committee on Assessments, upon their former report on the petition of sundry persons, asking to be relieved from the assessment for repaving Chapel street, and offered a resolution referring the subject to the street commissioner, to report at the next meeting of the board the state of the former and present grade and pavement in Chapel street, and also the condition of the old and new sewer therein, together with his opinion of the relative merits or advantages of the same—which resolution was adopted."—*Pro. Bd. Assistants, vol.* 13, *page* 89.

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January 21st, 1839.

"By Mr. Anderson. Petition of JOHN WALWORTH, MORGAN LEWIS, and fifty-three others, to be relieved from erroneous assessment for a new sewer on Chapel street, and for repaving and regrading Chapel street and the streets intersecting. Referred to Committee on Assessments."—*Pro. Bd. Assist., vol.* 13, *page* 93.

"Report of the Street Commissioner upon the report of the Assessment Committee, on the petition of sundry persons asking to be relieved from the assessment, &c., Chapel street, in relation to grade, &c., of said street. Referred to Committees on Assessments and Law, &c."—*Pro. Bd. Assist., vol.* 13, *page* 106.

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February 25, 1839.

"By Mr. Tiemann. Report of the Joint Committee on Assessments and Laws, on the former reports of the assessment committee, on the petition of sundry owners of property in Chapel street, and its vicinity, for relief from the payment of assessments for regrading and repaving such streets, and building a sewer therein, accompanied with the following resolutions:

"*Resolved*, That the Comptroller draw his warrants in favor of the owners of property on Chapel street, between Canal street and the centre of the blocks between Franklin and Leonard streets, and also on the intersecting streets intermediate, for the sums paid by them for the building the new sewer, and the recent regulations and paving Chapel street and the streets intersecting the same.

"*Resolved*, That the assessments upon property as above, which have not been paid, be remitted, and that the comptroller draw his warrant for the amount in favor of the contractor.

"Laid on the table, and

"On motion of Mr. Graham, *three times* the usual number of copies ordered to be printed."—*Pro. Bd. Assist., vol.* 13, *page* 167.

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March 18th, 1839.

"The report of the Committee on Law and Assessments on the petition of the owners of property on Chapel street, and its vicinity, for relief from the payment of assessment for re-

grading and repaving said street, being among general orders, was called up for consideration by Mr. Anderson.

"Mr. Balis moved that the discussion on this subject be deferred until the next meeting of the board, which motion was adopted."—*Pro. Bd. Assist., vol.* 13, *page* 202.

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March 25th, 1839.

"The report of the Committees on Assessment and Laws, on the petition of sundry owners of property in Chapel street, and its vicinity, for relief from the payment of assessments for regrading and repaving said streets, and building a sewer therein, being the special order of the day, was called up by Mr. Anderson.

"SPECIAL ORDERS.

"The report of the Committees on Assessments and Laws, on the petition of sundry owners of property in Chapel street, and its vicinity, for relief from the payment of assessments for regrading and repaving said street, and building a sewer therein, being the special order of the day, was called up by Mr. Anderson.

The committee, after giving at large the features of the case, offer the following as a summary of their conclusions:—

1. That the widening, grading and paving Chapel street, is essentially more a public benefit than a benefit to the individuals assessed.

2. That, as such, the charge upon the city treasury of one third the value of the buildings, ought, in justice and equity, to have been made.

3. That though the time has elapsed when this could have been made a legal charge, it is never too late to do justice, and that a mistake in the judgment of the commissioners, when palpable, should not be allowed to work an injury to any citizen.

4. That the neglect of the contractor to fill in the street within the time fixed by his contract, has caused large losses to the petitioners; and that the corporation having failed to collect these damages from the contractor, is bound, in justice and equity, to indemnify the petitioners.

5. That the petitioners were informed, by those who necessarily are the most competent authority on such subjects, that the improvement would cost them nothing, and acted differently under this information from what they would have done, had they anticipated these assessments.

6. That the old sewer was, in all respects, snfficient, requiring only some few repairs, and that the new sewer does not answer the same purpose as effectually.

7. That the corporaton having, in the year 1820, constructed, at the expense of the neighborhood, a good and sufficient sewer, it is a question whether its power was not thereafter limited to *alterations and amendments only*, at their expense, and that therefore the taking up the old sewer and constructing a new one in its place, has become a city charge.

8. That it is a matter of doubt whether, under the 175th and 176th sections of the act of 1813, an assessment should not have been made before the improvement was commenced, as is always done in the opening and extending of streets, in order that the common council might accurately judge whether the improvement would be beneficial or not.

9. That the widening of Chapel street, the regrading and repairing of the same, and the building a sewer therein, though done under different ordinances, *is but one whole improvement*, and that under the act of April 16th, 1836, the owners of the property affected by the regrading of the wide part of Chapel street, should have been allowed the damages sustained by them in consequence of such regrading.

Your committee therefore recommend the fellowing resolutions:—

Resolved, That the Comptroller draw his warrants in favor of the owners of property on Chapel street, between Canal street and the centre of the block between Franklin and Leonard streets, and also on the intersecting streets intermediate, for the sums paid by them for the building of the new sewer, and the recent regulations and paving of Chapel streets and the streets intersecting the same.

Resolved, That the assessments upon property as above, which have not been paid, be remitted, and that the Comptroller draw his warrant for the amount in favor of the contractor.

DANIEL F. TIEMANN,
C. C. CROLIUS, jun.,
FREEMAN CAMPBELL,
DAVID GRAHAM, jun.,
ABEL T. ANDERSON,
M. B. HART,
} Committee on Assessm'ts and Laws.

—

"The Report being read, Mr. Potter opposed the adoption of the resolution as recommended by the committee. Alderman Graham advocated the adoption of the resolution at considerable length. Mr. Tiemann called for the AYES AND NAYS, upon the passage of the resolution as recommended by the committee, when the same was adopted, ELEVEN members voting in favor, and two opposed, as follows:

"AFFIRMATIVE—Messrs. Sparks, Anderson, Crolius, Barnes, Campbell, Howe, Hart, Bunting, Graham, Tiemann, Nash.

"NEGATIVE—Caleb S. Woodhull, Ellis Potter."—*Pro. Bd. Assist., vol.* 13, *page* 211.

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Proceedings Board Aldermen vol. 16, *p.* 287.

April 3d, 1839.

Petition of Morgan Lewis and others praying to be relieved from the payment of assessments for regulating and paving Chapel street. Referred to the committee on assessments and laws.

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From the Board of Assistants, p. 295

A report of the committee on assessments and laws &c. on the petition of sundry owners of property on Chapel street for relief from the payment of an assessment for re-grading and re-paving said street. Referred to committee on assessments and laws.

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Proceedings Board Aldermen, vol. 17 *p.* 188.

July 15th.

Petition of E. Meriam in behalf of persons assessed for the re-grading and re-paving the wide part of Chapel street, and intersecting streets, for relief, which was laid on the table.

Page 215.

July 17th.

The Street Commissioner presented a communication relative to the advertisement and sale of property for assessments, which was referred to the committee on finance, together with the petition of E. Meriam and others for relief from assessment for re-grading Chapel street.

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Proceedings Board Aldermen, vol. 17. *p.* 228.

July 22d.

The Committee on Finance, to whom was referred the communication of the Street Commissioner, relative to the sale of property for unpaid assessments, presented the following report thereon:

The Finance Committee, to whom was referred the annexed communication of the Street Commissioner, with the accompanying list of final delinquents on assessments, on which sixty days have expired since confirmation, respectfully report:

That the returns involve a large sum of money, part of which is due to contractors, and part to the city.

The Committee have considered the subject, and recommend for adoption the following resolution.

Resolved, That the Street Commissioner be, and he is hereby directed to take proper measures, in pursuance of law, for the advertisement and sale of the property described in the accompanying returns for unpaid assessments.

THOMAS G. TALLMADGE,
EGBERT BENSON.

A motion was made to lay the subject on the table, which was lost.

Alderman Tiemann moved to amend the same by adding the following:

"Provided, such sale shall not take place before the first of February next," which was lost on a division called by him.

AFFIRMATIVE—Ald. Smith, Ferris, Willis, and Tiemann—4.

NEGATIVE—Alderm'n Woodhull, Benson, Guion, Ferris, Tallmadge, Hart, Cook, and Nichols—7.

The question was then taken on the resolution as reported, and the same was adopted, on a division called by Ald. Tiemann.

AFFIRMATIVE—Alder. Woodhull, Benson, Guion, Ferris. Tallmadge, Hart, Cook, and Nichols—8.

NEGATIVE—Ald. Smith, Willis, and Tiemann.

And the same was directed to be sent to the Board of Assistants.

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Proceedings of the Board of Assistants, vol. 14, *page* 223.

July 29th.

From the Board of Aldermen. Report of the Finance Committee, on the communication of the Street Commissioner, relative to the advertisement and sale of property for improvements, accompanied by the following resolution, to wit:

Resolved, That the street commissioner be, and he is hereby directed to take the proper measures in pursuance of law, for the advertisement and sale of the property described in the accompanying returns of unpaid assessments.

Mr. Balis moved that the whole subject be referred to the committee on finance, and the ayes and noes being called, the motion was carried by the following vote:

Affirmative: Messrs. Balis, Deming, O'Neill, Connor, Vandevoort, Campbell, Dodge, the President, 8.

Negative: Potter, Timpson, Pollock, Lee, 4.

So the resolution and accompanying documents were referred to the Committee on Finance.

On motion a recess was ordered for thirty minutes.

Mr. O'Neil moved to reconsider the vote of the Board, referring to the Committee on Finance the reports and resolution of the Board of Aldermen, in relation to sales of property for unpaid assessments, and the motion prevailed.

Mr. Campbell moved to amend the Resolutions by adding the words "except the assessments for regulating Chapel street."

The ayes and noes being called, on the motion to amend, the same was lost by the following vote:

Affirmative—Messrs. Vandevoort, Campbell, and Dodge—3.

Negative—Messrs. Balis, Deming, Potter, O'Neil, the President, Pollock, Lee—7.

The question then recurring on the motion to concur in the resolution, the ayes and noes were called, and the members voted as follows:

Affirmative—Messrs. Balis, Deming, Potter, O'Neil, the President, Pollock, Lee.

Negative—Messrs. Vandevoort, Campbell, Dodge—seven voting in the affirmative and three in the negative. The resolution was concurred in.

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Pro. Bd. Ald., vol. 17, *page* 253.

August 7th.

Petition of sundry owners of property in Chapel street, praying relief from erroneous assessments for re-paving Chapel street.

Alderman Robert Smith presented the following resolution in relation thereto, viz.:

Resolved, That the assessment for re-grading Chapel street be stricken from the list of property directed to be advertised and sold for the non-payment of assessments, and that the Comptroller draw his warrant in favor of the contractor for the amount thereof, at the time when the other contractors shall be paid by a sale of the property assessed.

Alderman Lawrence moved to refer the whole to the committee on assessments and laws, which was adopted, on a division called by Alderman Tiemann.

Affirmative—The President, Ald. Phœnix, Woodhull, Benson, Tallmadge, Cook, Lawrence, and Nash—8.

Negative—Ald. Guion, Smith, Ferris, Willis, Chamberlain, and Tiemann—6.

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Proceedings of the Board of Assistants, vol. 16, *page* 230.

By Mr. Anderson. Petition of sundry owners of property in Chapel street, and intersecting streets, for relief from erroneous assessment.

Mr. Anderson with the petition offered the following resolution, to wit:

Resolved, That the Street Commissioner be directed to withhold from advertising and sale the property assessed for grading and repaving Chapel street until further orders of the common council.

After a discussion between Mr. Anderson, in favor of adopting, and Mr. Potter, opposed, the ayes and noes being called, the members voted as follows:

Affirmative—Anderson, Conner, Vandevoort, Campbell, Howe, Dodge, the President, Spader—8.

Negative—Balis, Deming, Potter, O'Neil, Pollock, Lee—7.

Eight members voting in affirmative, and seven in the negative. The resolution was adopted and directed to be sent to the other board for concurrence.

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Proceedings of the Board of Aldermen, vol. 17, *page* 280.

From the Board of Assistants. Petitions of several owners of property in Chapel street, for relief from assessments, accompanied with the following resolution:

Resolved, That the Street Commissioner be directed to withhold from advertising and sale the property assessed for grading and repaving Chapel street, until further orders of the common council—which was laid on the table.

—

We have thus at length, and in detail, given the heads of the proceedings in the two boards composing the common council, in relation to these assessments, by which it will be seen that the committees in three successive reports *unanimously* admitted the *equity, legality, and justice* of the claim made by the Chapel street sufferers to INDEMNITY, and the Board of Assistants, by a vote of 11 to 2, *sustained* the report, which was the last of the series, and the most extensive, thereby sustaining all the others. These reports would no doubt have been concurred in by the other board, but for the intentional neglect of the chairman of the assessment committee to call that committee together to act upon the report of the committee of the other board, before the session of the common council for which they were elected terminated, as it was his duty to have done. Subsequent to this, application was made to the Board of Aldermen, composing a part of the next succeeding common council, to exclude the Chapel street property from the list of delinquents of the property to be advertised for sale for unpaid assessments, and this application and the assessment list were both referred to the finance committee, of which the chairman of the previous assessment committee of the previous common council was a member, and here again he exerted his power to defeat the application. The committee reported against the Chapel street application, and the report was adopted by the Board of Aldermen. (It was not, however, a unanimous report; Alderman TIEMANN, much to his credit, refused to sign it.) The report was sent to the Board of Assistants for concurrence, and was referred to the finance committee by a vote of 8 to 4.

Subsequently, *and after the Chapel street citizens had left the hall*, a member of the board moved a re-consideration of the vote of reference; the motion for re-consideration prevailed; the same member then moved that the board concur with the board of aldermen, which motion also prevailed. The next Monday night both boards convened, at which time a memorial was presented to the Board of Aldermen by the Chapel street sufferers, asking to have Chapel street property struck out of the list of delinquents of property to be advertised for sale for the non-payment of assessments, and it was moved by Alderman Robert Smith that the subject should at once be disposed of, and without being referred to a committee; but a previous motion having been made to refer, the motion to refer was first in order: it was accordingly referred, and a vote was taken on the previous motion, and carried by a vote of 8 to 7. A duplicate memorial was then at once presented in the Board of Assistants, and was by that board promptly acted upon the same evening, and by vote of 8 to 7 Chapel street assessments were ordered to be struck out of the list of delinquents, and the Board ordered the papers to be sent immediately to the Board of Aldermen for concurrence. The papers were accordingly sent at once to the other board, which, at the time the papers were announced, was not full, and consequently, Alderman Smith moved to lay the papers on the table, and they were laid on the table accordingly. Shortly after, the members who were absent from their seats, returned, whereupon, Alderman Guion moved, that the Chapel street papers be taken up. Alderman Benson opposed the motion, but his opposition did not avail, which being seen by Alderman Tallmadge, he immediately moved an adjournment, which motion, by the rules, has preference. The President put the question, and decided at once, without a moment's hesitation, that it was carried, and jumped out of his seat before a member could ask for the ayes and noes. Had the vote been taken that night in the Board of Aldermen, the Chapel street sufferers would have had a majority of two.

Finding matters thus situated in the Common Council, Alderman Robert Smith advised the Chapel street sufferers to apply to the Supreme Court for redress.

In the month of August, 1839, the Chairman of the Chapel street Committee proceeded to Utica, and made a full statement of the whole matter to Judge Savage, late distinguished Chief Justice of the Supreme Court of the State of New York. After making a verbal statement to Judge Savage, which occupied a whole day, the chairman of the committee placed the papers in the hands of two able legal gentlemen in Utica, HIRAM DENIO AND WARD HUNT, Esqs., for the purpose of making out an application to the Supreme Court for two writs of certioraris. These gentlemen examined the papers, and gave a written opinion that a motion for a certiorari is a proper remedy for the parties complaining. Murray Hoffman, Esq., had previously been applied to by the committee, and he gave a written opinion in the following words:—

In relation to the claim of the parties assessed for the sewer in Chapel street, and for repaving and regrading said st., I am of opinion--

That, as to the latter, the claim upon the Corporation for repayment is well founded and legal; and that those who have not paid cannot be compelled to pay.

That, as to the sewer, there is a very strong legal objection to the recovery of the amount assessed, and I am inclined to think no action can be sustained against those who have not paid.

And that the claim upon the Corporation for repayment, by those who have paid, is just and equitable.

MURRAY HOFFMAN.

New York. January 28, 1839.

Affidavits were made by the relators, and a copy of the same, with a notice of motion for the first Tuesday in December, were *served upon His Honor, the Mayor, in the month of October*, 1839, *in twenty-two months after the confirmation of the assessment.* The affidavit as to the sewer was made by James H. Sayre, and as to the paving and grading by Eben. Meriam, Andrew Lockwood, and Rienier Wortendyke, who, altogether, were assessed about $2500 for paving, grading, &c., exclusive of interest, which at this time amounts to $500 more. The affidavits were very full, and the notice of motion was, that a writ of certiorari would be moved for, and also a stay of proceedings. The motion was most ably argued on the part of the relators by WARD HUNT, Esq., of Utica, and was strenuously opposed by Peter A. Cowdrey, Esq., counsel for the Mayor and Common Council. The court was held by Judge Bronson. The court, after a full argument, took the papers, and after advisement and deliberation, during the session of the full bench of the Supreme Court in January, granted the writ in the paving and grading case, and denied the motion in the sewer case. The order made by the court in the case is embraced in the writ as follows:—

THE PEOPLE OF THE STATE OF NEW YORK:

To the Mayor, Aldermen and Commonalty of the city of New York—GREETING:

Whereas we have understood, on the complaint of Eben. Meriam, Rienier Wortendyke and Andrew Lockwood, that lately certain proceedings have been before you, the said Mayor, Aldermen and Commonalty of the city of New York, in relation to the regrading, repaving, or repairing of CHAPEL STREET, in the city of New York, in the year Eighteen hundred and thirty-six and the year Eighteen hundred and thirty-seven, and being willing for certain reasons that speedy justice should be done to the said Eben Meriam, Rienier Wortendyke, Andrew Lockwood, and all other persons interested in the said proceedings, and being willing for certain reasons that the said proceedings before you remaining should be certified and returned by you into our supreme court of judicature, before our justices thereof: DO COMMAND YOU, that you do certify and return to our justices of our supreme court, before our justices thereof, all and every *ordinance* of the Common Council of the said city of New York passed in the year Eighteen hundred and thirty-six, or at any time since, for repaving, repairing, or regrading Chapel street, in the said city, from Duane street to Canal street, or any portion of said Chapal street, and all and every ordinance of said Common Council, passed in the year eighteen hundred and thirty-six, or at any time since, for repaving, repairing, or regrading St. John's *lane* or Varick street, in the said city, or any portion thereof: and all and every ordinance of the said Common Council for procuring estimates of the expense of making each and every of the said improvements, and the estimates thereupon made: and all and every ordinance of the said Common Council for the appointment of Commissioners of Estimate and Assessment for assessing the benefits or expenses of the said improvements, or either of them, on the owners or occupants of any property, and the assessment thereupon made, together with all the papers and documents, before the said Mayor, Aldermen and Commonalty of the city of New York, previous to the time of ratifying or confirming such assessments tending to show the principle on which the said assessments were made: and all and every ordinance of the said Common Council ratifying or confirming the said assessments, or directing the collection of the monies assessed: and also that you, the Mayor, Aldermen and Commonalty, certify and return, whether any and what part of Chapel street included in the above mentioned improvements, or any of them, was repaved in the year eighteen hundred and twenty-nine at the expense of the owners or occupants of property upon said Chapel street: and also all and every ordinance of the said Mayor, Aldermen and Commonalty, passed or recognized between the year eighteen hundred and twenty-nine and the year eighteen hundred and thirty-six, providing, or showing, or tending to show that such owners or occupants upon Chapel street that were or ought to be exempt from any assessment or expense for the improvement of Chapel street, or any of them, ordered by the said Mayor, Aldermen and Commonalty to be made in the year eighteen hundred and thirty-six: and that the said Mayor, Aldermen and Commonalty certify and return all such maps and profiles of the said streets and improvements as may be necessary to the full understanding and explanation of the matters therein before mentioned, and each and every of them, before our justices of our supreme court, at the capitol, in the city of Albany, on the Tuesday of March next, so that our said justices may further act thereon as of right and according to law ought to be done, and have then there this writ.

Witness SAMUEL NELSON, CHIEF JUSTICE at the Capitol, in the city of Albany, this eighteenth day of January, eighteen hundred and forty. J. K. PAIGE, Clerk.

WARD HUNT, Attorney.

I certify the above certiorari has been ordered and allowed by the Court.

JNO. KEYES PAIGE, Clerk.

Proceedings of the Board of Aldermen, vol. 17, *page* 280.

New York, February 3, 1840.

The undersigned reports to the common council that Supreme Court have decided against the application of Eben Meriam and others for a certiorari to remove the proceedings in relation to the widening of Chapel street and rebuilding the sewer therein, and have granted a certiorari in relation to the repaving and regrading of said street, for the purpose of a more full investigation, but have refused in the mean time to stay proceedings of the Common Council.

Respectfully submitted,

P. A. COWDREY.

Shortly after this communication, the Street Commissioner advertised the property in Chapel and neighboring streets for sale, for the non-payment of this same assessment.

The relators made immediate application to the Supreme Court, for *an attachment*, as for contempt, for proceeding to advertise the property after the due service of the writ of certiorari. The motion was argued by WARD HUNT, Esq., for the relators, and Peter A. Cowdrey, Esq., for the Mayor, &c., on the 1st day of March special term, and on the 16th day of March the court made the following order:—

On motion of Ward Hunt, counsel for the relators, and P. A. Cowdrey, for the Mayor, &c., Ordered, That the advertisements of the property assessed for the regrading, &c., of Chapel street, be discontinued the service of the certiorari, being *per se* a stay of proceedings.

The corporation officers thereupon discontinued the advertisement of sale by taking Chapel street assessments out of the list, as also that for 20th sewer, in which case also a certiorari had been granted.

Three of the persons interested in the sewer; made affidavits in relation to that assessment, and copies of these affidavits, with a notice that a motion would be made by Ward Hunt, Esq., on the part of the relators, on the first Tuesday of the April term, for a writ of certiorari, were served upon the mayor, &c.

The motion was made by Mr. Hunt, and by him argued for the relators, and opposed by Mr. Cowdrey, for the Mayor, &c. The motion was allowed at once by Judge Bronson, who held the court.

THE PEOPLE OF THE STATE OF NEW YORK:

To the Mayor, Aldermen, and Commonalty of the City of New York—GREETING:

Whereas, we have understood on the complaint of James Agnew, Eli B. Budd, and Thomas Riley, that lately certain proceedings have been had before you, the said Mayor, Aldermen, and Commonalty of the city of New York, in relation to the removing of the then existing sewer, and constructing a new sewer in Chapel street, from Duane to Canal streets, in the year 1836, and also in relation to the building a sewer in Thomas street, in the same year, and being willing, for certain reasons, that speedy justice should be done to the said James Agnew, Eli B. Budd, and Thomas Riley, and all other persons interested in the said proceedings, and being willing, for certain reasons, that the said proceedings before you remaining should be certified and returned by you into our supreme court of judicature, before our justices thereof, do command you, that you do certify and return to our justices of our supreme court of judicature before our justices thereof:

All and every ordinance for removing the then existing sewer, and constructing a new sewer in Chapel street from Duane to Canal street, passed by the common council of the said city of New York, in the month of May, in the year 1836; all and every ordinance for building a sewer in Thomas street, passed by the said common council of the said city of New York, in the same month and year; all contracts made in the year 1836, or afterwards, for the building of the said sewer in Chapel

street or Thomas street; all reports, or certificates, or returns of assessors, inspectors, or surveyors made in relation to the construction of the said sewers, or either of them, in the same year or since; all assessment lists, or assessment maps, or assessments made or recommended or imposed for the payment of the expense of constructing the said sewers, and all maps, profiles, papers and documents tending to show what was done under and by virtue of the ordinance above referred to, and also what was done under, and by virtue, or by claim thereof, by the said Mayor, Aldermen, and Commonalty, or their officers, agents, or servants; and all and every ordinance of the said Mayor, Aldermen, and Commonalty, ratifying or confirming the said assessments, or directing the collection of the monies assessed, before our justices of our supreme court, at the city hall, in the city of New York, on the first Monday of May next, so that our said justices may further act thereon, as of right and according to law ought to be done, and have then there this Writ.

Witness Samuel Nelson, Esq., Chief Justice at the Capitol, in the city of Albany, this 7th day of April, 1840.

J. K. PAIGE, Clerk.

WARD HUNT, Attorney.

SUPREME COURT.

The Mayor, Aldermen, and Commonalty of the city of New York, adsm. The People ex rel. Eben Meriam and others.

IN COMPLIANCE WITH THE REQUIREMENTS OF THE ANNEXED WRIT OF CERTIORARI, the Mayor, Aldermen, and Commonalty of the city of New York, do certify and return to the justices of the supreme court of judicature of the People of the State of New York, under their seal, in a certain schedule hereto annexed, the following proceedings, viz.—all and every ordinance of the common council of the said city of New York, passed in the year Eighteen hundred and thirty-six, or at any time since, for repaving, repairing, or regrading Chapel street, in the said city, from Duane street to Canal street, *or any other portion of the said Chapel street;* and all and every ordinance of the said common council passed in the year Eighteen hundred and thirty-six, or at any time since, for repaving, repairing, or regrading *St. John's lane or Varick street*, in the said city, *or any portion* thereof; and all and every ordinance of the said common council for procuring *estimates of the expense* of making each and every of the said improvements, *and estimates thereupon made*; and all and every ordinance of said common council for the appointment of commissioners of estimate and assessment for assessing the benefit or expenses of said improvements, or either of them, on the owners or occupants of any property, and the assessment thereupon made, together with all the papers and documents before the said mayor, aldermen, and commonalty of the city of New York, previous to the time of ratifying or confirming such assessments, tending to show the principle on which the said assessments were made; and all and every ordinance of the said common council ratifying or confirming the said assessment, or directing the collection of the monies assessed, and also what part of Chapel street, included in the above mentioned improvements, or any of them, was repaved in the year Eighteen hundred and twenty-nine at the expense of the owners or occupants of property upon said Chapel street; and also all and every ordinance of the said mayor, aldermen, and commonalty, passed or recognized, between the year Eighteen hundred and twenty-nine and thirty-six, providing, or showing, or tending to show that such owners or occupants upon Chapel street were, or ought to be exempt from any assessment or expense for the improvements of Chapel street, or any of them, ordered by the said mayor, aldermen, and commonalty, to be made in the year One thousand, eight hundred and thirty-six, and all such maps and profiles of such streets as are necessary to the full understanding and explanation of the matters aforesaid.

[L. S.] D. T. VALENTINE.
Assist. Clerk C. C.

The following resolution for widening Chapel street:—

Resolved, That Chapel street be widened twenty-five feet on the N. W. side thereof, beginning at N. W. side of the lot now in the possession of Lawrence Ackerman, about ninety-one feet northerly from Leonard street, and extending thence to Reed; and also that Chapel street be widened twenty-five feet on the N. E. side thereof, beginning on the northerly end of the lot now occupied by Charles D. B. Voise, which said lot is at the southerly corner of Leonard and Chapel streets, and extending thence south-westerly to Murray street.

Resolved, That the counsel of the Board take the proper measures to carry into effect the preceding resolution.

Adopted by the Board of Aldermen, November 2, 1833.

Adopted by the Board of Assistant Aldermen, December 30, 1833.

Approved by the Mayor, Decem. 31, 1833.

Report confirmed, January 5, 1836.

Actual widening, ordered on the 15th May, 1836.

The Mayor, Aldermen, &c., not having made a return to the certiorari in the paving and grading case, a certificate of the clerk of the supreme court was served upon the Mayor, &c., together with a notice of a motion for an attachment as for contempt. On the 7th of April, 1840, the Counsel produced, at Albany, a partial return, and agreed to furnish such other return as the writ called for and the counsel for the relators required, wherefore the motion was not made. This return was taken back to New York by the counsel for the Mayor, &c., the papers were subsequently filed in the office of the clerk of the supreme court, at Albany, and were afterwards removed by the counsel of the Mayor, &c., to the clerk's office in New York, by consent of the clerk at Albany and one of the relators. The affidavit here given is of a date subsequent to the motion at Albany, and is not the same affidavit that was there submitted, although it is contended that the substance is the same. This, however, was a matter of no consequence, as this affidavit should not in fact form any part of the return. The counsel for the relators passing through the city of New York, on his way to Washington, served the counsel of the Mayor and Aldermen with a replicaion.

Subsequently, application was made to the said counsel, to complete his return, which he declined doing, saying that he was not bound to do so, and that the replication had been put in. One of the officers of the corporation, whose affidavit constituted a part of the return, had agreed to alter a clause in the affidavit, by way of explanation, but refused afterwards to do so. This affidavit was that which was withdrawn from the papers after the papers had been submitted to the relators' counsel at Albany, but before the papers were filed.

A notice of a motion, to compel a further return, was served on the Mayor as for the August term. This term was held by Mr. Chief Justice Nelson. There was also a motion for an attachment, or such other order as the Court should think proper to grant as to proceedings of the street commissioner in advertising, that unless the relators in the sewer case, in which a certiorari has been issued, paid the assessments, leases would be executed to the purchaser, for lots, &c., previously sold for the assessments, on a certain day which would arrive before a decision on the certiorari. This motion as to the sewer the relators' counsel considered was within the order made by Chief Justice Nelson, on the 16th March, which is set forth above, that a service of certiorari is *per se* A STAY OF PROCEEDINGS, and the motion was made solely with this view. These motions were both argued by Mr. Hunt, for the relators, and Mr. Cowdrey for the mayor, &c.

The affidavit referred to, is in the words following:—

SUPREME COURT.

The Mayor, Aldermen, and Commonalty of the city of New York, adsm. the People ex rel. Eben. Meriam and others.

City and County of New York ss. John Ewen, Street Commissioner of the city of New York, being duly sworn, doth depose and say that the annexed return contains a full statement of all the ordinances referred to in the certiorari hereunto annexed that have been passed by the common council of the said city, and all the papers and documents before the said Mayor, Aldermen, and Commonalty, previous to the time of ratifying or confirming such assessments, tending to show the principle on which the said assessments were made, and also all such maps and profiles of the said streets and improvements as are necessary to the full understanding and explanation of the matters in the said certiorari mentioned, or any of them, and this deponent further saith that Chapel street, in the said city, from Murray to Chamber, was paved at the expense of the owners or occupants of property upon said Chapel street, in the year one thousand, eight hundred and twenty-nine, and that Chapel street was widened on about the month of May, in the year one thousand, eight hundred and thirty-six, pursuant to the annexed resolution passed December 31st, 1833, and the repaving of such street was rendered indispensable in consequence of such widening, and this deponent further *saith that the expense of repaving Chapel street, between Murray and Reade streets, was charged upon the owners of prop-*

erty within those limits, and did not in any respect affect the property not included therein. And this deponent further saith, according to the best of his knowledge and belief, the practice always has been under the ordinance hereunto annexed, in relation to the expense of repaving streets, passed in the year 1824, to construct the same as not applying to any case where there was a radical change in the street, either by altering the grade or increasing the width thereof, but only to such cases where the pavement was worn or defaced by the ordinary wear and tear of the streets.

JOHN EWEN.

Sworn before me, this 9th day of April, 1840.
S. F. COWDREY, Com. of Deeds.

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Paving Case.

Mr. Chief Justice Nelson took the papers, and in the month of September made the following orders:—

The motion is made on a misapprehension of the facts. The first affidavit contained the clause proposed to be stricken out, the matter is therefore all right. The motion must be denied with costs. S. N.

Filed Sept. 1, 1840.

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Sewer Case.

All reasonable means were taken to terminate the advertisement of the Chapel street property. The *legal notices* were in fact stopped, and those beyond this ceased as far as practicable. The parties concerned seem unreasonably sensative in the matter. The advertisements on the service of that rule were put an end to. Denied with costs. S. N.

At the October special term, held by Mr. Justice Cowen, the motion for a further return in the paving and grading case was renewed, and the motion was, without argument, at once granted by the court, upon which the order in the following words was made:—

The People ex rel. Eben Meriam and others, } Ward Hunt, Attorney.
vs.
The Mayor, Aldermen, &c.

A motion having been made in this cause, on the part of the plaintiffs, for a further return to the certiorari heretofore issued in this cause, in regard to the assessment of the expense of repairing or repaving Chapel street, between Duane and Murray streets, or any part thereof mentioned in the proceedings in this cause upon the owners and occupants of property in Chapel street, between Duane and Canal st., and having been argued by Mr. L. H. Sandford for the plaintiffs, and Mr. S. F. Cowdrey for the defendants.

ORDERED, That the defendants do return to the court, as a part of the return to the said certiorari, whether or not any part, and what part of the said expenses were assessed upon the owners and occupants last mentioned, or any part of them. Rule, 7th October, 1840.

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In January, the counsel for the relators gave notice of a motion to be made at the next special term, of February, for an order to compel the corporation to take a copy of a map off the files which constituted a part of the return in the paving and grading case, in consequence of its not being a true copy of the original; and also that a part of the return made to the order of the court, entered at the October term, should be struck out as being irrelevant. This return is in the words following:—

SUPREME COURT.

The Mayor, Aldermen, and Commonalty of the city of New York, adsm., The People ex rel. Eben Meriam and others.

In compliance with the requirements of the annexed rule, made and entered in the above cause, the mayor, aldermen, and commonalty of the city of New York do certify and return to the justices of the supreme court of judicature of the State of New York, under their seal, that no part of the expense of *repairing* or *repaving* Chapel street, between Duane and Murray streets, in the said city, was assessed upon the owners or occupants of property between Duane and Canal streets, but that the full amount of all the expense of *repairing* and *repaving* Chapel street, between Murray and Duane streets, was assessed upon the owners and occupants of property within these limits, and that no more than the amount of the expense of repairing and repaving Chapel street, between Duane and Canal streets, was assessed upon the owners of property within those limits. And they further say, *that although some of the particular items of expenditure incurred in the repairing and repaving Chapel street, between Murray and Duane streets, may have been in part included in the assessment upon the property between Duane and Canal streets*, yet that other items of expenditure incurred in the repairing and repaving Chapel street aforesaid, between Duane and Canal streets, were in part included in the assessment upon the property between Murray and Duane streets, and that the amount of such expenditure, as first above mentioned and charged upon the property between Duane and Canal street, was less than the amount of such expenditure as last above mentioned and charged upon the property between Murray and Duane streets.

In witness whereof, we, the Mayor, Aldermen, and Commonalty of the city of New York, have caused our common Seal to be hereunto affixed the 15th day of October, in the year of our Lord, One thousand, eight hundred and forty. ISAAC L. VARIAN, Mayor.

By the Common Council,
SAMUEL J. WILLIS, Clerk. [L. S.]

—

At the January term, pending this notice of motion, the counsel of the Mayor noticed the causes for argument, the counsel of the relators applied to Judge Gridley, and obtained a stay of proceedings.

Notwithstanding this stay of proceedings, the counsel for the Mayor persisted in bringing on the argument, which was opposed by the counsel for Relators. The court sustained the counsel for relators, and refused then to hear the arguments.

At the February special term the motion in relation to the paving and grading return was made on the part of the relators, and opposed on the part of the mayor, &c. The court stated, in substance, as follows:—

First, as to the map, that the court would not be misled by it, sufficient appearing to show the true map.

Second, as to the return made in pursuance of the rule of October 7th, relative to assessing north of Duane street certain expenses for paving, &c., south of that street, that the return admitted the only material fact, and it could not be important HOW MUCH or *how little* was assessed.

The judge denied the motion, without costs, as there was, he said, colorable grounds for making it.

—

The motion in relation to the sewer was not made. At the May term of the Supreme Court both causes were noticed for argument by the counsel of the respective parties.

The causes were most ably argued on the part of the relators by Wm. M. Holland and Lewis H. Sandford, Esquires (Mr. Hunt being obliged to leave town at the commencement of the argument), and by Peter A. Cowdrey, Esq. for the mayor, &c. On the returns made by the mayor, &c. to the writ issued in this cause—

The court took the papers, and in the month of November made the following decision in the paving and grading case:—

SUPREME COURT.

The People ex rel. Eben Meriam and *others*, *vs.* The Mayor, Aldermen, and Commonalty of the city of New York.

BRONSON, J. This case depends on the same principles as that on the relation of Agnew and others, in relation to the sewer.—*Certiorari quashed.*

—

The opinion, &c., in the sewer case, will be found next in order, page 181.

—

The returns made in the matter of the assessment for paving and grading Chapel street, from Murray to Canal street, and the adjoining streets, including that portion of Varick street between Franklin and North Moore st. and St. John's lane, between Beach and Laight street, are as follows, viz.—

1. The certificate of David T. Valentine, Assistant Clerk of the Board of Aldermen, under the common seal of the mayor, aldermen, and commonalty of the city of New York, which certificate recites the rule of court entered in this cause, and states that all the papers, documents, &c., as recited, are returned, and that a schedule is annexed. This certificate is without date, and not accompanied with any schedule.

2. The Resolution of the Board of Aldermen and Board of Assistant Aldermen, in relation to the widening of portions of Chapel street, passed in 1833.

3. Resolutions for changing the grade of Chapel street from Read to Canal street, and the intersecting streets from Duane to York street, both inclusive, agreeable to certain lines drawn on certain profiles referred to, which profiles are also returned as to Chapel street, from Read to Canal street, and as to Duane, Thomas, Anthony, Leonard, Franklin, White, North Moore, Beach, Walker, Lispenard, and York, being all the streets which intersect Chapel street from Duane to York street, both inclusive.

4. Resolutions for removing the then existing sewer in Chapel street, and for constructing a new sewer in Chapel street, from Duane

to connect with the sewer in Canal street, with lateral culverts, &c.; and also a resolution that the street commissioner be directed to prepare and present a suitable ordinance for carrying the preceding resolutions into effect. These resolutions are in the form and shape herein before set forth.

5. An ordinance purporting to be passed by the mayor, aldermen, and commonalty of the city of New York, in common council convened the 16th day of May, 1836. This ordinance directs "that the graduation of Chapel street be changed agreeable to lines drawn on the profiles in the street commissioner's office, and that the streets be repaved in conformity to the same." At the foot of an ordinance is an oath, signed John Ewen, J. S. Warner, and M. D. L. Gaines. and sworn to by the persons above named, before Cornelius W. Lawrence, the 28th day of January, 1837. This ordinance is not signed by the mayor, as required by the 12th section of the act of April 7th, 1830; and also an assessment list, to which is attached a certificate signed by two of the assessors, which recites that they had been appointed by an ordinance passed May 16, 1836, to make an estimate of the expense of conforming to a certain order and direction of the said common council for grading, regulating and repairing Chapel street, and the adjoining streets from *Murray* to Canal street, and to make an equitable assessment thereof, &c. Murray street is some hundred feet *south* of Read street, and beyond that district included in Chapel street from Duane to Canal street, Canal street being nearly due *north* of Duane street. Then follows the assessment list which contains the names of 353 persons assessed for the repaving of Chapel street from Murray to Canal street, and the adjoining streets, and embraces an assessment for filling in earth and repaving, and for curb, gutter and bridge stone in Varick street, between Franklin and North Moore; and also for the same items in St. John's lane, between Laight and Beach streets. Also for the same items in Lispenard, Walker, White, Anthony, Thomas, Duane, North Moore, Beach, York, Hudson and Chapel streets, between Duane and Canal streets; and also for excavating earth, repaving, curb, gutter and bridge stone, between Read and Murray streets, and Read, Chamber, Warren, and Murray streets. Likewise for repaving, curb, gutter and bridge stone, and FILLING IN, on the opposite side of the same streets, which were of the same grade before, and now the same grade as the opposite side not charged with any filling. The certificate states the amount of the contract in a gross sum of $33,979 28, and then afterwards specifies the apportionments of it as above. An item of "$43 80 for cleaning privies" is stated in the certificate. The amount of the assessment for that portion of the district embraced in the assessment list, and not authorised by the ordinances, about $6000. Opposite the number of each lot are the feet front of such lot; then, in separate columns, a certain number of loads of filling where the grade is raised, and loads of excavating where the grade is lowered, square yards repaving, feet of curb, gutter and bridge stone; then the expenses of surveying, inspecting, collecting and cleaning two privies between Reed street and Murray street, added together, is spread over the whole district. The more the street was filled in opposite buildings, thereby injuring the basements, the greater was the amount of assessment imposed, and no allowance made for damages as required by the act of April 16th, 1816. The profiles returned show the change of grade, and what description of buildings were affected by it, and to what extent.

6. A communication, dated at the street commissioner's office, May 10, 1836, which states that he encloses an ordinance for changing the grade of Chapel and adjoining streets, and for paving the same, agreeable to such alteration, from Duane street to Canal, that it may be passed, and assessors appointed thereto, and nominates himself as one of the assessors. On this communication is endorsed the substance of the communication, to which is added these words:—

"Passed the Board of Aldermen, May 10, 1836. J. Morton, Clerk.—Passed the Board of Assistants. Concurred in. J. Haggerdon, Clerk.—Approved, May 16th, 1336. C. W. Lawrence.

7. A report of the Assessment Committee in favor of confirming the assessment for repaving Chapel street and adjoining streets, from Murray to Canal street, which was adopted by the Board of Assistants, October 2, 1837.

8. Report of the Assessment Committee of the Board of Aldermen in favor of concurring with the assessment committee of the board of assistants in confirming the assessment for repaving, &c., Chapel and adjoining streets from Murray street to Canal street, which was adopted by the Board of Aldermen, December 22, 1837, and both reports approved by the Mayor, December 23, 1837.

9. The ordinance of November 24, 1824, and three subsequent ordinances, exempting streets and parts of streets newly paved or repaved, subsequent to the date of the passage of the respective ordinances, from any further charge for repaving, paving, or repairing.

10. An imperfect copy of the original assessment map showing the district embraced by the assessment.

11. The original writ served on the Mayor.

12. Affidavit of John Ewen, Street Commissioner.

DENIAL OF A CERTIORARI.

In December, 1840, a motion was argued at the special term of the Supreme Court on behalf of J. B. Elmendorf, Sampson Moore, William Giffing, and Moses Barnwell, relators, on an application to the court for a Writ of Certiorari to be directed to the *Mayor, Aldermen and Commonalty of the city of New York*, requiring the said mayor &c. to certify and return certain proceedings of the said mayor, ald. and com. and their officers, in relation to regrading and paving of Chapel and adjoining streets, and to certify and return certain facts set forth by the relators. Mr. Chief Justice Nelson held the court. He took the papers, and held the matter under advisement until during the general term in January, 1841, when he delivered the following opinion, which Mr. Justice Cowen, in a subsequent opinion given by him in the Mount Morris case, says was the opinion of the whole court. This application was made in consequence of the intimation given by Mr. Justice Cowen at the October special term in the same assessment proceeding in which other persons were relators, that the corporation should return the *Facts* instead of bundles of papers.

SUPREME COURT.

The People ex rel. Jacob B. Elmendorf, et al.

vs.

The Mayor, Aldermen, and Commonalty of the City of New York.

Motion for certiorari to bring up assessment for regrading Chapel street from Duane to Canal street.

NELSON, C. J.—It appears that as early as the 25th of April, 1836, the Board of Aldermen adopted a resolution directing the Street Commissioner to report an ordinance for regrading Chapel street from Duane to Canal street, and also the intersecting streets between Duane and York, according to lines drawn on a profile, there referred to as on file in said commissioner's office. The same was sent to the board of assistants, and adopted by them soon afterwards.

That on the 10th of May, both boards adopted the ordinance reported by the commissioners for changing the grade of said streets, and paving same, and appointed three assessors to make the necessary estimate and assessments.

In May, 1836, the relator and others remonstrated to the Common Council against the contemplated improvement, but were induced to give up their opposition in consequence of representations made by the commissioners or some of them, that the expense would be trifling, &c.

A written contract was made and entered into by the street commissioner for the work previous to June, 1836, and before the estimate and assessment was *formally* made.

It further appears that the expense of regulating and paving Chapel street between Murray and Duane streets, and also a part of Varick street and St. John's lane, was included in the estimate and assessments not embraced in the ordinance of the common council. The amount however is comparatively trifling. The assessors made their estimate and assessment sometime in the *summer of* 1836, and reported to the Board (the amount $33,613 46), which was duly confirmed. In *June*, 1837, the common council were applied to by a number of persons interested for relief and to vacate the assessment—the board of assistants adopted resolutions granting the application, but the same were never acted upon by the board of aldermen.

There are many other matters detailed in the affidavits on which the motion for a *Certiorari* is founded, not material to notice from the view I have taken of it.

The opposing affidavit shows, that *ten days notice of the application for confirmation* of the report or estimate and assessment was given in some ten of the city papers, inviting objections; and further, that about two thirds of the assessments have been already paid by the owners.

From the above history of the proceedings, it appears that nearly five years have elapsed

since they were commenced by the common council, and *three and a half since the confirmation of the* ESTIMATE *and assessment* of the commissioners. In the mean time, the several streets have been graded and paved, the sewers made, and two thirds of the tax paid by the owners.

The objections relied upon for obtaining the certiorari extend *to almost every step from the adoption of the original ordinance, 10th of May*, 1836, *to the confirmation of the assessment*, JUNE, 1837; AND NO SATISFACTORY REASON IS GIVEN FOR SUCH GREAT DELAY IN APPLYING FOR THIS REMEDY.

Having a DISCRETION OVER IT, *we are bound to regard the consequences that must press upon the city at this late day, if allowed, and regulate our* JUDGMENT *in some measure accordingly.* It would be unjust and oppressive to interfere if they have been greatly aggravated *by the delay.* We should also look into the probable effect of QUASHING the proceedings upon the parties themselves, for if the error is technical and nothing substantial will be gained, the certiorari should be withheld. In the exercise of a sound DISCRETION OVER IT, we cannot grant it where the fruits may be little more than a multiplication of costs and expenses, in addition to serious PUBLIC INCONVENIENCE.

What, then, would be the legal effect of setting aside the assessment at this late day?

1. The loss of the costs and expenses of making it, and of the collection of two-thirds of the amount which ordinarily is no inconsiderable sum, but I concede if the remedy be *promptly* sought this should not constitute a decisive objection.

2. The city, for aught I see, would immediately become subject to a suit by each person who has already paid his assessment. A somewhat formidable consequence when we see that the list of tax payers embraces about ONE THOUSAND persons.

3. The city *must* also be subjected to the entire expense of the improvement, unless a new assessment can be made consistent with the law.

What benefit would the persons assessed obtain?

If a re-assessment could not be made, they would of course obtain exemption from payment of any part of the tax. But on looking at the act [R. S. of City, p. 131] I am inclined to think this might be done, though it is unnecessary to express a definitive opinion here; *an estimate of the expense should doubtless be made before the contracts were entered into or the work commenced;* but I do not perceive the *importance* of the assessment before that period; and there is nothing in the act making it *expressly*, or of *necessity*, a condition precedent.

The streets have been already graded and paved, and the common sewers made; these, of course, would remain undisturbed.

I am aware the counsel also insist, that the original ordinance passed by the common council 1st May, 1836, is void and should be quashed—

1. Because the *ayes and noes were not taken, nor the journal of the proceedings published, according to the 7th section of the charter.* (R. S. of N. Y., p. 512. And 2. *Because the Boards* of Aldermen and Assistant Aldermen *were out of office*, their term having expired on the 9th of May.

As to the first ground, I am inclined to think the statute *merely directory*, and not imperative, *or a condition to the validity of the ordinance;* and as to the second, it is *by no means certain* that the board might not act *on the 10th.*

By the 4th section (R. S. of city, p. 512) the election takes place on the second Tuesday of April, and the aldermen are to be sworn into office on the second Tuesday of May thereafter.

In 1836 this was the 10th day—they are chosen for one year, section 3. The general rule is to exclude the day on which an act is to be done from which time is to be computed IN A STATUTE. These officers are elected for a year, and are to be sworn into office on a certain day, from which time their term begins; *till then they are not aldermen. Even fractions of a day may be regarded*, and by common usage the old board may go out at noon of the 10th, when the new are qualified. In the absence of such usage I APPREHEND THEY HOLD TO THE END OF THAT DAY.

I do not mean, however, to put this case on any view I might take of these objections. They are FUNDAMENTAL, and if sound, show that the whole proceeding is without authority, and all concerned TRESPASSERS; to which *remedy* the parties may resort if they think proper.

I place my refusal upon the UNREASONABLE DELAY IN THE APPLICATION for the certiorari, and the *serious consequences to the city* which must necessarily follow the granting of it, after such a lapse of time, after the improvement has been finished and two thirds of the assessments paid by the owners. *Even writs of error cannot be issued after two years* from the rendition of the judgment, (2 R. S. 49. § 21.)

In analogy to this statute we should refuse a certiorari after the lapse of this period in an ordinary case; MUCH MORE ought we in this one. The right to exercise a DISCRETION and the principles upon which it should be regulated, in these cases, will be found at large in the People *vs.* Supervisors of Alleghany. (15 Wend. 198.

Motion denied without costs.

VETO OF MAYOR MORRIS,

Document No. 9—Board of Aldermen, June 14, 1841.—The following Message was received from his Honor the Mayor, and ordered on file—SAMUEL J. WILLIS, Clerk.

MAYOR'S OFFICE,
New York, June 14, 1841.

To the Board of Aldermen of the City of New York.

Gentlemen—I return to your body the accompanying reports and resolutions and ordinances, viz: Report of the Street Committee in favor of flagging, &c., in Seventeenth street, between Irving place and Union place, and resolution. Report of same committee in favor of paving Ninth street from avenue C to avenue D and resolution. An ordinance to regulate and pave Washington street. An ordinance to build a sewer in Morris street. An ordinance for deepening Storm's basin. An ordinance to pave, &c., southerly sidewalk of Twenty-eighth street, between the Third and Fourth avenues. An ordinance for a well and pump in Twenty-third street.

These were originated in your Board; they have been concurred in by the Board of Assistant Aldermen; and by that body sent to me for my approbation. These direct improvements involving an expenditure of public moneys, or requiring assessments upon citizens, and have been passed without calling or taking the ayes and noes in either branch of the Municipal Legislature. For this omission I am constrained to withhold my approval of them, although there is no objection to the improvements contemplated.

The seventh section of the amended Charter of the City of New York requires, that, "all resolutions and reports of committees which shall recommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of the said city, shall be published immediately after the adjournment of the board, under the authority of the common council, in all the newspapers employed by the corporation; *and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*"

Although some of the legal tribunals of the State have decided that the omission to take the ayes and noes upon the passage of such reports and resolutions, and ordinances, does not make them void, while others have maintained a contrary doctrine, still the directions contained in the section of the Charter referred to are obligatory upon the common council, and under no circumstances should they be disregarded.

These provisions were intended to protect the interests of the citizens, by ensuring deliberation and integrity in their representatives, upon subjects involving either taxation, assessment, or an appropriation of public moneys. The authors of the section referred to, wisely determined that the most effectual method to ensure deliberation and honest action on the part of the agent, was to compel him to record and publish his vote; thereby giving to the constituent knowledge of the agent's acts, and exposing each agent to the animadversion of his constituents, when he voted incorrectly.

These provisions of the Charter, if strictly enforced, cannot but prove beneficial to the citizen. It cannot be denied that there are individuals, who may be elevated to office, so singularly constituted as to be influenced in their conduct more by the fear of public censure than by an internal conviction of right, who will vote improperly, and even corruptly, if they can do so without detection and exposure.

To protect the public against the acts of such persons, and to inform the constituents of such acts of the representative, the seventh section of the amended Charter was framed. I conceive it to be the duty of all of us, strictly to enforce observance of every requirement of the City Charter, that uniformly correct precedents may be established; and we may avoid all measures which we have not a clear right to effectuate. That community is most scrupulous in its obedience to the laws, whose officers and legislators are strict in their observance of constitutional and legal requirements.

Example from those in authority is more important than their adjudications or their precepts. We therefore should not only enforce, but obey the law. The City Charter is a Constitution, which we as agents of the people, are bound to obey strictly, not only in its letter, but in its spirit. ROBT. H. MORRIS.

JOHN STREET CASE,

IN SUPREME COURT.

The People ex rel. JAMES FELLOWS, vs. The Mayor, Aldermen and Commonalty of the city of New York, in the matter of widening and straightening John street, in the city of New York.

John W. Edmonds, Esq. for the Relator.

William Inglis, Esq. for the persons in favor of widening John street.

Peter A. Cowdrey, Esq. for the Mayor and Common Council.

At the March special term of 1840 of this Court, Chief Justice Nelson presiding, a motion was made by John W. Edmonds, Esq. on the part of the Relator, for a writ of certiorari to be directed to the Mayor, Aldermen and Commonalty of the city of New York, commanding the said mayor, &c., to certify and return to the said court all the proceedings of the Mayor and Common Council of the city of New York directing the widening and straightening of John street, and in authorising an application to be made to the Supreme Court for the appointment of three Commissioners of Estimate and Assessment.

The affidavit on which the motion was founded set forth that in the adopting the Report of the Committee recommending the widening, &c. of John street, and in the passage of the resolution for carrying the same into effect, the ayes and noes were not taken in either Board composing the Common Council, and the Report and the vote upon the same were not published in any of the newspapers employed by the Corporation under the authority of the Common Council.

The Report of the Commissioners in this case had been confirmed the fourth day of September, 1839, and without any public notice whatever being given of the presentation of the *COMMISSIONERS' REPORT AT THE TERM OF THE COURT.*

Various irregularities, as well as illegalities, were set forth in the papers.

Mr. Inglis proposed to read affidavits of some of the persons who were in favor of the improvement, which Mr. Edmonds objected to. The Chief Justice allowed the affidavits to be read, the substance of which is recited in the opinion of the Court.

Mr. Inglis made an eloquent argument as to the expediency, &c. of widening the street, and stated the street had become of bad repute in consequence of its then bad condition.

Mr. Edmonds replied to him, and fully sustained the position he had taken, that the proceedings were absolutely illegal, and, in addition, the proceedings were irregular, and that the widening of the street at a cost of about two hundred thousand dollars, exclusive of the expense of subsequent improvements, was an **EXPENSE altogether TOO GREAT to be expedient.**

The court took time for advisement, and in the course of about ten days decided and denied the motion, at the same time giving the following brief Opinion :—

Nelson, Chief Justice.—The Writ of Certiorari asked for in this case does not issue ex debito justitiare, but upon cause shown, and rests in the sound discretion of the court. 15 Wend. 198. The object of it is to bring up the proceedings of the common council of the city of New York in the years 1835, '6, '7, directing their counsel to take the necessary measures for widening, &c. John street, alleging certain irregularities and errors therein. No steps have been taken by the relators for the purpose of reviewing these errors till now, March, 1840. In the mean time measures for widening said street have been taken and completed, and an ordinance passed directing the buildings to be removed along the line of improvement by the first of May next. It is quite obvious, even without the affidavits before us, if the proceedings are now to be interrupted, great and serious damage must necessarily result to the owners and tenants. Since the *confirmation of the report*, which was some time previous, they have acted with the understanding and belief that the improvement would certainly be perfected, and have made the necessary arrangements accordingly. The property has not been rented. Other places of residence and business have been procured in the mean time. Contracts and preparations have been made to carry out the alterations of the streets, &c. Unless, therefore, the court is compelled to grant the writ, it seems to me the considerations are strong and decisive against interfering. The relators should not have slept upon their rights for some three years. The court cannot yield to the suggestion that they were ignorant of the proceedings, or of the assessments made by the commissioners.

Besides, I have serious doubts if the remedy would avail them. The confirmation of the report, unless reversed, is made final and conclusive *upon all parties interested* by the terms of the statute. 2 R. Laws, 413, § 178. I do not see how a party could be permitted to question collaterally the conclusiveness of the judgment of confirmation by going behind it. While that stands, he is estopped upon the act, —and if so, were the resolutions of the board annulled directing the institution of these proceedings, they would still be left in full force, as much as a judgment rendered in a suit commenced by attachment or writ, where the latter only are set aside.

Upon the whole, I am clear that the court should withhold its assent to the allowance of the certiorari.—Motion denied without costs.

[From the Saratoga Sentinel—Extra of July 20, 1841.]

IN CHANCERY.

BEFORE THE CHANCELLOR.

Samuel Vandervoort *vs.* the Trustees of the village of Astoria.—J. B. SCOLES, for complainant; G. WINTER, for defendants.

In this case the Chancellor decided that injunctions to stay public improvements should not be granted *ex parte* by Injunction Masters, out of court where there is no immediate danger of irreparable damages being done before the defendants can have an opportunity of being heard. That the Master, in all such cases, instead of granting the injunction in the first instance, should direct an order, to show cause before the court why an injunction should not be granted.

Injunction dissolved with costs to the defendants, without reference to the denial of any matters of the bill by the answer.

IN CHANCERY.

BEFORE THE ASSISTANT VICE CHANCELLOR.

STREET ASSESSMENTS.

Peter G. Stuyvesant and others, vs. The Mayor, Aldermen and Commonalty of the city of N. York.

Opinion of Murray Hoffman, Esq. Injunction Master.

The bill is brought before me as Injunction Master. I have been obliged by my sense of duty to grant an injunction in this and several cases on the eve of the sale advertised to take place on the 27th inst. I am sensible of the inconvenience to the city from an interference at this time, and do it with unfeigned reluctance.

But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterizes the proceedings complained of. I have a deep-rooted conviction that ultimately the decision must be against the corporation; and I believe that the jurisdiction exists in this court to compel the corporation to try the question fairly in a single action at law between them and the complaining party. I think it is within the province of this court to prevent an innocent purchaser being deluded into litigation and probable loss, and to confine the controversy to the alleged wrong-doer and the injured party. This strikes me as the plain, just, and common sense view of the matter. There are in this bill a number of complainants, the several owners of various parcels of property. They may all be bound by the result of one action. Thus, with perfect justice to the corporation, these questions may be tried in the most simple and satisfactory matter, and a contest with a third party averted.

There has been no opinion as yet expressed by the chancellor upon the point of jurisdiction, and I am at liberty to act upon the assumption and my own conviction that it exists.

I may, in a case of such moment, briefly advert to the reasons which led me on a former occasion to consider the neglect of the corporation to call the ayes and noes, and make the publication prescribed by the charter of 1830 a fatal omission.

But in the present bill a new point is taken of much consequence. The proceedings for opening Art street commenced in April, 1837. The report was completed, and the advertisement announcing that it would be presented to the court for confirmation began on the 18th day of May, 1839. The report was filed on the 5th of June, 1839, and confirmed in the ensuing August. It is stated in the bill that, from the examination of the affidavits of publication, and the advertisement, it appears that the publication was made in but three papers,

and does not appear that any notice was affixed in a public place contiguous to the premises. It is charged as a fact that the advertisement was only in three papers, and that no such notice was put up.

By the ninth section of the act of 20th April, 1839, it is provided that all motions (except as before provided) made under the act thereby amended, shall be, upon giving previous notice of the trial, place, and object thereof, published for at least fourteen days in four of the public newspapers, and by copies of such notice in handbills, to be posted up for the same space of time in three conspicuous places adjacent to the property to be affected. (See section 2 for this last clause.) It admits of no doubt that a motion for the confirmation of the report of commissioners falls within the ninth section.

The act repeals the amended act as far as it is inconsistent with the provisions of the new act; and it is directed to take effect on its passage (the 20th of April, 1839), but it expressly provided that no part of it except the *ninth* and *twelfth* sections shall affect any proceedings under the act thereby amended, which had been commenced previously to its going into effect.

It is an irresistible inference that the ninth and twelfth sections *do affect* prior proceedings, if those sections, when applied to such proceedings, are constitutional.

Of that I cannot entertain the slightest doubt. Both the Chancellor and Supreme Court have held that the Revised Statutes are applicable to all existing cases, so far as they affect merely the forms and modes of proceedings. (*The People* v. *Livingston*, 6 Wendell, 526.) Every future proceeding in the assertion of a right or prosecution of a suit is to be governed by the new statutes. In this case, if the advertisement had been begun before the 20th of April, 1839, that would have been a proceeding already commenced, and would not have been affected by the ninth section. But as it was a proceeding commenced after that date, it necessarily falls within it.

In *Aymar* vs. *Gault* (2 Paige, 284) the doctrine was applied to the case of an absent party. The reference under the revised statutes was ordered, to take proof of the claim, although the suit was commenced before they went into operation.

In *Larkin* vs. *Mann* (2 Paige, 27) the rule was applied to the partition suits previously commenced. See also *Parsons* vs. *Browne*, (7 Paige, 359).

This being the law, then it is clear that the present complainants are not bound by the proceedings at all; that they are now at liberty to take every objection of fact or law which they could have taken before the Supreme Court, as well as those which they could not then have taken.

I speak on the supposition that they did not actually attend and contest the confirmation. Without saying whether this would cure the defect or not, it is plain an argument might be raised upon it. But no principle of our law is more sacred than this, that no man shall be affected in person or property without the opportunity of being heard in the proper tribunal. From necessity, perhaps, personal notice has been dispensed with in many cases; these street proceedings among the number. The party who is assessed for benefit merely (no part of his property being taken), is never summoned before the commissioners. He has no notice of the proceedings except by that publication for fourteen days which the old act prescribed, or by the publication under the new act. His property and himself are bound upon the assumption that he has seen that notice. The law therefore must be observed to a scruple. No judge has a right to say that from great publicity, or from the actual taking of one paper containing the notice, or from any thing short of the absolute fulfilment of the requisitions of the statute, the party is to be bound.

What absurdity is it to imagine that the clear command of the Legislature that notice must be given in four papers, and by posting up copies in three adjacent places, is to be fulfilled by any other mode of notice!

I pass over another most important question in this bill, viz: the carrying Art street through a part of the city included in the map of 1807. It is needless to discuss it, in the view I have already taken.

I have, however, had my doubts since the decision of the Chancellor in Vandevoort *vs.* The Village of Astoria whether in these cases I ought, as injunction master, to do more than grant an order to show cause. Certainly the case here is very different; the Trustees of Astoria being in the act of making the improvement complained of. Here it is to prevent a recovery in this mode of the sum assessed for the improvement. I have concluded, however, that it is most proper for me to grant an order to show cause, with a temporary injunction.

I doubt whether I have a right to impose terms upon granting an injunction. Otherwise I should direct that the injunction be on the condition of the complainants filing a written consent with the bill, or endorsed upon it, submitting to abide the decision of an action to be had in a court of law by the corporation against one of the parties, the form and other particulars attending the bringing such action, to be settled by this Court.

John Haggerty and others, *vs.* The Mayor, Aldermen, &c.

The complainants in the bill, who are numerous, seek an injunction against selling their property assessed for the improvement of John street, and advertised for sale on the 27th inst.

I refer to my opinion in the case of Stuyvesant, vs. the Corporation, for the reasons upon which I have allowed a temporary injunction. It is however peculiarly incumbent upon me in this instance, to see that the case before me is substantially different from that of Wiggins, vs. the Corporation, heretofore decided by the Chancellor, and in which an injunction was refused.

In the *first* place, the delay referred to by the Chancellor in the last clause of his opinion is fully accounted for in this bill; and as the Corporation never sued at law, and never advertised until the present notice of sale, there never was an opportunity for the complainants to resist he demand or to apply to this court. I have before held that until an advertisement was begun there was no jurisdiction.

Next, in the case of Wiggins no proceedings to sell the property had been taken.

Again, in that case the statements on the bill did not exclude the supposition that on the record of the proceedings it may have appeared that the ayes and noes were called. That difficulty is fully met in the present case.

Again, the bill was there defective upon the point of the complainant being the actual owner of the property assessed when he filed the bill.—The present bill is in this particular unobjectionable.

And lastly, a new and very important point is here introduced. The report was brought before the Supreme Court in ————, 1838. It was sent back for correction, and the motion for final confirmation made and the rule entered in September, 1839. At that time the 12th section of the act of 20th April, 1839, was in force. The costs were never taxed under that 12th section. The amount is added to the sum assessed, and each of the complainants' property is liable for and was to pay a proportion of such costs. The sale is to raise that proportion as well as the assessments for benefit. Now the section, as I have shown in my opinion in Stuyvesant vs. the Corporation, affects proceedings subsequently taken. It is wholly illegal to charge the costs upon any party until they were taxed. Notice of the taxation is directed to be given in a public manner, and certainly without such notice and taxation the parties assessed cannot be bound to pay them.

It has been decided, from reasons of convenience and in the absence of any peremptory provision of the statute, that costs may be included in the assessment, and imposed prospectively by the Commissioners; and that an inconsiderable variation in the amount taxed from the amount imposed, will not affect the validity of the proceedings, nor prevent the confirmation of the report (Wiggins vs. The Mayor &c. in Chancery, March 6, 1841).

But if the section prescribing a taxation applies to this John st. case at all, it is apparent that no party can be called upon to pay any portion of the costs until a due taxation has been had.—Without such taxation there can be no obligations to pay, and no lien on the party's property. What will be the consequence of this, and whether it may not be corrected by a taxation now and proportionate abatement, I need not inquire. The property is advertised to be sold for a debt, some of which at least is illegally imposed upon it.

By adverting to my opinion in the case of Westervelt & Codwise vs. the Corporation, it will be seen that it is settled law that the costs of the proceedings cannot be assessed upon the property without an express statute; that in a case in Albany, an assessment was set aside for want of such statutory provision; and that in the instance of opening streets in New York, the old act admitted the addition of costs. Now I think the case will appear very clear if we suppose that it had been part of the old act that the cost must be taxed upon notice before they could be added to the assessment for benefit. Certainly they could not be recovered until taxed. I may add that, as the supreme court is empowered to make rules for carrying the act into effect, all inconveniences may readily be avoided.

MURRAY HOFFMAN,
Assistant Vice Chancellor.

CHAPEL STREET SEWER.

We give below the proceedings of the Supreme Court in this matter, and premise them with quotations made from the Reports of the Assessment Committee of one of the Boards composing the Common Council of the City of New York, to be found in Document No. 9 of Volume of proceedings of the Board of Assistants of 1838 as to the merits of the Sewer Question.

"That the Committee have devoted much time and labor in examining the subject committed to them—that they have had before them several persons who have fully set forth all the facts and circumstances connected with this subject, and have fully established the fact that the laying of the new sewer was entirely unnecessary, and consequently an expenditure without any possible good to the parties interested, who are now called upon to pay large sums of money without receiving the *least equivalent therefor.*" This Report was signed by all the members of the committee; and in a subsequent Report they use these words: "Mr. Shepherd, the superintendent to the building of the new sewer in Chapel-street, appeared before your committee and stated that the old sewer was as good when it was taken up as any new one could be made. It was larger than the new one now is, being six feet square, and the new one but four feet six inches in diameter, consequently was an unnecessary expense of $16,571."

SUPREME COURT.

The People ex rel. James Agnew and others,
vs.
The Mayor, Aldermen and Commonalty of the city of New York.

This cause came on for argument at the May term of this court upon the return made to the certiorari. William M. Holland and Lewis H. Sandford, Esqs. counsel for the Relators, and Peter A. Cowdrey, Esq. counsel for the Mayor, &c.

The papers returned by the Mayor, &c. consisted of—

1st. An ordinance for removing the present sewer in Chapel-street, and coustructing a new sewer therein from Duane-street, to connect with the sewer in Canal-street, with lateral culverts, &c. Lovell Purdy, Joseph N. Lord, and Richard B. Fosdick, Assessors.

Upon this ordinance was noted a memorandum in these words: "Passed Board of Aldermen May 10th, 1836. Passed Board of Assistants May 10th, 1836. Approved by the Mayor May 16th, 1836." It was also underwritten as being signed by the Assessors and sworn to by the Assessors Nov. 1st, 1836.

2d. A contract made by the Street Commissioner with Thomson Price in June, 1836, for constructing a sewer in Chapel-street from Duane-street to Canal-street, and a lateral sewer in Thomas-street, together with the necessary culverts at the corners of each street, with receiving basins, &c., and for removing the then existing sewer—the work to be paid for when completed and the money collected from an assessment to be laid for that purpose—the price of the main sewer to be $4 97 per lineal foot—lateral sewer $3 30 per foot—receiving basins $87 each—opening $7 75—all to be completed by the 15th of October following.

3d. Seven assessment maps, setting forth the district embraced in the assessment list, and each particular lot assessed, with the size in feet and inches—and also the profiles of Chapel-street and the intermediate streets from Duane to York-street, both inclusive.

4th. The assessment list, signed by the three assessors named in the ordinance, to which is appended a certificate of the assessors, which recited that they, the said assessors, were appointed by the Mayor, Aldermen and Commonalty of the city of New York, *in Common Council convened*, on the 16th day of May, 1836, to make an estimate and assessment of the expense of removing the present sewer in Chapel-street, and constructing a new sewer therein from Duane-street, to connect with the sewer in Canal-street, with lateral culverts, &c. The abstract, which is signed by the Assessors, and made a part of the assessment, is in these words:

"Abstract of assessment for building a sewer in Chapel and Thomas Streets.

Sewer in *Thomas*-street, 362 feet, at $3 30 per foot,	$1194 60
6 openings at top of sewer in Thomas-street, at $7 75,	46 50
Sewer in Chapel-street, south of the north of White-street, 1022 feet, at $4 97,	5079 34
Sewer in Chapel-street from White-street to sewer in Canal-street, 782 feet, at *five dollars thirty-seven cents*,	4199 34
15 openings sewer in Chapel-street, $7 75,	116 25
28 receiving basins in *both* sewers, $87,	2436 00
550 feet culverts in *both* sewers, $2 55,	1402 50
	$14,474 53

Contract, $14,474 53; Surveying, $585; Inspecting, $291; Advertising, $5; Assessors, $560; Collecting, $473 89; Surveying, $585; Damage to water pipes, 181 66.

5th. The Minutes of the Common Council in these words: "Assessment for constructing a sewer in Chapel and *Thomas* streets, and the appointment of Asher Martin Collector, was confirmed by the Board of Aldermen January 4th, 1837—by the Board of Assistants January 9th, 1837. Approved by the Mayor January 11th, 1837."

6th. Copies of receipts of the Surveyor, Inspector, Assessors, and of payment of damage done to water pipes, and an affidavit of the Street Commissioner, and a certificate under seal of the Corporation that they had returned all the proceedings.

1. The ordinance does not show upon its face that it had been passed by calling the ayes and noes in either branch of the Common Council, as required by law.

2. The contract shows that the assessment was not to be made until the work was completed.

3. The maps show that the Park at the junction of Beach and Chapel streets was omitted to be assessed, and that the Park at the junction of Duane and Hudson streets was assessed. See 3d Wend., Ross vs. the Mayor, &c. of New York.

4. The assessment lists show that it is not an estimate and assessment, as required by the 175th and 176th sections of the Act of April 9, 1813, (2 R. L., p. 407,) but that it is an apportionment of cost, according to the square feet of surface, without any reference to benefit or advantage. The assessment list, which closes with the abstract, shows it is for building a sewer in Chapel-street and *Thomas-street*, whereas the ordinance only authorizes the constructing a sewer in Chapel-street. The expense of building a sewer *in Thomas-street* is spread over the whole assessment district. The abstract shows that forty cents more per foot for 782 feet of the main sewer was assessed (by Assessors) than the price contracted for, making $312 of excess, and that $181 66 was awarded as damage to water pipes, which the Assessors had no authority by law to award or assess. The assessment also shows that there were *two* sewers included in the assessment, and the ordinance authorizes but *one*. The abstract shows that five hundred and sixty dollars fees to the Assessors was included in the assessment, which is for three Assessors, at the rate of four dollars per day each, pay for seven and a half weeks for each Assessor. No such time being required for assessing this amount, it being, as made out, a mere mathematical calculation by apportionment. The law does not authorise assessors appointed by the Common Council to assess any fees upon the owners and occupants of property deemed to be benefitted by a sewer.

The contract also shows that the sewer was to be built on or over the bottom of the former sewer, that its walls were to be eight inches thick, and that the dimensions of the sewer were to be four feet eight inches in diameter and circular form, and that the openings for the house drains were placed fourteen inches from the inside of the bottom. The shape of the sewer shows at once conclusively that it could be no benefit, affording no capacity, because the opening for the house drains for water, and being on the bottom of the former sewer, must consequently raise it the thickness of its walls at least above the surface of the former sewer, affording less drainage for the cellars, and of course a damage instead of a benefit.

This cause was fully argued before the full bench. The Court took time to deliberate and advise, and at the October term *quashed the writ*, which afforded the Relators no opportunity of appealing to the Court for the Correction of Errors.

Bronson, J.—The writ of certiorari, when issued for the purpose of enabling this court to exercise its supervisory power over inferior tribunals, removes nothing but the record—or other entry in the nature of a record—of the proceedings in the court below; and if the return contains any thing more, it cannot be regarded. The record is examined to see whether the subordinate tribunal has kept within the limits of its jurisdiction; but we cannot look beyond it for the purpose of a review on the merits. Such is the settled doctrine of this court, and it disposes of several of the questions which have been made by the relators. The return in this case contains nothing in the nature of a record, beyond the ordinance for constructing the sewer, the estimate and assessment made by the persons appointed for that purpose, and the confirmation of the assessment by the Common Council. Those are the only documents upon which any question can properly be made.

Most, if not all, of the objections urged against these proceedings admit of a satisfactory answer: but I shall not give them a particular examination, for the reason, that I think the certiorari ought not to be issued; and that, should some of the points happen to be well taken, it is the writ, and not the proceedings, which ought to be quashed.

The powers exercised by the Common Council of the city of New York are, for the most part, either legislative, executive, or ministerial; and a certiorari only lies to inferior courts and officers who exercise judicial powers. If it were not for a few modern cases, I should be of opinion that we have no authority to supervise in this way the acts, ordinances, and proceedings of the corporation of the city of New York, or indeed of any other corporation, public or private. I have searched in vain for a precedent for such a course in the land of the Common Law; and the first case I have met with any where, in which a certiorari was awarded to a corporation for the purpose of reviewing its proceedings, is that of *Le Roy* vs. *The Mayor, &c. of New York*, 20 *John.*,

430; and there, the grounds on which the writ usually issues, rather than the inquiry whether it would lie to a corporation, was the question discussed at the bar and considered by the court. See, also, *Parks* vs. *The Mayor, &c. of Boston*, 8 *Pick.*, 218. All our city, and many of our village corporations have been vested with very large powers within their respective limits; and if a certiorari will lie to remove into this court an ordinance for constructing a sewer, it is difficult to see where we can stop short of reviewing all their acts in the same way, which looks to me like a great stretch of jurisdiction.

But if a certiorari will lie, it does not follow that it should be awarded in every case where the relator may have some ground for complaint. The allowance of the writ rests in the sound discretion of the court, and it has often been denied where the power to issue it was unquestionable, and where there was apparent error in the proceeding to be reviewed. And if it has been improperly awarded, it is not too late to correct the error after a return and hearing of the merits. *The People* vs. *Supervisors of Alleghany*, 15 *Wend.* 298. And see *The People* vs. *Supervisors of Queens* [Feb. 1841]. There are, I think, few if any cases where an ordinance or assessment for constructing a common sewer, or making any other city improvement, should be removed into this court by certiorari. It is better that persons having cause for complaint should be left to such redress as they may have by action. The case falls within the principle of those which have just been cited; and in the first of those cases a certiorari which had been issued to remove an assessment for county charges was quashed after a return and a hearing on the merits; and there, too, the relator had no other remedy. Great *public inconvenience* must necessarily ensue if we attempt in this way to review assessments for city improvements, which are not unfrequently as extensive in their influence as assessments for county taxes. The principal objections which have been urged against these proceedings are, 1. that the ordinance for constructing the sewer is void, because it does not appear affirmatively that the ayes and noes were called on taking the vote upon it in the two Boards; 2. that the order confirming the assessment is void for the same reason; 3. that the confirmation could only be made by the whole Corporation assembled in one body, and not by the Common Council in two Boards, as organised under the act of 1830; and 4. that no confirmation appears—there being no ordinance or resolution for that purpose, but only an extract from the minutes of the Common Council.

Now, without considering what answers there may be to these objections, they seem to prove too much for this form of remedy. If the points are well taken, there has been no ordinance for constructing the sewer, nor has the assessment ever been confirmed, and there is nothing to be reached by the certiorari. If the relators have suffered under color of proceedings which never had any legal existence, their remedy is by action. All the other questions which arise upon the record—and we cannot look beyond it—may, for aught I see, be as well tried in some other form as in that which the relators have selected, and we shall do them no harm by withholding this extraordinary remedy. I must not be understood as intimating that a certiorari should be allowed whenever the question can be reached in no other form. There may be many cases where the public inconvenience, which would be likely to result from this mode of review, would greatly outweigh the importance of correcting some legal, though, perhaps, not very grievous, error in the proceedings.

The relators in this case have taken no objection which is not equally applicable to all the other persons who have been taxed, and the whole assessment must stand or fall together. It is also important to notice, that the ordinance for making the improvement was passed, the work done, and the assessment made and confirmed, more than three years before the certiorari was sued out. The time of bringing a writ of error from a final judgment is limited by law to two years; and I think a case can rarely happen where it would be proper to allow a certiorari after the lapse of a longer period. This is a sufficient ground for quashing the writ, aside from other considerations tending to the same results.

Certiorari quashed.

MOUNT MORRIS SQUARE.

The opening of this Square was founded upon the resolution of an alderman, which was referred to a committee, who reported in favor; the report was adopted, and a resolution passed to carry it into effect, but the report was not published, nor were the ayes and noes called on taking the vote, nor was the same published, as required by the charter. The resolution thus passed by the two Boards was approved by the Mayor on the 20th October, 1836, and on the 4th of September, 1839, the commissioners made their report—a delay of near three years.

The place designated as Mount Morris Square is on a rocky hill or ledge near Hurlgate, about seven miles or more from the City Hall. We have examined the place, and should think it about one hundred feet high, and that it would require an outlay of more than two millions of dollars to reduce it to the city grade. The Catskill Mountains are full as well calculated for a public square as Mount Morris. The award made for Mount Morris is $22,000; the expense of making it and assessing the amount is $.

When the reports of the commissioners were deposited in the clerk's office for examination, no bill of expense accompanied the same. The reports are a mere recital of metes and bounds of the property awarded for or assessed, and the names of the supposed owners, and the amount of the particular award or assessment. There is no addition of the awards, and of the amount of assessments—no summary, schedule, or abstract—no diagram, or map, accompanies it. The property is described by map numbers, and the whole report a perfect wilderness to explore.

A map, with a list of names of the persons assessed, and of those to whom awards are made, with each of their respective amounts extended in two columns, and each added up, with a statement of the expenses, would be intelligible, but such a report as this is only calculated to confuse and mislead.

SUPREME COURT.

The People ex rel. Michael Floy, et al. vs. The Mayor, Aldermen and Commonalty of the City of New York. } Opening of Mount Morris Square in the City of New York. Points of Relators.

The motion is in the alternative.

First. To set aside the confirmation of the Report of Commissioners of Estimate and Assessment, which was confirmed Sept. 4, 1839.

This is asked for, on the ground, that no notice of the motion for confirmation was published or posted, as is required by the 9th section of the act of April 20, 1839. Laws of 1839, p. 182.

And the charges and expenses, which are enormous and unjust, were never taxed or allowed, as is required by section 12, of the same act.

The act of 1839 is general, and all its provisions would apply to all the then pending proceedings, but for the 14th section, which limits all except the 9th and 12th sections to future proceedings.

1. As to Notice.—There is *no* pretence that any notice was given in four newspapers; *or that any was posted*,—(see fore part of section 2, in connection with section 9, as to the manner of posting, Folio 23 to 26.)

2. Nor is there any pretence of taxation of the expenses.

As to this, *it is said*, that there is nothing in the section to require it to be done *before the Commissioners report*. This is clearly wrong. The charges are all "*allowed*" so far as the *payers are* concerned, when they are put into the report and confirmed. They then become a lien and charge on the lands assessed, and if the proceedings are regular, nothing but *payment in full* can remove them. There is no provision in any statute for a modification of the assessment, or a recovery back of part of it, on those charges being taxed afterwards and reduced. Nor is there any remedy, except to pursue *the terms of* the law and have them taxed, before assessing them on the land. The intent of the law *is* plain. The only "allowance" in the case, is that made by including them in the report. The Corporation itself never *allows* them, except in that mode. The Corporation pays the charges as thus included, *out of the assessments imposed for the same charges* on the adjacent lands.

Again. This court had made provision previous to this motion for confirmation, viz. in July 1839, for these taxations. But, if the court had not, it was the duty of the Commissioners to wait until they did. The law was imperative, that *they should be taxed.*

On both these grounds, therefore, the confirmation was irregular and illegal, and being made a *rule* of this court, it should be set aside.

3. Another ground for setting aside the confirmation, is the entire ignorance and want of actual notice in the relators, the great wrong and injustice of the estimate and assessment. See 19 Wend. 659, John street and Cherry street, per J. Cowen, 1 Cowen 74, Dover street.

The occasion is favorable for such action. The awards to parties for the lands proposed to be taxed, *are not yet payable*. None of them have been paid. Folio 39.

The confirmation being set aside, one of two things will ensue.

1. The Corporation will doubtless be induced to abandon this *improvement*, which is a century and a half in advance of the times. They will prefer paying and losing whatever *is justly* due to the Commissioners &c. who acted in the matter, to the odium and injustice of proceeding.

2. If otherwise, the parties can have the expenses taxed and reduced, the lands taken valued at 1-6 of the present estimate, and the lands omitted brought into the assessment; and thus be relieved from the gross and oppressive charges which are now imposed upon them.

Should the court conclude to set aside the confirmation, then it will be needless for them to examine the remaining points here presented.

Second. The second alternative of our motion, (which is sought only in case the court declines to set aside the confirmation of the report), is the issuing of writs of certiorari, to bring up for review all the proceedings for the opening of the square in question; it being alleged that they are without authority or jurisdiction, illegal and void.

It is asked that the whole, if granted, *be carried on as one proceeding*, both to save expense and the better to attain the justice of the case.

I. As to the issuing of writs of certiorari.

1. To the Justices of this Court acting as Commissioners on the confirmation, the allowance of the writ

is "a matter of course."—20 Wend., 685, matter of Carlton street; and see 7 Cow. 158, Bogert vs. The Mayor &c.; 13 Wend. 668 Patchen vs. Brooklyn.

2. To the Corporation of the City in reference to the proceedings before them. See 6 Wend. 564 Starr. vs. Trustees of Rochester, and 8 Pick. infra.

Although the issuing of these writs is a matter of "discretion," yet such discretion is a regulated, not an arbitrary discretion. See the remarks in 5 Rep. 100, Rooke's case.

Here, we expect to show that besides the manifest wrongs and intolerable injustice of the assessment, the proceedings are null and void.

We are not bound *on this motion*, to show this. That, we are to accomplish on arguing the return. We are only to show, that there is *probable cause* for presenting the points.

Then what is there to stay the writs? Not inconvenience? The awards are not paid, nor the square opened. Nothing is done.

But is *inconvenience* to *the Corporation*, by whose authority, this great wrong has been occasioned to us, to prevent the redress due to that wrong? Is *our inconvenience*—the confiscation of our property, nothing?

There is no imputation of laches. The confirmation was in Sept. 1839. These parties, ignorant that any thing was on foot till last summer, and ignorant of the irregularities *till Feb. last.*

Next, as to the probable cause for reviewing these proceedings.

II. The resolution for taking and opening Mount Morris Square is *illegal and void*, for the following causes, viz.

1. It was a judicial act or power exercised by the Common Council and the Mayor, as separate and distinct bodies, passing upon it separately. Whereas the Common Council cannot under such an organization exercise any such power.

Subd. 1. That this power is in its nature *judicial* and *not legislative.* 8 Pick. 218, Park vs. Mayor &c. of Boston; 2 R. L. 408 §. 177; 1 R. Stat. 513, 515, Commissioners of Highways in towns; Stat. 23. Hen. 8, ch. 5; Stat. of Sewers'; Callis. on Sewers, 216, 7; id. 185. id. 163; Com. Dig.—Sewers, D. s. p.

6 Ad. & Ell. 807—Pocock vs. O'Shannessey, per Patterson, J.

8 Taunt. 602—D. of Newcastle vs. Clark.

Subd. 2.—The Corporation assumes to exercise this power under the *act of* 1813.—2 R. L. 408, § 177, &c.

They have no such power by their *charter*, and they have no prescriptive powers.

The statute of 1813 gave the power to *The Mayor, &c. in Common Council convened.*

It was a judicial power, to be exercised by the persons, or *officers*, then composing *The Mayor*, &c. See 1 Willcocks Mun. C. 40, s. 54.

That is, the Mayor, Recorder, Aldermen and Assistants, convened and acting together—as one body —"in Common Council convened."

No other class of officers—no combination of these classes, omitting one or more classes—could exercise the power.—1 Willc. 42, s. 57–8. Id. p. 68, s, 125; p. 101, s. 233 and 235. 7 Cowen, 533; note to Exparte Rogers, and the cases there collected.

Subd. 3.—The resolution in question was not adopted by the classes, or in the manner authorized by the act of 1813.

It was *legislated through* in the form prescribed by the act of 1830.—(Laws 1830, p. 125.)

This act does not extend to the exercise of *judicial* or *ministerial* powers. It applies solely to "the *legislative power* of the 'Corporation of the City'—(see s. 1)—and to the delegation of sundry *executive* powers"—s. 21.

As to *all other powers* of the Corporation, the existing laws were unaffected. They were to be exercised in the manner pointed out by the various laws conferring them.

The statute itself is plain enough, as to what powers were to be exercised under the act of 1830. Its history corroborates our view.

See acts of 1824 and 1828, which were severally rejected by the people of the city by immense majorities. Laws of 1824, age 162 128, page 317. In s. 4 and 5 of those acts, the language is the most comprehensive possible—"The *whole power* of the Corporation"—"Legislative *and other powers*," &c. &c.

Then see Kent's City Charter, p. 231, sec. 11th, 236, 264, 349—showing the history of the 1st s. of the act of 1830, in its passage through the Convention of the people. The sweeping clauses as to the *powers* were reduced to the sect. as now existing, except that the Legislature limited the s. to the legislative power of the "*Corporation*" instead of the "*City.*"

Cowper 26—Rex vs. Croker.

Willes, 484—Norman vs. Beaumont—s. c. Barnes, 453.

1 East 64—Davison vs. Gill.

3 Esp. 198—Gross vs. Jackson.

Willcocks, where cited above, and the various Sewer cases above.

2 Const. Rep. S. C. (Treadway's) 726—Schroeder vs. City of Charleston.

7 Dowl. & Ryl. 684—The King vs. Tremayne.

4 East, 17—Rex vs. Morris, and vs. Stanard.

3 Johns. Cases, 107—Gilbert vs. Columbia Turnpike Company; a strong case.

2 Cowen, 419—Sprague vs. Birdsall. A statute in favor of corporations, and in derogation of common right, is to be strictly construed.

5 id., 188—Malcom vs. Rogers. "Shall or may" is to be construed "*shall*," when public interests and rights are concerned.—19 Wend. 38; Long Island R. R. Co.

It seems to be abhorrent to common sense to say, that when the Legislature provided that this Corporation "*shall*" exercise this mighty power in a prescribed mode, it intended that the Corporation might do as they pleased about it—that they might construe "shall" to mean "won't."

4. The omission to publish the reports of committees and the votes, as is expressly required by the 7th sect. of the act of 1830.

See the foregoing head.

We will also remark, that this omission estops the corporation from charging us with delay or laches, in moving the court.

The grand object of the provision was, to give *notice, publicity*, to these proceedings.

See Kent's C. C. 257—286–7—and the Address of the Convention, pursuant to resolution at p. 346.

5. The resolution itself was never signed by the Mayor, or authenticated by any officer of either board. In other words, no such resolution exists.

III. There was no regular, legal or valid authority to the Mayor to apply to the Court for the appointment of Commissioners of estimate and assessment.

It will be perceived that the *resolutions* contain no such authority, and it is one as essential as that for the opening itself. See sec. 178 of the act of 1813.

IV. The assessment is illegal, because it indirectly takes private property for public use, without compensation.

A *public square* in a large City is for the health, the recreation, the convenience of all its citizens—as well as of strangers.

Whatever *pretence* there might be for assessing persons fronting on the square, for a part of the expense, there can be none in justice or equity as to owners who are many hundred feet distant.

3 Story's Comm. on Const. 661.

2 Burlamaqui, 149, 150.

2 Wend, 452, 4th Avenue.

11 id. 149. Albany street.

3 M. & S. 447. Masters vs. Scraggs.

2 B. & B. 691. Spofford vs. Harrison.

3 Ad. & Ellis, 248. Loady vs. Wilson. Callis. 8.

11 Wend, 154. Canal street extension.

V. The assessment on the relators and others was thus erroneous in principle, unjust, partial and oppressive.

See fol. 21 and 28 to 38—and the diagram.

Many of these errors are such as come within the purview of a certiorari.

Thus, the entire omission of large tracts coming within the bounds of the district assessed—viz:

1. The block between 5th and 6th Avenues and 125th and 126th streets—only one block removed from the square itself, and nearer than any of the relators' lands.

2. The block between 114th and 115th streets, and 4th and 5th Avenues.

3. Ten entire blocks between 5th and 7th Avenues, and 114th and 119th streets. A considerable part of which is nearer than our property.

4. The lands of the Corporation, on which is the House of Detention.

That these are to be corrected on certiorari, see

20 John's. 430—Le Roy vs. Mayor, &c. of N. Y.

3 Wend, 333—Ross vs. same.

10 id. 167—Baldwin vs. Calkings.

2 Wend 395, 398—Bouton vs. Brooklyn, recognizes the principle.

See also 5 Rep. 100—Rooke's case, s. p.

As to the oppression, see the illegal charges of Commissioners and Counsel, at fol. 21 and 29 to 31.

VI. The assessment, &c. is also erroneous and void, because it was not made *by all the three Commissioners.* Only one of them actually made it, and *only two* of them ever met or acted together in regard to it.

By s. 178 all the Commissioners *must act in the premises*, although only two need sign the report.

7 Cowen 526—Exparte Rogers, and the valuable note at p. 530.

8 Cowen 544—Sinclair vs. Jackson.

6 Johns. R. 39—Green vs. Miller.

This principle is incorporated in the Rev. Stat. See 2 R. S. 555, s 27.

VII. The report of the Commissioners and its confirmation are also erroneous and void for the want of the taxation of the costs and charges of the Commissioners, Counsel, Surveyor, &c., and for the neglect to give notice of the motion to confirm the report; pursuant to the 9th and 12th sections of the act of 1839.

Sufficient has been stated on this subject in the two first pages hereof.

VIII. Fifteen months from the confirmation of the report having elapsed, and the square not being opened, the Corporation cannot now proceed to open it, and have lost all jurisdiction of the subject matter.

Laws of 1818, page 196, shows that they cannot suspend the opening "exceeding in the whole 15 months."

If it were otherwise, they can *collect the assessments, and delay the opening a century.* Because if they can suspend one day beyond the 15 months, there is nothing to prevent their doing it 1000 years, if they think proper.

These corporations take nothing by implication. If they claim power they must show an express grant of it;—Willc. p. 100; p. 99, s. 226;—and as the Court says in the cases of John street and Cherry street, "the argument is just as good for a 'county, town or village,' as for this great city."—19 Wend. 659.

('The argument on this first head (third subd.) is too extended to be by any possibility compressed into the requisite brevity for these points, and much of it is omitted.)

2. The resolution is illegal, because it was made without any petition therefor.

S. 177, above cited, requires not only the *judgment* of the Mayor, &c., but also the *petition of three-fourths of the land owners* fronting on the Square to be opened.

This Square is in the part of the city laid out by the Commissioners under the act of 1807. It was authorized by act of May 10th, 1836, p. 395.

The act of 1813 left these matters to be set on foot by those who would have to bear the expense.

Unless such is the construction, "*and also*" in the 9th line of the s. must be read "*or.*"

The Corporation had no jurisdiction to act without such petition of three-fourths.

It is like the case of a Sewer rate, assessed by the Commissioners of Sewers without the presentment of a jury—on which it was held that the commissioners acquired no jurisdiction, and that the warrant to collect it was void.

4th London Jurist, 860. (3 Oct. 1840.)

Wingate vs. Wait—In Exch.—Trin. T. 1840.

Styles' R. 179, 185, 191—Custodes Libertat. &c. vs. Inhabitants of Outwell, on certiorari, proc. quash.

ed, because it did not appear that the jury was of the Hundred, &c.

3 Cow. & P. 63—Birkott vs. Crozier, on similar grounds.

And as to acquiring jurisdiction—see Style 13—Whitley vs. Fawcett, and id. 85. Rex vs. Apsley.

7 Ad. & Ell. R. 266—Emmerson vs. Saltmarshe—4 Lond. Jurist, 790, 793.—Att. Gen. vs. Daniel.

2 Binn. 250—Schuylkill Falls Road.

All these are Sewer cases.

3. The resolution is also illegal and void, because the *ayes and noes were not called* or taken on its passage in either Board—(supposing it to be upheld as a proper act under the organization of 1830.)

Section 7 of that act expressly requires it. The vote cannot be taken in any other manner. The law permits it in no other mode or form.

The Counsel of the city says this is merely "*directory.*" It is no more so than the provisions in 12th, 13th, and 14th sect., and the one can be disregarded as much as the other.

This is a power granted to a *mere corporation*, by which the lands of citizens may be taxed, and those lands confiscated, and their personal property distrained.

It must be construed strictly. It cannot be tolerated that the donee of the power is to execute it as he pleases, or in any manner save that provided in the grant.

(This point also is of great magnitude, and can scarcely be presented in this place. Among the host of authorities, we will refer to these only :)

7 Barc. Abr. 448—Statute, G. the general rule, as to a stat. directing a thing to be done *in a certain manner.*

SUPREME COURT.

The Mayor, Aldermen, and Commonalty of the City of New York, *adsm.*	Opening of Mount Morris Square.
The People ex rel. Michael Floy, et al.	Defts. Points.

First as to the motion to set aside the Report of the Commissioners.

1. This motion will not be entertained because the Report was confirmed by the Judges of the Supreme Court, acting as Commissioners, and the only mode of bringing the question before the Supreme Court is by certiorari, 11 Wend. 154.

2. The relators are too late in making any such application. The Report was confirmed Sept. 4, 1839. The affidavit states that the party had no actual notice of these proceedings "until some time during the summer of 1840." This was sufficient to have enabled him to make inquiry and present his objections months ago.

3. The notice of presenting the report for confirmation was given pursuant to the Act of 1813, as appears by the report itself, and the accompanying papers. The objection is, that the notice was not given as required by the *4th section* of the act of 1839, p. 183.

These proceedings were commenced anterior to the passage of the act of 1839.

The 4th section, by the express enactment of the 14th section, does not apply to proceedings previously commenced.

The 9th section applies only to motions, *other than those therein before provided.* The notice of making the report is expressly provided for by the 4th section and is excluded from the provisions of the 9th.

4. The question of taxation of costs should have been raised on the motion to confirm. But is was necessary for the Commissioners to insert in their report, an amount sufficient to meet the costs and expenses. This amount must necessarily have been prospective and could not have been ascertained on taxation. The costs, however, may and must yet be taxed,

Such has been the decision of Judge Bronson in the case (I believe) of 29th street, and such was the late decision of the Chancellor in the case of Wiggin vs. The Corporation.

5. The relators, waving their other objections, seek to set aside the report, on the ground of ignorance of the proceedings.

This is attempted to be proved by the testimony of one person, who swears to his ignorance, until *last summer.* And he has been assessed in the enormous amount of $52.

The rights of various persons have become interested in this question since the confirmation of the report. And the annulling of the proceedings is calculated to prejudice the public interests. It would lead to a draw upon the City Treasury.

Second.—As to the granting of certiorari.

1. The allowance of this writ to the justices of this court as Commissioners, is only a matter of course to enable the relators to carry the case to the Court of Errors. This court will affirm its own act as Commissioners. There is nothing, however, upon which to found o writ of error. The Court of Errors will only review such questions as were raised in the court below.

When no doubt exists as to the correctness of the decision, this court will not grant a certiorari without annexing as a condition that it *shall not operate as a stay of proceedings*, 13 Wend. 664.

2. The granting of a com. law certiorari is only done in the exercise of a sound discretion. People vs. The Supervisors of Allegany, 15 Wend. 206.

In this case, on the confirmation of the report, Sept. 4, 1839, the title to the land became vested in the public, 2 R. S. 413.

On the 1st April 1841, parties become entitled to awards. They have lost their land, and have made calculations on the money to be paid therefor.

The amount of assessments is $25,743, Benj. Townsend who makes the affidavit represents about the one five-hundreth part of this.

The proceedings of the Common Council which are the subject of complaint took place in September and October 1836, nearly five years since.

3. The resolution for taking and opening Mount Morris Square was a valid and effectual ordinance of the Corporation.

I. The stat. 2 R. S. 408, § 177, conferred the power in relation to streets &c. upon "the Mayor, Aldermen, and Commonalty of the City of New-York." That is their corporated name. Charter of 1730 § 1.

They constitute the municipal government of the City of New York and their functions are either legislative or executive.

Congress and the Legislature both lay out roads and highways, their acts are all legislative, although they may have an effect which resembles the exercise of a judicial power.

The Common Council of the City of New York is not "*the*" Corporation, nor is it any body separate and distinct from the Corporation. It is the Corporation assembled in its legislative capacity. The Corporation acts in Common Council, except when it performs an act merely executive.

The Corporation itself, aud by its corporate name, is vested with all the powers, franchises, property, and immunities conferred by its charter. Charter 1730, § 1, 37. &c. &c.

It was not correct, therefor, in the loose language sometimes used, to confer all the corporate franchises upon the Common Council. The Convention of 1820 subdivided the ordinary powers of the Corporation into legislative and executive, the former, by the 1st section of the act of 1830, p. 125, they conferred upon the Common Council the latter, by the 21st section, they ordered to be performed by distinct departments to be organised by the Common Council.

The learned counsel for the relators finds that provision is thus made for the legislative and executive power; but being anxious to discover something *not provided for*, calls the power which he is contending against judicial.

I pray your Honor not so to decree it, through apprehension of the quo warranto of the Attorney General.

But it is the act of 1813, and not that of 1830, which confers the power. And the counsel for the relator agrees that it must be exercised by the Common Council as then organized. I have as great an attachment to our old Recorder as he can have. But the 15th section of the act forbids his being a member of the Common Council any longer. The act of 1830 did not change the power which was to act, it only altered the form of its action. Both before and since the amended charter, it was the Mayor, Aldermen, &c. who acted in Common Council.

II. The first part of the 177th sec. 2 R. S. 408, and of the 178th sect. p. 409, especially vest the discretion in the Corporation, unmoved by any petition, to take proceedings for the opening of a street, &c. It was the intention of the act to make it their duty on the application of three-fourths of the owners. This has always been the construction of the act.

III. The requirement of the 7th section as to the ayes and noes is directory, and not peremptory. It is not of the essence of the thing required to be done so as to constitute the resolution a valid ordinance. These requirements are contained in the 12th and 13th sections, and were complied with.

The object of the 7th section was to make the members answerable to their constituents. It was not to make the taking of the ayes and noes an indispensable requisite to the validity of the proceeding. The words, "before it shall take effect," in the 12th section, are not to be found in the 7th section. There are no negative words, or words of exclusion.

It would operate to make an act, valid by the 12th and 13th sections, invalid by the non-compliance with a requirement as to an act *subsequently* to be done. No time of limitation is fixed, within which to determine the validity or invalidity of an ordinance.—5 Cowen, 269; 6 Wend. 486; 3 Mass. 230.

IV. The relator is grossly in error in stating the resolution not to have been signed by the Mayor, or authenticated by any officer of either Board. The affidavit of the Clerk shows the resolution to have been regularly passed, authenticated and approved.

4. The application for the appointment of Commissioners, as appears from the paper on file, is under the common seal of the Corporation, and regularly authenticated. The resolution, as set forth in the affidavit of the relator, directs the counsel to take the necessary measures to carry the resolution into effect.

The seal imports authority. The resolution expressly directed the application. The official act of the counsel in representing the Corporation on the application for the appointment of Commissioners cannot be controverted.

5. The constitutional question as to the taking of private property for improvements, as in this case, has been repeatedly settled by this court. That question does not arise here. This is an assessment for a benefit conferred. All experience shows that improvements of this nature greatly enhance the value of property in their neighborhood.

6. Whatever may have been the reason for the omission to include certain blocks in the assess-

CASES IN CHANCERY.

The following cases in the Equity Court show a great fluctuation in a very brief space of time:

The opinions given by HIS HONOR CHANCELLOR WALWORTH, subsequent to the decision in the case of the *infant children* of J. Meserole, deceased, will be found in the proper place, in this number, in chronological order, after the decision of that case by the Court for the Correction of Errors.

The court of the last resort, in that case, decided that the proceedings of the Corporation of Brooklyn in imposing that assessment "ARE ILLEGAL AND VOID."

IN CHANCERY.

BEFORE THE CHANCELLOR.

Oakley *vs.* the Trustees of Williamsburgh and Moore.

The trustees of the village of Williamsburgh are not authorized by the village charter to alter the grade of a street, after the grade thereof has been regulated and established by them as directed in the act of incorporation. And where such trustees were proceeding to dig down and alter the grade of a street, which had been regularly graded and regulated; *held*, that the owner of adjoining lands, whose property would be seriously injured by an alteration of the grade, was entitled to an injunction to restrain such illegal proceedings of the trustees.

The Court of Chancery has jurisdiction to interfere by injunction to restrain the defendant from proceeding in an illegal act which will necessarily cast a cloud upon the complainant's title to real estate, and will naturally diminish its value.

This was an appeal from the Vice Chancellor of the first circuit, refusing to grant an injunction.—The bill of complaint in this case, which was filed by the complainants in behalf of themselves and all OTHERS having a common interest with them, after setting out that part of the act of incorporation of the village of Williamsburgh which made it the duty of the trustees to cause a survey and map of the village to be made, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting on such map all the gradations and regulations which might or should be required in the roads, alleys and streets, accompanied by such remarks and explanations as the nature of the subject might require, to be kept by the clerk, subject to the inspection of the freeholders and inhabitants of the village, so that no person could plead ignorance of the plan to be adopted for opening, laying out, levelling and regulating the streets of such village, (Laws of 1827, p. 276, § 19,) stated that, in pursuance of their act of incorporation, the trustees of the village caused such survey and map to be made, signed, and filed, as directed by the act, except that the gradations of the streets were not exhibited on the map; that such gradations were omitted on the map because the formation of the surface of the ground rendered it impossible to comply with that part of the provisions of the statute immediately; for which reason the grading of the streets was left to be established by actual survey from time to time, as it should become necessary to open such streets; that in 1828, the trustees caused a survey and profile to be made of the southerly section of First street, running from Grand street along the margin of the East river to the south bounds of the village; and caused such survey and profile to be filed with their clerk, and caused the street to be graded and levelled in conformity thereto; and setting out the certiorari, &c., in the supreme court upon which these proceedings of the trustees were confirmed; (See Coles v. the Trustees of Williamsburgh, 10 Wend. Rep. 659;) and that the trustees subsequently caused similar sections of Second and Fourth streets, and several other streets intersecting the same to be laid out, and surveys and maps and profiles thereof to be made and filed in the same manner, and caused the said streets, or certain sections thereof, to be levelled in conformity with such surveys; and that one of them, South Second street, had been paved and the assessment therefor had been made and collected or paid. The complainants then charged or alleged, in their bill, that one of them owned large and valuable tracts of land on the southerly section of First street, and on the other streets which had been so graded and levelled; and that others of the complainants respectively owned lands on such other streets; some of which lands had been purchased since the regulation and surveys of the said streets, and upon the faith thereof as the permanent plan for the grading and levelling of those streets; and that no change or alteration in the gradation of such streets could now be made without serious detriment to the rights and interests of the complainants in relation to their lands; but that the trustees of the village, upon the petition of the majority of the landowners on the south-easterly section of First street, in June, 1836, passed an ordinance or resolution to alter the grade of that street as thus permanently settled, and to re-regulate and pave the street; and that they had employed the defendant Moore to cut down and alter the grade of the street about six feet; which, if permitted, would require a corresponding alteration of the grading of the other streets, upon which some of the complainants property was situate, and which intersect the south section of First street; and that the re-grading of First street, if carried into effect in the manner contemplated in the ordinance, would materially impair and injure the value of the complainants property. They therefore asked for an injunction to restrain the defendants from proceeding to alter the grade of the street as theretofore established, and from digging down the street or removing the earth therefrom. An order to show cause why an injunction should not issue having been granted, the defendants introduced affidavits showing that the alteration of the grades of the streets was necessary for the benefit of the village, and more particularly for the convenient use of the waters of the East river for commercial purposes; whereupon the Vice Chancellor made an order denying the application for an injunction.

J. H. Lee and D. B. Ogden, for complainants.

Ebenezer Griffin, for the defendants.

THE CHANCELLOR.—If the trustees of the village of Williamsburgh have the power, under their act of incorporation, to alter the grade of the streets of the village after it has been once regulated and established by them as required by the 19th section of that act, the case before me is not one in which it would be proper for this court to interfere; as there is no pretence that the trustees are acting in bad faith, and without reference to what they honestly believe to be for the interest of the inhabitants of the village. On the other hand, however, if they have no such power as they have assumed to exercise by the ordinance in question, then this appears to be a very proper case for the allowance of an injunction, to restrain an illegal proceeding by them to dig down and alter the grading of the street as originally established, which, as alleged in the bill, will be a material injury to the value of the property of these complainants. The assessments upon their lots for the expenses of the proceedings to alter the gradations of the streets, although they might be so far void as not to affect their legal title to the land, would of themselves be a *cloud* upon that title which must necessarily diminish the value if it did not entirely prevent the sale of such lands as village building lots; *as a prudent man would not be likely to buy* a city or village lot for the purpose of building thereon, and pay the full value of the lot, while a cloud like this was hanging over the title, which might thereafter subject him to litigation if not to actual loss of the property. And as this court sometimes exercises its jurisdiction for the purpose of removing a *cloud* from the complainant's title to real estate, it may also, in a proper case, interpose its authority to prevent the illegal act from which such a *cloud* must necessarily arise. (*Petit* v. *Shepherd*, 5 *Paige's Rep.* 493.) The decision of the present case, therefore, depends upon the question whether the trustees of Williamsburgh have the right, as claimed by them, to alter the regulation and grading of their streets after it has been once adopted and established. For it is judicially settled by the decision of the Supreme Court, in reference to this particular street, that the grade thereof had been legally established by the trustees, before the institution of the proceedings now in question to re-regulate the street and to grade the same anew.

The object of the legislature, by the 19th section of the statute, appears to have been to have a permanent plan of the village made and adopted by the trustees, not only as to the location of the streets, roads and alleys, but also as to the regulation or gradations thereof; to which plan all subsequent proceedings should conform. Hence, it was made the duty of the trustees to cause a survey and map of the village to be made and filed, as soon as conveniently might be, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting all the gradations and regulations which would be required in such roads, alleys and streets. And it appears to me that the making of this survey and map of the locations and gradations of the streets, roads, &c., of the village was not only a useless proceeding, but was also calculated to deceive those who might thereafter become the owners of village property, if it was not intended to confine the proceedings of the trustees to the opening and improving the streets, &c., according to the locations and gradations as thus established. And I think there could not have existed a reasonable doubt as to the intention of the legislature thus to restrict the power of the trustees if it had not been for the introduction of the word *altering* into the subsequent sections of the act.

The 21st section of the act provides that it shall be lawful for the trustees to order and direct the pitching, regulating and paving the streets according to the map and survey, and the *altering* amending and cleaning any street, vault, sink, &c.; and to cause estimates of the expense to be made, assessed and collected, &c. And the 24th section contains a similar power as to the widening and altering streets and highways already laid out, and as to the laying out and making other roads and streets, conformable to the map, as the trustees might think necessary and convenient; with a provision for compensating the owners of lands for the property thus taken for new streets, or the alteration of the old ones, and for raising the amount by assessments upon the owners of lands benefitted thereby. It is under the power of altering streets, as given in the 21st and 24th sections, that the counsel for the defendants claim the right to change the location or to alter the grade of streets which have been located or graded, in conformity to the general map and plan of improvements, subsequent to the act of incorporation. In this I think the trustees have entirely mistaken the meaning of the legislature in relation to the alterations which they were, by these sections, authorized to make. At the time when this act of incorporation was passed there were, roads or streets already existing within within the chartered limits of the village. And as a general plan of improvements was to be made and adopted by the trustees, both as to the location and the grade of every street, alley and road in the village, it was anticipated by the legislature that it might become necessary for the trustees to alter the grades and locations of the old roads and streets, so as to render them conformable to the general and permanent plan of the village, as well as to pitch, regulate, pave and open the new streets, according to the map and survey. Hence the necessity of providing for the alteration of streets in the 21st section, which relates to the pitching, regulating and paving, as well as in the subsequent section regulating the manner of altering and widening old streets and opening new ones. The word *altering*, therefore, in both of these sections, related to the old streets and roads which existed at the time of passing the act of incorporation, and not to the new streets which might thereafter be laid out, opened or graded in conformity to the map and survey, and to the grade as first adopted by the trustees. And these trustees have no power or authority to change or alter the grade or location of any such new

street after it has been once established by them, in conformity to the map and survey and gradation first established, or of any of the old streets after they have been made to conform to such general plan.—The defendants have no legal power therefore to alter the grade of this southerly section of First street, or of the adjacent streets which have been thus regulated and graded.

The inhabitants of this village, however, are not without remedy if the interest of the public requires a correction of any mistake which the trustees may have made either in laying out streets, or in fixing the gradations thereof. For it is perfectly competent for the legislative power which directed a general plan of the village to be adopted and adhered to by the trustees, to authorize them to make such alterations in the plan as may be found necessary either in regard to this particular street, or as to the streets of the village generally. And if the legislature shall think proper to authorize such alterations, it will be for the same power to prescribe the proper mode of ascertaining who are injured by such alterations, and of compensating them for such injury.

There is no ground for the objection in this case, that the complainants have waived their rights by delay, or by any acquiescence in the proceedings of the trustees. They protested against the alteration of the grade of the street the first opportunity they had for that purpose: and they followed it up with an application to this court for redress when they found that the defendants were determined to proceed notwithstanding such protest.

The order of the Vice Chancellor must therefore be reversed, with costs, and an injunction must be granted to restrain the defendants from proceeding with the proposed alteration of the former gradation of the street as originally established by the trustees. (See 6 Paige, 262)

DECISION IN THE MATTER OF WIDENING JOHN STREET.

IN CHANCERY.

BEFORE THE CHANCELLOR.

Timothy Wiggin

vs.

The Mayor, &c., of the city of New York.

This was an application for an injunction to restrain the collection of an assessment for the widening, straightening, and improving John street, in the city of New York, between Broadway and Pearl street. From the bill it appeared that the ordinance of the Common Council authorizing and directing this improvement, was passed in February, 1836; that shortly afterwards the Supreme Court appointed commissioners of estimate and assessment, who made their report in 1838, and the same was presented to that court for confirmation, but was afterwards sent back to the commissioners for revisal and correction; that the amended report was confirmed by the court in September, 1839, and that the order for the making of the improvement was carried into effect in May, 1840. The complainant charged in his bill upon information derived from E. Meriam, that the ayes and noes were not called upon the adoption of the resolution of the Common Council, authorizing the making of the improvement; nor were the votes of the Aldermen and Assistants, and the report of the committee on streets, upon which the ordinance was founded, published in any of the newspapers employed by the corporation. Various objections were stated in the bill as to the equity and justice of the assessment upon property which was supposed by the commissioners to be benefited by the improvement, which objections are noticed in the opinion of the court. The complainant also stated in his bill that the improvement was not within the part of the city as to which a permanent map and plan were required to be made by the commissioners under the act of April, 1807, and he therefore insisted that the Common Council, as organized under the act of 1830, amending the charter of the city, had no jurisdiction or authority to widen or alter John street.

W. Hunt and L. H. Sandford, for the complainant.

Peter A. Cowdrey, for the defendants.

THE CHANCELLOR.—The language of the bill in this case, leaves it doubtful whether the complainant, at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law.—The bill, instead of alleging in the usual manner, that the complainant was at a particular date, and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the first of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they did not sustain, does not appear to be one which in any manner concerns this complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the rise of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant, or otherwise, according as the interest of the one or the other will be affected hy the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforeseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. the Mayor, &c., of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment, made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure this complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widensng of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Meserole vs. the Mayor, &c., of Brooklyn, (in Chan. April 7, 1840,) referred to on the argument, the commissioners had not erred in judgment as to what property was to be benefited by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend., 618.) There the court held that if the proceedings had been regular, and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed, would actually be benefited by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alledging that the fronts on William street would be benefited by the improvement.

The same answer is applicable to the objection that $100 was included in the assessments for surveying and grading the triangle opposite to Cliff street under the resolution of May, 1837.

As the bill alledges that the cost of the proceeding have not yet been taxed, it cannot now be known whether the amount of the assessment will be more or less than the amount allowed for damages, and the costs and expenses of making the improvement. The mode of conducting these

proceedings, as prescribed by law, is such, that the assessments must be made and confirmed before the whole expense and costs of the proceedings can be ascertained, the commissioners, after having ascertained the damages for property taken, must necessarily proceed upon mere estimates of some of the costs, &c., which will probably be incurred thereafter in completing the proceedings. A mistake of a few dollars, therefore, one way or the other in estimating the amount of the expenses cannot vitiate the whole assessment, and take from the Supreme Court the power to confirm a report founded upon a reasonable estimate of the prospective costs. The act of April, 1839, only requires the costs and charges of commissioners, and attorney and counsel, &c., to be taxed before they are paid, and not that they should be taxed before the assessment is made and confirmed, as that could not be done. It is no objection, therefore, to the collection of the assessment, that those costs had not been taxed when this bill was filed.

The objection that the corporation, as at present organized, has not the right to lay out new streets, or to alter old ones, in that part of the city which was not embraced in the permanent plan of improvements adopted by the commissioners appointod under the act of the 3d April, 1807, is one which, if well taken, would render the whole proceeding under the ordinance for the widening of John street, absolutely void. The power to open new streets, or to alter old ones, in this part of the city, is claimed by the corporation under the second clause of the 177th section of the act of the 9th of April, 1813, to reduce the several laws relating particularly to the city of New York into one act, (2 R. S. of 1813, p. 409.) By that clause the power was expressly given to the corporation, whever, or as often as it should, in the opinion of the Mayor, Aldermen, and Commonalty, *in Common Council convened*, be necessary or desirable for the public convenience or health to lay out, form and open new streets, &c., in that part of the city, or to extend, enlarge, straighten, alter, or otherwise improve, streets, &c., already laid out, or thereafter to be laid out.

It is not pretended that previous to the act of April, 1830, to amend the charter of the city of New York, the corporation, when convened in Common Council, under the charter and the laws then in force, would not have been authorized to pass an ordinance for the making of this improvement; but this act for the amendment of the city charter directs that neither the Mayor nor the Recorder shall be a member of the Common Council after the second Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the Common Council of the city; which boards are to meet in separate chambers, &c. And the complainant's counsel therefore insist that the Mayor, Aldermen, and Commonalty can no longer convene in Common Council, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in Common Council, according to the provisions of its charter, and not to the partioular officers who, at that time, represented the corporation in Common Council. And the act of 1830 having excluded the Mayor and Recorder from the Common Council, and directed the Aldermen and Assistants to convene as a Common Council in two separate boards, the Mayor, Aldermen, and Commonalty of the city, that is the corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorizing the opening of a new street, or the alteration of a new one, under the 177th section of the act of 1813, was strictly a legislative power given to the corporation represented in its Common Council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen, and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to a preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law.—And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot *would not even create a cloud upon his title.* For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a CLOUD upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should expresse my opinion at this time upon the question. Whether the 7th section of the act of April, 1830, requiring the ayes and noes to be taken, and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property, benefited by the proposed improvement, are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefited by the improve-rather than by a general tax upon the city at large. A court of equity, therefore, at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefited thereby, and upon those who have not.

It is true, the complainant alledges in his bill that his property is not benefited by the improvement. But that-allegation is not sworn to by any one, and it is, of course, contradicted by the report, under oath, of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

(Copy.) JOHN M. DAVISON, Register.

[From the Saratoga Sentinel–Extra of July 20, 1841.]

IN CHANCERY.

BEFORE THE CHANCELLOR.

Samuel Vandervoort
vs.
The Trustees of the village of Astoria.

J. B. SCOLES, for Complainant. G. WINTER, for Defendants.

In this case the Chancellor decid d that injunctions to stay public improvements should not be granted *ex parte* by Injunction Masters, out of court, where there is no immediate danger of irreparable damages being done before the defendants can have an opportunity of being heard. That the Master, in all such cases, instead of granting the injunction in the first instance, should direct an order, to show cause before the court why an injunction should not be granted.

Injunction dissolved with costs to the defendants, without reference to the denial of any matters of the bill by the answer.

IN CHANCERY.

BEFORE THE ASSISTANT VICE CHANCELLOR.

Street Assessments.

Peter G. Stuyvesant and others,
vs.
The Mayor, Aldermen, and Commonalty of the city of New York.

Opinion of Murray Hoffman, Esq., Injunction Master.

The bill is brought before me as Injunction Master. I have been obliged by my sense of duty to grant an injunction in this and several cases on the eve of the sale advertised to take place on the 27th inst. I am sensible of the inconvenience to the city from an interference at this time, and do it with unfeigned reluctance.

But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterizes the proceedings complained of. I have a deep-rooted conviction that ultimately the decision must be against the corporation; and I believe that jurisdiction exists in this court to compel the corporation to try the question fairly in a single action at law between them and a complaining party. I think it is within the province of this court to prevent an innocent purchaser being deluded into litigation and probable loss, and to confine the controversy to the alleged wrong-doer and the injured party. This strikes me as the plain, just, and common-sense view of the matter. There are in this bill a number of complainants, the several owners of various parcels of property. They may all be bound by the result of one action. Thus, with perfect justice to the corporation, these questions may be tried in

the most simple and satisfactory manner, and a contest with a third party averted.

There has been no opinion as yet expressed by the Chancellor upon the point of jurisdiction, and I am at liberty to act upon the assumption and my own conviction that it exists.

I may, in a case of such moment, briefly advert to the reasons which led me on a former occasion to consider the neglect of the corporation to call the ayes and noes, and make the publication prescribed by the charter of 1830 a fatal omission.

[The assistant Vice Chancellor states some facts of his opinion in the case of Codwise vs. the Corporation, which it was intended shonld appear in this paper, but are crowded out for want of room.]

But in the present bill a new point is taken of much consequence. The proceedings for opening Art street commenced in April 1837. The report was completed, and the advertisement announcing that it would be presented to the Court for confirmation began on the 18th day of May, 1839. The report was filed on the 5th of June, 1839, and confirmed in the ensuing August. It is stated in the bill that, from the examination of the affidavits of publication, and the advertisement, it appears that the publication was made in but three papers, and does not appear that any notice was affixed in a public place contiguous to the premises. It is charged as a fact that the advertisement was only in three papers, and that no such notice was put up.

By the ninth section of the act of 20th April, 1839, it is provided that all motions (except as before provided) made under the act thereby amended, shall he, upon giving previous notice of the trial, place, and object thereof, published for at least fourteen days in four of the public newspapers, and by copies of such notice in handbills, to be posted up for the same space of time in three conspicuous places adjacent to the property to be affected. (See section 2 for this last clause.) It admits of no doubt that a motion for the confirmation of the report of commissioners falls within the ninth section.

The act repeals the amended act as far as it is inconsistent with the provisions of the new act; and it is directed to take effect on its passage, (the 20th of April, 1839,) but it expressly provided that no part of it except the *ninth* and *twelfth* sections shall affect any proceedings under the act thereby amended, which had been commenced previously to its going into effect.

It is an irresistible inference that the ninth and twelfth sections *do affect* prior proceedings, if those sections, when applied to such proceedings, are constitutional.

Of that I cannot entertain the slightest doubt. Both the Chancellor and Supreme Court have held that the Revised Statutes are applicable to all existing cases, so far as they affect merely the forms and modes of proceedings. (*The People* vs. *Livingston*, 6 Wendell, 526.) Every future proceeding in the assertion of a right or prosecution of a suit is to be governed by the new statutes. In this case, if the advertisement had been begun before the 20th of April, 1839, that would have been a proceeding already commenced, and would not have been affected by the ninth section. But as it was a proceeding commenced after that date, it necessarily falls within it.

In *Aymar* vs. *Gault* (2 Paige, 284) the doctrine was applied to the case of an absent party. The reference under the Revised Statutes was ordered, to take proof of the claim, although the suit was commenced before they went into operation.

In *Larkin* vs. *Mann* (2 Paige, 27) the rule was applied to the partition suits previously commenced. See also *Parsons* vs. *Browne* (7 Paige, 359).

This being the law, then it is clear that the present complainants are not bound by the proceedings at all; that they are now at liberty to take every objection of fact or law which they could have taken before the Supreme Court, as well as those which they could not then have taken.

I speak on the supposition that they did not actually attend and contest the confirmation. Without saying whether this would cure the defect or not, it is plain an argument may be raised upon it. But no principle of our law is more sacred than this, that no man shall be affected in person or property without the opportunity of being heard in the proper tribunal. From necessity, perhaps, personal notice has been dispensed with in many cases; these street proceedings among the number. The party who is assessed for benefit merely (no part of his property being taken), is never summoned before the Commissioners. He has no notice of the proceedings except by that publication for 14 days which the old act prescribed, or by the publication under the new act. His property and himself are bound upon the assumption that he has seen that notice. The law therefore must be observed to a scruple. No judge has a right to say that from great publicity, or from the actual taking of one paper containing the notice, or from any thing short of the absolute fulfilment of the requisitions of the statute, the party is to be bound.

What absurdity is it to imagine that the clear command of the Legislature that notice must be given in four papers, and by posting up copies in three adjacent places, is to be fulfilled by any other mode of notice!

I pass over another most important question in this bill viz: the carrying Art-street through a part of the city included in the map of 1807. It is needless to discuss it, in the view I have already taken.

I have, however, had my doubts since the decision of the Chancellor in Vandevoort vs. The Village of Astoria whether in these cases I ought, as injunction master, to do more than grant an order to show cause. Certainly the case here is very different; the Trustees of Astoria being in the act of making the improvement complained of. Here it is to prevent a recovery in this mode of the sum assessed for the improvement. I have concluded, however, that it is most proper for me to grant on order to show cause, with a temporary injunction.

I doubt whether I have a right to impose terms upon granting an injunction. Otherwise I should direct that the injunction be on the condition of the complainants filing a written consent with the bill, or endorsed upon it, submitting to abide the decision of an action to be had in a court of law by the Corporation against one of the parties, the form and other particulars attending the bringing such action, to be settled by this Court.

Martha Amory and others,
vs.
The Mayor, Aldermen, &c.

This case is, in its leading particulars, similar to that of Stuyvesant vs. The Corporation, before noticed. It is distinctly charged as to the proceedings in relation to the 6th avenue, that when the first publication of the notice of motion to confirm the report was made the act of 20th of April, 1839, was in force the rule of confirmation being made on the 6th of June, 1839. Here also the question under the 12th section is of great importance as the costs of the opening exceeds $10,000. Some questions may arise under this section; but this at least is clear: No part of the costs can be levied upon the party or his property, nor can a sale be made to pay them until the taxation has been made. How far if this were the only neglect, it would affect the whole assessment, I need not now enquire. I am clear that it justifies an interference with the present sale, which is to raise the whole amount, including the costs, provided this court has any jurisdiction at all; a point before examined.

John Haggerty and others,
vs.
The Mayor, Aldermen, &c.

The complainants in the bill, who are numerous, seek an injunction against selling their property assessed for the improvement of John street, and advertised for sale on the 27th inst.

I refer to my opinion in the case of Stuyvesant, vs. The Corporation, for the reasons upon which I have allowed a temporary injunction. It is however peculiarly incumbent upon me in this instance, to see that the case before me is substantially different from that of Wiggins, vs. The Corporation heretofore decided by the Chancellor, and in which an injunction was refused.

In the *first* place, the delay referred to by the Chancellor in the last clause of his opinion is fully accounted for in this bill; and as the Corporation never sued at law, and never advertised until the present notice of sale, there never was an opportunity for the complainants to resist the demand or to apply to this court. I have before held that until an advertisement was begun there was no jurisdiction.

Next, in the case of Wiggins no proceedings to sell the property had been taken.

Again, in that case the statements on the bill did not exclude the supposition that on the record of the proceedings it may have appeared that the ayes and noes were called. That difficulty is fully met in the present case.

Again, the bill was there defective upon the point of the complainant being the actual owner of the property assessed when he filed the bill.—The present bill is in this particular unobjectionable.

And lastly, a new and very important point is here introduced. The report was brought before the Supreme Court in ————, 1838. It was sent back for correction, and the motion for final confirmation made and the rule entered in September, 1839. At that time the 12th section of the act of 20th April, 1839, was in force. The costs were never taxed under that 12th section. The amount is added to the sum assessed, and each of the complainants' property is liable for and was to pay a proportion of such costs. The sale is to raise that proportion as well as the assessments for benefit. Now the section, as I have shown in my opinion in Stuyvesant vs. The Corporation affects proceedings subsequently taken. It is wholly illegal to charge the costs upon any party until they were taxed. Notice of the taxation is directed to be given in a public manner, and certainly without such notice and taxation the parties assessed cannot be bound to pay them.

It has been decided, from reasons of convenience and in the absence of any peremptory provision of the statute, that costs may be included in the assessment, and imposed prospectively by the Commissioners; and that an inconsiderable variation in the amount taxed from the amount imposed, will not affect the validity of the proceedings, nor prevent the confirmation of the report (Wiggin vs. The Mayor, &c, in Chancery, March 6, 1841.)

But if the section prescribing a taxation applies to this John street case at all, it is apparent that no party can be called upon to pay any portion of the costs until a due taxation has been had.—Without such taxation there can be no obligations to pay, and no lien on the party's property. What will be the consequence of this, and whether it may not be corrected by a taxation now and proportionate abatement, I need not inquire. The property is advertised to be sold for a debt, some of which at least is illegally imposed upon it.

By adverting to my opinion in the case of Westervelt & Codwise vs, the Corporation, it will be seen that it is settled law that the costs of the proceedings cannot be assessed upon the property without an express statute; that in a case in Albany, an assessment was set aside for want of such statutory provision; and that in the instance of opening streets in New York, the old act admitted the addition of the costs. Now I think the case will appear very clear if we suppose that it had been part of the old act that the cost must be taxed upon notice before they could be added to the assessment for benefit. Certainly they could not be recovered until taxed. I may add that, as the Supreme Court is empowered to make rules for carrying the act into effect, all inconveniences may readily be avoided.

M. HOFFMAN, Assistant Vice Chancellor.

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THE ASSESSMENT COSTS.

DECISION.

The motions made at the December Special Term of the Supreme Court, were by Mr. Emmet, one of the Ex-Counsel of the Corporation of the City of New-York, for the confirmation of the Reports of the Commissioners of Estimate and Assessment, for opening 37th street, 39th street, 128th street, 11th avenue, and Madison avenue.

Thirty-seventh and thirty-ninth street Assessments were commenced near eight years ago, viz: in June, 1836. The Common Council have never at any time, passed any resolution for to authorize an application to the Supreme Court for the appointment of Commissioners for opening these two streets. Yet notwithstanding this, an application was made to the Supreme Court, on a petition signed by the Mayor and Clerk of the Common Council, and Commissioners were appointed on the 24th June, 1836. The Report of the Street Committee of the Board of Assistants, stating the reasons why these streets were not to be opened by Commissioners, in detail, and the affidavit of the Chairman of the Committee, stating the reason why no resolution was introduced to authorize the application to the Supreme Court, are to be found in this volume, pages 141 and 142.

Andrew Warner, one of the Commissioners of Estimate and Assessment, in the 37th street proceeding, was examined as a witness in 1841, before the Select Committee of the Senate, appointed to investigate Assessment abuses in the City of New-York, and stated that he was sworn into office on the 24th of October, 1836, as one of the Commissioners for 37th street; that the Commissioners had completed their Report twelve or eighteen months previous to that time, and that it had not been presented to the Court for confirmation; has not heard Mr. Emmet state why he has not presented the report for confirmation. The witness also stated that the Commissioners were not all in the habit of attending the meetings, but were allowed compensation, the same as if they did attend.

The Report was finished, it appears, in 1840, and lay dormant after that time near four years before it was presented for confirmation.

Notice was given for taxing the fees of the Commissioners, Counsel and Surveyors, in these cases, before William Paxson Hallett, Esq., Clerk of the Supreme Court, who had himself acted as Commissioner in several streets, where the charges had been exorbitant. The Costs, &c., were taxed at more than TEN THOUSAND DOLLARS, to be assessed upon the land.

Objections were made to the taxation of the costs by Mr. Hallett, by the Counsel for the sufferers before the Court, on the ground that Mr. Emmet divided the fees with some of the Clerks of the Supreme Court, in Assessment matters, and read from Senate document No. 86, of 1843, a Report of a Clerk of the Supreme Court, to that effect.

In thirty-ninth street, Anson G. Phelps, Esq., was assessed on a piece of ground for the opening of this street; the same piece of ground had already been assessed for the pretended opening of fortieth street, $575, and also for the pretended opening of the 1st avenue, from 28th to 42d street, the further sum of $312, besides appropriating one third of the land for the avenue. This made $887, exclusive of the 39th street assessment; the interest of these two first assessments, exceed the value of the land assessed. Had the streets and avenues been opened by one sett of competent Commissioners, as was all that was authorized by the Common Council, the assessment on this piece of ground, would not have amounted to more than a few shillings, instead of exceeding more than FOUR TIMES THE VALUE OF THE LAND.

The Counsel for the sufferers, RICHARD MOTT, ESQ., on the motion for confirmation, objected to the competency of the Court to act in these matters, under that provision of the Constitution which prohibits a Judge from holding any other office or trust, and insisted, that in appointing these Commissioners of Estimate and Assessments, and confirming their Reports, the Judges did not act as a Court, but acted as Commissioners. This the Courts have all held, as did also the Hon. Select Committee of the Senate, who examined into the assessment outrages. Chief Justice SPENCER and Chief Justice SAVAGE, have both held that the power exercised by the Court in Street matters, was in the capacity of a Commissioner and not as a Court.

Mr. Mott read from the Constitution of 1777, and also of 1823; section 25 of the former, and Sec. 7 of Article 5 of the latter, on the prohibiting Judges of the Supreme Court from holding any other office or trust.

He also read the respective letters of the Judges of the Circuit Court of the U. S., for the districts of North Carolina, Maryland, and Pennsylvania, addressed to the President of the United States, in 1792, in which they refused to serve under an Act of Congress imposing duties upon them in reference to invalid pensioners, on the ground of constitutional disability. He also read a letter from the Judges of the Circuit Court of the U. States, for the district of New York, in which they consented to act as COMMISSIONERS, but not as a Court. In these cases the Judges admitted that the duties required by the Act of Congress were of a meritorious character, and they therefore regretted their inability to act, considering the duty inconsistent with their oaths of office and the Constitution of the United States. These letters are to be found in the Municipal Gazette, No. 16, of Nov 17th, 1843, page 286, in connection with the other objections urged by the Counsel in these cases.

Mr. Mott also urged the provisions of the Constitution of 1777 and 1823, in connection with the Colonial law of 1691, which are set forth and discussed, on page 199, of the Municipal Gazette.

The provisions of the Constitution refered to, are Section 41, of the Constitution of 1777, and Sec. 7, of Article 4, of the Constitution of 1823; also, Section 2, of Article 7.

This great Constitutional Question, was most ably argued by Mr. Mott, and he has gained for himself a well earned fame, in the success which has attended his efforts.

Mr. Mott also placed before the Court, such public documents as conclusively show that these assessment proceedings are notoriously of a scandalous character, and did not commend themselves to the favorable consideration of the Court.

The Counsel moving for a confirmation, indulged in the use of very abusive language against citizens who had publicly opposed these assessment abuses, but was made to take his seat, and was deservedly rebuked by the Court.

This decision will relieve citizens from the payment of arbitrary and disgraceful assessments, for sham improvements, and will also release all lands sold for such assessments. Those who have paid assessments more than six years ago, are barred by the Statutes, as the Corporation will not hesitate to plead Statute limitation.

The streets on the agricultural part of the island, will not be harmed by this decision.

Those who have sold land bordering on a street or avenue, as laid out in 1807, have, by the Act, dedicated the land in the street or avenue, to public use, whether they owned on both or only on one side of the street, as the conveyance sweeps all the land they owned in the street or avenue opposite the ground conveyed.

Those who own both sides of the street or avenue, have nothing to do but to put up fences, and the street is made without the use of Surveyor, Counsel, or Commissioner, and in those cases where the above will not apply, the several owners may negotiate or the Corporation can do so, and if no ar-

430; and there, the grounds on which the writ usually issues, rather than the inquiry whether it would lie to a corporation, was the question discussed at the bar and considered by the court. See, also, *Parks* vs. *The Mayor, &c. of Boston*, 8 *Pick.*, 218. All our city, and many of our village corporations have been vested with very large powers within their respective limits; and if a certiorari will lie to remove into this court an ordinance for constructing a sewer, it is difficult to see where we can stop short of reviewing all their acts in the same way, which looks to me like a great stretch of jurisdiction.

But if a certiorari will lie, it does not follow that it should be awarded in every case where the relator may have some ground for complaint. The allowance of the writ rests in the sound discretion of the court, and it has often been denied where the power to issue it was unquestionable, and where there was apparent error in the proceeding to be reviewed. And if it has been improperly awarded, it is not too late to correct the error after a return and hearing of the merits. *The People* vs. *Supervisors of Alleghany*, 15 *Wend.* 298. And see *The People* vs. *Supervisors of Queens* [Feb. 1841]. There are, I think, few if any cases where an ordinance or assessment for constructing a common sewer, or making any other city improvement, should be removed into this court by certiorari. It is better that persons having cause for complaint should be left to such redress as they may have by action. The case falls within the principle of those which have just been cited; and in the first of those cases a certiorari which had been issued to remove an assessment for county charges was quashed after a return and a hearing on the merits; and there, too, the relator had no other remedy. Great *public inconvenience* must necessarily ensue if we attempt in this way to review assessments for city improvements, which are not unfrequently as extensive in their influence as assessments for county taxes. The principal objections which have been urged against these proceedings are, 1. that the ordinance for constructing the sewer is void, because it does not appear affirmatively that the ayes and noes were called on taking the vote upon it in the two Boards; 2. that the order confirming the assessment is void for the same reason; 3. that the confirmation could only be made by the whole Corporation assembled in one body, and not by the Common Council in two Boards, as organised under the act of 1830; and 4. that no confirmation appears—there being no ordinance or resolution for that purpose, but only an extract from the minutes of the Common Council.

Now, without considering what answers there may be to these objections, they seem to prove too much for this form of remedy. If the points are well taken, there has been no ordinance for constructing the sewer, nor has the assessment ever been confirmed, and there is nothing to be reached by the certiorari. If the relators have suffered under color of proceedings which never had any legal existence, their remedy is by action. All the other questions which arise upon the record—and we cannot look beyond it—may, for aught I see, be as well tried in some other form as in that which the relators have selected, and we shall do them no harm by withholding this extraordinary remedy. I must not be understood as intimating that a certiorari should be allowed whenever the question can be reached in no other form. There may be many cases where the public inconvenience, which would be likely to result from this mode of review, would greatly outweigh the importance of correcting some legal, though, perhaps, not very grievous, error in the proceedings.

The relators in this case have taken no objection which is not equally applicable to all the other persons who have been taxed, and the whole assessment must stand or fall together. It is also important to notice, that the ordinance for making the improvement was passed, the work done, and the assessment made and confirmed, more than three years before the certiorari was sued out. The time of bringing a writ of error from a final judgment is limited by law to two years; and I think a case can rarely happen where it would be proper to allow a certiorari after the lapse of a longer period. This is a sufficient ground for quashing the writ, aside from other considerations tending to the same results.

Certiorari quashed.

MOUNT MORRIS SQUARE.

The opening of this Square was founded upon the resolution of an alderman, which was referred to a committee, who reported in favor; the report was adopted, and a resolution passed to carry it into effect, but the report was not published, nor were the ayes and noes called on taking the vote, nor was the same published, as required by the charter. The resolution thus passed by the two Boards was approved by the Mayor on the 20th October, 1836, and on the 4th of September, 1839, the commissioners made their report—a delay of near three years.

The place designated as Mount Morris Square is on a rocky hill or ledge near Hurlgate, about seven miles or more from the City Hall. We have examined the place, and should think it about one hundred feet high, and that it would require an outlay of more than two millions of dollars to reduce it to the city grade. The Catskill Mountains are full as well calculated for a public square as Mount Morris. The award made for Mount Morris is $22,000; the expense of making it and assessing the amount is $.

When the reports of the commissioners were deposited in the clerk's office for examination, no bill of expense accompanied the same. The reports are a mere recital of metes and bounds of the property awarded for or assessed, and the names of the supposed owners, and the amount of the particular award or assessment. There is no addition of the awards, and of the amount of assessments—no summary, schedule, or abstract—no diagram, or map, accompanies it. The property is described by map numbers, and the whole report a perfect wilderness to explore.

A map, with a list of names of the persons assessed, and of those to whom awards are made, with each of their respective amounts extended in two columns, and each added up, with a statement of the expenses, would be intelligible, but such a report as this is only calculated to confuse and mislead.

SUPREME COURT.

The People ex rel. Michael Floy, et al. vs. The Mayor, Aldermen and Commonalty of the City of New York.	Opening of Mount Morris Square in the City of New York. Points of Relators.

The motion is in the alternative.

First. To set aside the confirmation of the Report of Commissioners of Estimate and Assessment, which was confirmed Sept. 4, 1839.

This is asked for, on the ground, that no notice of the motion for confirmation was published or posted, as is required by the 9th section of the act of April 20, 1839. Laws of 1839, p. 182.

And the charges and expenses, which are enormous and unjust, were never taxed or allowed, as is required by section 12, of the same act.

The act of 1839 is general, and all its provisions would apply to all the then pending proceedings, but for the 14th section, which limits all except the 9th and 12th sections to future proceedings.

1. As to Notice.—There is no pretence that any notice was given in four newspapers; *or that any was posted*,—(see fore part of section 2, in connection with section 9, as to the manner of posting, Folio 23 to 26.)

2. Nor is there any pretence of taxation of the expenses.

As to this, *it is said*, that there is nothing in the section to require it to be done *before the Commissioners report*. This is clearly wrong. The charges are all "*allowed*" so far as the *payers* are concerned, when they are put into the report and confirmed. They then become a lien and charge on the lands assessed, and if the proceedings are regular, nothing but *payment in full* can remove them. There is no provision in any statute for a modification of the assessment, or a recovery back of part of it, on those charges being taxed afterwards and reduced. Nor is there any remedy, except to pursue the terms of the law and have them taxed, before assessing them on the land. The intent of the law is plain. The only "allowance" in the case, is that made by including them in the report. The Corporation itself never *allows* them, except in that mode. The Corporation pays the charges as thus included, *out of the assessments imposed for the same charges* on the adjacent lands.

Again. This court had made provision previous to this motion for confirmation, viz. in July 1839, for *these taxations*. But, if the court had not, it was the duty of the Commissioners to wait until they did. The law was imperative, that *they should be taxed*.

On both *these grounds*, therefore, the confirmation was irregular and illegal, and being made a rule of this court, it should be set aside.

3. Another ground for setting aside the confirmation, is the entire ignorance and want of actual notice in the relators, the great wrong and injustice of the estimate and assessment. See 19 Wend. 659, John street and Cherry street, per J. Cowen, 1 Cowen 74, Dover street.

The occasion is favorable for such action. The awards to parties for the lands proposed to be taxed, *are not yet payable*. None of them have been paid. Folio 39.

The confirmation being set aside, one of two things will ensue.

1. The Corporation will doubtless be induced to abandon this *improvement*, which is a century and a half in advance of the times. They will prefer paying and losing whatever is *justly* due to the Commissioners &c. who acted in the matter, to the odium and injustice of proceeding.

2. If otherwise, the parties can have the expenses taxed and reduced, the lands taken valued at 1-6 of the present estimate, and the lands omitted brought into the assessment; and thus be relieved from the gross and oppressive charges which are now imposed upon them.

Should the court conclude to set aside the confirmation, then it will be needless for them to examine the remaining points here presented.

Second. The second alternative of our motion, (which is sought only in case the court declines to set aside the confirmation of the report), is the issuing of writs of certiorari, to bring up for review all the proceedings for the opening of the square in question; it being alleged that they are without authority or jurisdiction, illegal and void.

It is asked that the whole, if granted, *be carried on as one proceeding*, both to save expense and the better to attain the justice of the case.

I. As to the issuing of writs of certiorari.

1. To the Justices of this Court acting as Commissioners on the confirmation, the allowance of the writ

is "a matter of course."—20 Wend., 685, matter of Carlton street; and see 7 Cow. 158, Bogert vs. The Mayor &c.; 13 Wend. 668 Patchen vs. Brooklyn.

2. To the Corporation of the City in reference to the proceedings before them. See 6 Wend. 564 Starr. vs. Trustees of Rochester, and 8 Pick. infra.

Although the issuing of these writs is a matter of "discretion," yet such discretion is a regulated, not an arbitrary discretion. See the remarks in 5 Rep. 100, Rooke's case.

Here, we expect to show that besides the manifest wrongs and intolerable injustice of the assessment, the proceedings are null and void.

We are not bound *on this motion*, to show this. That, we are to accomplish on arguing the return. We are only to show, that there is *probable cause* for presenting the points.

Then what is there to stay the writs? Not inconvenience? The awards are not paid, nor the square opened. Nothing is done.

But is *inconvenience* to *the Corporation*, by whose authority, this great wrong has been occasioned to us, to prevent the redress due to that wrong? Is *our inconvenience*—the confiscation of our property, nothing?

There is no imputation of laches. The confirmation was in Sept. 1839. These parties, ignorant that any thing was on foot till last summer, and ignorant of the irregularities *till Feb. last.*

Next, as to the probable cause for reviewing these proceedings.

II. The resolution for taking and opening Mount Morris Square is *illegal and void*, for the following causes, viz.

1. It was a judicial act or power exercised by the Common Council and the Mayor, as separate and distinct bodies, passing upon it separately. Whereas the Common Council cannot under such an organization exercise any such power.

Subd. 1. That this power is in its nature *judicial* and *not legislative*. 8 Pick. 218, Park vs. Mayor &c. of Boston; 2 R. L. 408 § 177; 1 R. Stat. 513, 515, Commissioners of Highways in towns; Stat. 23. Hen. 8, ch. 5; Stat. of Sewers'; Callis. on Sewers, 216, 7; id. 185. id. 163; Com. Dig.—Sewers, D. s. p.

6 Ad. & Ell. 807—Pocock vs. O'Shannessey, per Patterson, J.

8 Taunt. 602—D. of Newcastle vs. Clark.

Subd. 2.—The Corporation assumes to exercise this power under the *act of* 1813.—2 R. L. 408, § 177, &c.

They have no such power by their *charter*, and they have no prescriptive powers.

The statute of 1813 gave the power to *The Mayor, &c. in Common Council convened.*

It was a judicial power, to be exercised by the persons, or *officers*, then composing *The Mayor*, &c. See 1 Willcocks Mun. C. 40, s. 54.

That is, the Mayor, Recorder, Aldermen and Assistants, convened and acting together—as one body—"in Common Council convened."

No other class of officers—no combination of these classes, omitting one or more classes—could exercise the power.—1 Willc. 42, s. 57–8. Id. p. 68, s, 125; p. 101, s. 233 and 235. 7 Cowen, 533; note to Exparte Rogers, and the cases there collected.

Subd. 3.—The resolution in question was not adopted by the classes, or in the manner authorized by the act of 1813.

It was *legislated through* in the form prescribed by the act of 1830.—(Laws 1830, p. 125.)

This act does not extend to the exercise of *judicial* or *ministerial* powers. It applies solely to "the *legislative power* of the 'Corporation of the City'—(see s. 1)—and to the delegation of sundry *executive* powers"—s. 21.

As to *all other powers* of the Corporation, the existing laws were unaffected. They were to be exercised in the manner pointed out by the various laws conferring them.

The statute itself is plain enough, as to what powers were to be exercised under the act of 1830. Its history corroborates our view.

See acts of 1824 and 1828, which were severally rejected by the people of the city by immense majorities. Laws of 1824, age 162 128, page 317. In s. 4 and 5 of those acts, the language is the most comprehensive possible—"The *whole power* of the Corporation"—"Legislative *and other powers*," &c. &c.

Then see Kent's City Charter, p. 231, sec. 11th, 236, 264, 349—showing the history of the 1st s. of the act of 1830, in its passage through the Convention of the people. The sweeping clauses as to the *powers* were reduced to the sect. as now existing, except that the Legislature limited the s. to the legislative power of the "*Corporation*" instead of the "*City.*"

Cowper 26—Rex vs. Croker.

Willes, 484—Norman vs. Beaumont—s. c. Barnes, 453.

1 East 64—Davison vs. Gill.

3 Esp. 198—Gross vs. Jackson.

Willcocks, where cited above, and the various Sewer cases above.

2 Const. Rep. S. C. (Treadway's) 726—Schroeder vs. City of Charleston.

7 Dowl. & Ryl. 684—The King vs. Tremayne.

4 East, 17—Rex vs. Morris, and vs. Stanard.

3 Johns. Cases, 107—Gilbert vs. Columbia Turnpike Company; a strong case.

2 Cowen, 419—Sprague vs. Birdsall. A statute in favor of corporations, and in derogation of common right, is to be strictly construed.

5 id., 188—Malcom vs. Rogers. "Shall or may" is to be construed "*shall*," when public interests and rights are concerned.—19 Wend. 38; Long Island R. R. Co.

It seems to be abhorrent to common sense to say, that when the Legislature provided that this Corporation "*shall*" exercise this mighty power in a prescribed mode, it intended that the Corporation might do as they pleased about it—that they might construe "shall" to mean "won't."

4. The omission to publish the reports of committees and the votes, as is expressly required by the 7th sect. of the act of 1830.

See the foregoing head.

We will also remark, that this omission estops the corporation from charging us with delay or laches, in moving the court.

The grand object of the provision was, to give *notice, publicity*, to these proceedings.

See Kent's C. C. 257—286–7—and the Address of the Convention, pursuant to resolution at p. 346.

5. The resolution itself was never signed by the Mayor, or authenticated by any officer of either board. In other words, no such resolution exists.

III. There was no regular, legal or valid authority to the Mayor to apply to the Court for the appointment of Commissioners of estimate and assessment.

It will be perceived that the *resolutions* contain no such authority, and it is one as essential as that for the opening itself. See sec. 178 of the act of 1813.

IV. The assessment is illegal, because it indirectly takes private property for public use, without compensation.

A *public square* in a large City is for the health, the recreation, the convenience of all its citizens—as well as of strangers.

Whatever *pretence* there might be for assessing persons fronting on the square, for a part of the expense, there can be none in justice or equity as to owners who are many hundred feet distant.

3 Story's Comm. on Const. 661.

2 Burlamaqui, 149, 150.

2 Wend, 452, 4th Avenue.

11 id. 149. Albany street.

3 M. & S. 447. Masters vs. Scraggs.

2 B. & B. 691. Spofford vs. Harrison.

3 Ad. & Ellis, 248. Loady vs. Wilson. Callis. 8.

11 Wend, 154. Canal street extension.

V. The assessment on the relators and others was thus erroneous in principle, unjust, partial and oppressive.

See fol. 21 and 28 to 38—and the diagram.

Many of these errors are such as come within the purview of a certiorari.

Thus, the entire omission of large tracts coming within the bounds of the district assessed—viz:

1. The block between 5th and 6th Avenues and 125th and 126th streets—only one block removed from the square itself, and nearer than any of the relators' lands.

2. The block between 114th and 115th streets, and 4th and 5th Avenues.

3. Ten entire blocks between 5th and 7th Avenues, and 114th and 119th streets. A considerable part of which is nearer than our property.

4. The lands of the Corporation, on which is the House of Detention.

That these are to be corrected on certiorari, see

20 John's. 430—Le Roy vs. Mayor, &c. of N. Y.

3 Wend, 333—Ross vs. same.

10 id. 167—Baldwin vs. Calkings.

2 Wend 395, 398—Bouton vs. Brooklyn, recognizes the principle.

See also 5 Rep. 100—Rooke's case, s. p.

As to the oppression, see the illegal charges of Commissioners and Counsel, at fol. 21 and 29 to 31.

VI. The assessment, &c. is also erroneous and void. because it was not made *by all the three Commissioners.* Only one of them actually made it, and *only two* of them ever met or acted together in regard to it.

By s. 178 all the Commissioners *must act in the premises*, although only two need sign the report.

7 Cowen 526—Exparte Rogers, and the valuable note at p. 530.

8 Cowen 544—Sinclair vs. Jackson.

6 Johns. R. 39—Green vs. Miller.

This principle is incorporated in the Rev. Stat. See 2 R. S. 555, s 27.

VII. The report of the Commissioners and its confirmation are also erroneous and void for the want of the taxation of the costs and charges of the Commissioners, Counsel, Surveyor, &c., and for the neglect to give notice of the motion to confirm the report; pursuant to the 9th and 12th sections of the act of 1839.

Sufficient has been stated on this subject in the two first pages hereof.

VIII. Fifteen months from the confirmation of the report having elapsed, and the square not being opened, the Corporation cannot now proceed to open it, and have lost all jurisdiction of the subject matter.

Laws of 1818, page 196, shows that they cannot suspend the opening "exceeding in the whole 15 months."

If it were otherwise, they can *collect the assessments, and delay the opening a century.* Because if they can suspend one day beyond the 15 months, there is nothing to prevent their doing it 1000 years, if they think proper.

These corporations take nothing by implication. If they claim power they must show an express grant of it;—Willc. p. 100; p. 99, s. 226;—and as the Court says in the cases of John street and Cherry street, "the argument is just as good for a 'county, town or village,' as for this great city."—19 Wend. 659.

(The argument on this first head (third subd.) is too extended to be by any possibility compressed into the requisite brevity for these points, and much of it is omitted.)

2. The resolution is illegal, because it was made without any petition therefor.

S. 177, above cited, requires not only the *judgment* of the Mayor, &c., but also the *petition of three-fourths of the land owners* fronting on the Square to be opened.

This Square is in the part of the city laid out by the Commissioners under the act of 1807. It was authorized by act of May 10th, 1836, p. 395.

The act of 1813 left these matters to be set on foot by those who would have to bear the expense.

Unless such is the construction, "*and also*" in the 9th line of the s. must be read "*or.*"

The Corporation had no jurisdiction to act without such petition of three-fourths.

It is like the case of a Sewer rate, assessed by the Commissioners of Sewers without the presentment of a jury—on which it was held that the commissioners acquired no jurisdiction, and that the warrant to collect it was void.

4th London Jurist, 860. (3 Oct. 1840.)

Wingate vs. Wait—In Exch.—Trin. T. 1840.

Styles' R. 179, 185, 191—Custodes Libertat. &c. vs. Inhabitants of Outwell, on certiorari, proc. quash.

ed, because it did not appear that the jury was of the Hundred, &c.

3 Cow. & P. 63—Birkott vs. Crozier, on similar grounds.

And as to acquiring jurisdiction—see Style 13—Whitley vs. Fawcett, and id. 85. Rex vs. Apsley.

7 Ad. & Ell. R. 266—Emmerson vs. Saltmarshe—4 Lond. Jurist, 790, 793.—Att. Gen. vs. Daniel.

2 Binn. 250—Schuylkill Falls Road.

All these are Sewer cases.

3. The resolution is also illegal and void, because the *ayes and noes were not called* or taken on its passage in either Board—(supposing it to be upheld as a proper act under the organization of 1830.)

Section 7 of that act expressly requires it. The vote cannot be taken in any other manner. The law permits it in no other mode or form.

The Counsel of the city says this is merely "*directory.*" It is no more so than the provisions in 12th, 13th, and 14th sect., and the one can be disregarded as much as the other.

This is a power granted to a *mere corporation*, by which the lands of citizens may be taxed, and those lands confiscated, and their personal property distrained.

It must be construed strictly. It cannot be tolerated that the donee of the power is to execute it as he pleases, or in any manner save that provided in the grant.

(This point also is of great magnitude, and can scarcely be presented in this place. Among the host of authorities, we will refer to these only :)

7 Barc. Abr. 448—Statute, G. the general rule, as to a stat. directing a thing to be done *in a certain manner.*

SUPREME COURT.

The Mayor, Aldermen, and Commonalty of the City of New York, *adsm.*	Opening of Mount Morris Square.
The People ex rel. Michael Floy, et al.	Defts. Points.

First as to the motion to set aside the Report of the Commissioners.

1. This motion will not be entertained because the Report was confirmed by the Judges of the Supreme Court, acting as Commissioners, and the only mode of bringing the question before the Supreme Court is by certiorari, 11 Wend. 154.

2. The relators are too late in making any such application. The Report was confirmed Sept. 4, 1839. The affidavit states that the party had no actual notice of these proceedings "until some time during the summer of 1840." This was sufficient to have enabled him to make inquiry and present his objections months ago.

3. The notice of presenting the report for confirmation was given pursuant to the Act of 1813, as appears by the report itself, and the accompanying papers. The objection is, that the notice was not given as required by the *4th section* of the act of 1839, p. 183.

These proceedings were commenced anterior to the passage of the act of 1839.

The 4th section, by the express enactment of the 14th section, does not apply to proceedings previously commenced.

The 9th section applies only to motions, *other than those therein before provided.* The notice of making the report is expressly provided for by the 4th section and is excluded from the provisions of the 9th.

4. The question of taxation of costs should have been raised on the motion to confirm. But is was necessary for the Commissioners to insert in their report, an amount sufficient to meet the costs and expenses. This amount must necessarily have been prospective and could not have been ascertained on taxation. The costs, however, may and must yet be taxed,

Such has been the decision of Judge Bronson in the case (I believe) of 29th street, and such was the late decision of the Chancellor in the case of Wiggin vs. The Corporation.

5. The relators, waving their other objections, seek to set aside the report, on the ground of ignorance of the proceedings.

This is attempted to be proved by the testimony of one person, who swears to his ignorance, until *last summer.* And he has been assessed in the enormous amount of $52.

The rights of various persons have become interested in this question since the confirmation of the report. And the annulling of the proceedings is calculated to prejudice the public interests. It would lead to a draw upon the City Treasury.

Second.—As to the granting of certiorari.

1. The allowance of this writ to the justices of this court as Commissioners, is only a matter of course to enable the relators to carry the case to the Court of Errors. This court will affirm its own act as Commissioners. There is nothing, however, upon which to found o writ of error. The Court of Errors will only review such questions as were raised in the court below.

When no doubt exists as to the correctness of the decision, this court will not grant a certiorari without annexing as a condition that it *shall not operate as a stay of proceedings*, 13 Wend. 664.

2. The granting of a com. law certiorari is only done in the exercise of a sound discretion. People vs. The Supervisors of Allegany, 15 Wend. 206.

In this case, on the confirmation of the report, Sept. 4, 1839, the title to the land became vested in the public, 2 R. S. 413.

On the 1st April 1841, parties become entitled to awards. They have lost their land, and have made calculations on the money to be paid therefor.

The amount of assessments is $25,743, Benj. Townsend who makes the affidavit represents about the one five-hundreth part of this.

The proceedings of the Common Council which are the subject of complaint took place in September and October 1836, nearly five years since.

3. The resolution for taking and opening Mount Morris Square was a valid and effectual ordinance of the Corporation.

I. The stat. 2 R. S. 408, § 177, conferred the power in relation to streets &c. upon "the Mayor, Aldermen, and Commonalty of the City of New-York." That is their corporated name. Charter of 1730 § 1.

They constitute the municipal government of the City of New York and their functions are either legislative or executive.

Congress and the Legislature both lay out roads and highways, their acts are all legislative, although they may have an effect which resembles the exercise of a judicial power.

The Common Council of the City of New York is not "*the*" Corporation, nor is it any body separate and distinct from the Corporation. It is the Corporation assembled in its legislative capacity. The Corporation acts in Common Council, except when it performs an act merely executive.

The Corporation itself, aud by its corporate name, is vested with all the powers, franchises, property, and immunities conferred by its charter. Charter 1730, § 1, 37. &c. &c.

It was not correct, therefor, in the loose language sometimes used, to confer all the corporate franchises upon the Common Council. The Convention of 1820 subdivided the ordinary powers of the Corporation into legislative and executive, the former, by the 1st section of the act of 1830, p. 125, they conferred upon the Common Council the latter, by the 21st section, they ordered to be performed by distinct departments to be organised by the Common Council.

The learned counsel for the relators finds that provision is thus made for the legislative and executive power; but being anxious to discover something *not provided for*, calls the power which he is contending against judicial.

I pray your Honor not so to decree it, through apprehension of the quo warranto of the Attorney General.

But it is the act of 1813, and not that of 1830, which confers the power. And the counsel for the relator agrees that it must be exercised by the Common Council as then organized. I have as great an attachment to our old Recorder as he can have. But the 15th section of the act forbids his being a member of the Common Council any longer. The act of 1830 did not change the power which was to act, it only altered the form of its action. Both before and since the amended charter, it was the Mayor, Aldermen, &c. who acted in Common Council.

II. The first part of the 177th sec. 2 R. S. 408, and of the 178th sect. p. 409, especially vest the discretion in the Corporation, unmoved by any petition, to take proceedings for the opening of a street, &c. It was the intention of the act to make it their duty on the application of three-fourths of the owners. This has always been the construction of the act.

III. The requirement of the 7th section as to the ayes and noes is directory, and not peremptory. It is not of the essence of the thing required to be done so as to constitute the resolution a valid ordinance. These requirements are contained in the 12th and 13th sections, and were complied with.

The object of the 7th section was to make the members answerable to their constituents. It was not to make the taking of the ayes and noes an indispensable requisite to the validity of the proceeding. The words, "before it shall take effect," in the 12th section, are not to be found in the 7th section. There are no negative words, or words of exclusion.

It would operate to make an act, valid by the 12th and 13th sections, invalid by the non-compliance with a requirement as to an act *subsequently* to be done. No time of limitation is fixed, within which to determine the validity or invalidity of an ordinance.—5 Cowen, 269; 6 Wend. 486; 3 Mass. 230.

IV. The relator is grossly in error in stating the resolution not to have been signed by the Mayor, or authenticated by any officer of either Board. The affidavit of the Clerk shows the resolution to have been regularly passed, authenticated and approved.

4. The application for the appointment of Commissioners, as appears from the paper on file, is under the common seal of the Corporation, and regularly authenticated. The resolution, as set forth in the affidavit of the relator, directs the counsel to take the necessary measures to carry the resolution into effect.

The seal imports authority. The resolution expressly directed the application. The official act of the counsel in representing the Corporation on the application for the appointment of Commissioners cannot be controverted.

5. The constitutional question as to the taking of private property for improvements, as in this case, has been repeatedly settled by this court. That question does not arise here. This is an assessment for a benefit conferred. All experience shows that improvements of this nature greatly enhance the value of property in their neighborhood.

6. Whatever may have been the reason for the omission to include certain blocks in the assess-

CASES IN CHANCERY.

The following cases in the Equity Court show a great fluctuation in a very brief space of time:

The opinions given by His Honor Chancellor Walworth, subsequent to the decision in the case of the *infant children* of J. Meserole, deceased, will be found in the proper place, in this number, in chronological order, after the decision of that case by the Court for the Correction of Errors.

The court of the last resort, in that case, decided that the proceedings of the Corporation of Brooklyn in imposing that assessment "ARE ILLEGAL AND VOID."

IN CHANCERY.

Before the Chancellor.

Oakley *vs.* the Trustees of Williamsburgh and Moore.

The trustees of the village of Williamsburgh are not authorized by the village charter to alter the grade of a street, after the grade thereof has been regulated and established by them as directed in the act of incorporation. And where such trustees were proceeding to dig down and alter the grade of a street, which had been regularly graded and regulated; *held*, that the owner of adjoining lands, whose property would be seriously injured by an alteration of the grade, was entitled to an injunction to restrain such illegal proceedings of the trustees.

The Court of Chancery has jurisdiction to interfere by injunction to restrain the defendant from proceeding in an illegal act which will necessarily cast a cloud upon the complainant's title to real estate, and will naturally diminish its value.

This was an appeal from the Vice Chancellor of the first circuit, refusing to grant an injunction.—The bill of complaint in this case, which was filed by the complainants in behalf of themselves and all others having a common interest with them, after setting out that part of the act of incorporation of the village of Williamsburgh which made it the duty of the trustees to cause a survey and map of the village to be made, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting on such map all the gradations and regulations which might or should be required in the roads, alleys and streets, accompanied by such remarks and explanations as the nature of the subject might require, to be kept by the clerk, subject to the inspection of the freeholders and inhabitants of the village, so that no person could plead ignorance of the plan to be adopted for opening, laying out, levelling and regulating the streets of such village, (Laws of 1827, p. 276, § 19,) stated that, in pursuance of their act of incorporation, the trustees of the village caused such survey and map to be made, signed, and filed, as directed by the act, except that the gradations of the streets were not exhibited on the map; that such gradations were omitted on the map because the formation of the surface of the ground rendered it impossible to comply with that part of the provisions of the statute immediately; for which reason the grading of the streets was left to be established by actual survey from time to time, as it should become necessary to open such streets; that in 1828, the trustees caused a survey and profile to be made of the southerly section of First street, running from Grand street along the margin of the East river to the south bounds of the village; and caused such survey and profile to be filed with their clerk, and caused the street to be graded and levelled in conformity thereto; and setting out the certiorari, &c., in the supreme court upon which these proceedings of the trustees were confirmed; (See Coles v. the Trustees of Williamsburgh, 10 Wend. Rep. 659;) and that the trustees subsequently caused similar sections of Second and Fourth streets, and several other streets intersecting the same to be laid out, and surveys and maps and profiles thereof to be made and filed in the same manner, and caused the said streets, or certain sections thereof, to be levelled in conformity with such surveys; and that one of them, South Second street, had been paved and the assessment therefor had been made and collected or paid. The complainants then charged or alleged, in their bill, that one of them owned large and valuable tracts of land on the southerly section of First street, and on the other streets which had been so graded and levelled; and that others of the complainants respectively owned lands on such other streets; some of which lands had been purchased since the regulation and surveys of the said streets, and upon the faith thereof as the permanent plan for the grading and levelling of those streets; and that no change or alteration in the gradation of such streets could now be made without serious detriment to the rights and interests of the complainants in relation to their lands; but that the trustees of the village, upon the petition of the majority of the landowners on the south-easterly section of First street, in June, 1836, passed an ordinance or resolution to alter the grade of that street as thus permanently settled, and to re-regulate and pave the street; and that they had employed the defendant Moore to cut down and alter the grade of the street about six feet; which, if permitted, would require a corresponding alteration of the grading of the other streets, upon which some of the complainants property was situate, and which intersect the south section of First street; and that the re-grading of First street, if carried into effect in the manner contemplated in the ordinance, would materially impair and injure the value of the complainants property. They therefore asked for an injunction to restrain the defendants from proceeding to alter the grade of the street as theretofore established, and from digging down the street or removing the earth therefrom. An order to show cause why an injunction should not issue having been granted, the defendants introduced affidavits showing that the alteration of the grades of the streets was necessary for the benefit of the village, and more particularly for the convenient use of the waters of the East river for commercial purposes; whereupon the Vice Chancellor made an order denying the application for an injunction.

J. H. Lee and D. B. Ogden, for complainants.

Ebenezer Griffin, for the defendants.

The Chancellor.—If the trustees of the village of Williamsburgh have the power, under their act of incorporation, to alter the grade of the streets of the village after it has been once regulated and established by them as required by the 19th section of that act, the case before me is not one in which it would be proper for this court to interfere; as there is no pretence that the trustees are acting in bad faith, and without reference to what they honestly believe to be for the interest of the inhabitants of the village. On the other hand, however, if they have no such power as they have assumed to exercise by the ordinance in question, then this appears to be a very proper case for the allowance of an injunction, to restrain an illegal proceeding by them to dig down and alter the grading of the street as originally established, which, as alleged in the bill, will be a material injury to the value of the property of these complainants. The assessments upon their lots for the expenses of the proceedings to alter the gradations of the streets, although they might be so far void as not to affect their legal title to the land, would of themselves be a *cloud* upon that title which must necessarily diminish the value if it did not entirely prevent the sale of such lands as village building lots; *as a prudent man would not be likely to buy* a city or village lot for the purpose of building thereon, and pay the full value of the lot, while a cloud like this was hanging over the title, which might thereafter subject him to litigation if not to actual loss of the property. And as this court sometimes exercises its jurisdiction for the purpose of removing a *cloud* from the complainant's title to real estate, it may also, in a proper case, interpose its authority to prevent the illegal act from which such a *cloud* must necessarily arise. (*Petit* v. *Shepherd*, 5 *Paige's Rep.* 493.) The decision of the present case, therefore, depends upon the question whether the trustees of Williamsburgh have the right, as claimed by them, to alter the regulation and grading of their streets after it has been once adopted and established. For it is judicially settled by the decision of the Supreme Court, in reference to this particular street, that the grade thereof had been legally established by the trustees, before the institution of the proceedings now in question to re-regulate the street and to grade the same anew.

The object of the legislature, by the 19th section of the statute, appears to have been to have a permanent plan of the village made and adopted by the trustees, not only as to the location of the streets, roads and alleys, but also as to the regulation or gradations thereof; to which plan all subsequent proceedings should conform. Hence, it was made the duty of the trustees to cause a survey and map of the village to be made and filed, as soon as conveniently might be, exhibiting the streets, roads and alleys to be permanently laid out, and also exhibiting all the gradations and regulations which would be required in such roads, alleys and streets. And it appears to me that the making of this survey and map of the locations and gradations of the streets, roads, &c., of the village was not only a useless proceeding, but was also calculated to deceive those who might thereafter become the owners of village property, if it was not intended to confine the proceedings of the trustees to the opening and improving the streets, &c., according to the locations and gradations as thus established. And I think there could not have existed a reasonable doubt as to the intention of the legislature thus to restrict the power of the trustees if it had not been for the introduction of the word *altering* into the subsequent sections of the act.

The 21st section of the act provides that it shall be lawful for the trustees to order and direct the pitching, regulating and paving the streets according to the map and survey, and the *altering* amending and cleaning any street, vault, sink, &c.; and to cause estimates of the expense to be made, assessed and collected, &c. And the 24th section contains a similar power as to the widening and altering streets and highways already laid out, and as to the laying out and making other roads and streets, conformable to the map, as the trustees might think necessary and convenient; with a provision for compensating the owners of lands for the property thus taken for new streets, or the alteration of the old ones, and for raising the amount by assessments upon the owners of lands benefitted thereby. It is under the power of altering streets, as given in the 21st and 24th sections, that the counsel for the defendants claim the right to change the location or to alter the grade of streets which have been located or graded, in conformity to the general map and plan of improvements, subsequent to the act of incorporation. In this I think the trustees have entirely mistaken the meaning of the legislature in relation to the alterations which they were, by these sections, authorized to make. At the time when this act of incorporation was passed there were, roads or streets already existing within within the chartered limits of the village. And as a general plan of improvements was to be made and adopted by the trustees, both as to the location and the grade of every street, alley and road in the village, it was anticipated by the legislature that it might become necessary for the trustees to alter the grades and locations of the old roads and streets, so as to render them conformable to the general and permanent plan of the village, as well as to pitch, regulate, pave and open the new streets, according to the map and survey. Hence the necessity of providing for the alteration of streets in the 21st section, which relates to the pitching, regulating and paving, as well as in the subsequent section regulating the manner of altering and widening old streets and opening new ones. The word *altering*, therefore, in both of these sections, related to the old streets and roads which existed at the time of passing the act of incorporation, and not to the new streets which might thereafter be laid out, opened or graded in conformity to the map and survey, and to the grade as first adopted by the trustees. And these trustees have no power or authority to change or alter the grade or location of any such new

street after it has been once established by them, in conformity to the map and survey and gradation first established, or of any of the old streets after they have been made to conform to such general plan.—The defendants have no legal power therefore to alter the grade of this southerly section of First street, or of the adjacent streets which have been thus regulated and graded.

The inhabitants of this village, however, are not without remedy if the interest of the public requires a correction of any mistake which the trustees may have made either in laying out streets, or in fixing the gradations thereof. For it is perfectly competent for the legislative power which directed a general plan of the village to be adopted and adhered to by the trustees, to authorize them to make such alterations in the plan as may be found necessary either in regard to this particular street, or as to the streets of the village generally. And if the legislature shall think proper to authorize such alterations, it will be for the same power to prescribe the proper mode of ascertaining who are injured by such alterations, and of compensating them for such injury.

There is no ground for the objection in this case, that the complainants have waived their rights by delay, or by any acquiescence in the proceedings of the trustees. They protested against the alteration of the grade of the street the first opportunity they had for that purpose: and they followed it up with an application to this court for redress when they found that the defendants were determined to proceed notwithstanding such protest.

The order of the Vice Chancellor must therefore be reversed, with costs, and an injunction must be granted to restrain the defendants from proceeding with the proposed alteration of the former gradation of the street as originally established by the trustees. (See 6 Paige, 262)

DECISION IN THE MATTER OF WIDENING JOHN STREET.

IN CHANCERY.

BEFORE THE CHANCELLOR.

Timothy Wiggin

vs.

The Mayor, &c., of the city of New York.

This was an application for an injunction to restrain the collection of an assessment for the widening, straightening, and improving John street, in the city of New York, between Broadway and Pearl street. From the bill it appeared that the ordinance of the Common Council authorizing and directing this improvement, was passed in February, 1836; that shortly afterwards the Supreme Court appointed commissioners of estimate and assessment, who made their report in 1838, and the same was presented to that court for confirmation, but was afterwards sent back to the commissioners for revisal and correction; that the amended report was confirmed by the court in September, 1839, and that the order for the making of the improvement was carried into effect in May, 1840. The complainant charged in his bill upon information derived from E. Meriam, that the ayes and noes were not called upon the adoption of the resolution of the Common Council, authorizing the making of the improvement; nor were the votes of the Aldermen and Assistants, and the report of the committee on streets, upon which the ordinance was founded, published in any of the newspapers employed by the corporation. Various objections were stated in the bill as to the equity and justice of the assessment upon property which was supposed by the commissioners to be benefited by the improvement, which objections are noticed in the opinion of the court. The complainant also stated in his bill that the improvement was not within the part of the city as to which a permanent map and plan were required to be made by the commissioners under the act of April, 1807, and he therefore insisted that the Common Council, as organized under the act of 1830, amending the charter of the city, had no jurisdiction or authority to widen or alter John street.

W. Hunt and L. H. Sandford, for the complainant.

Peter A. Cowdrey, for the defendants.

THE CHANCELLOR.—The language of the bill in this case, leaves it doubtful whether the complainant, at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law.—The bill, instead of alleging in the usual manner, that the complainant was at a particular date, and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the first of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they did not sustain, does not appear to be one which in any manner concerns this complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the rise of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant, or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforeseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. the Mayor, &c., of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment, made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure this complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widensng of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Meserole vs. the Mayor, &c., of Brooklyn, (in Chan. April 7, 1840,) referred to on the argument, the commissioners had not erred in judgment as to what property was to be benefited by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend., 618.) There the court held that if the proceedings had been regular, and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed, would actually be benefited by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alledging that the fronts on William street would be benefited by the improvement.

The same answer is applicable to the objection that $100 was included in the assessments for surveying and grading the triangle opposite to Cliff street under the resolution of May, 1837.

As the bill alledges that the cost of the proceeding have not yet been taxed, it cannot now be known whether the amount of the assessment will be more or less than the amount allowed for damages, and the costs and expenses of making the improvement. The mode of conducting these

proceedings, as prescribed by law, is such, that the assessments must be made and confirmed before the whole expense and costs of the proceedings can be ascertained, the commissioners, after having ascertained the damages for property taken, must necessarily proceed upon mere estimates of some of the costs, &c., which will probably be incurred thereafter in completing the proceedings. A mistake of a few dollars, therefore, one way or the other in estimating the amount of the expenses cannot vitiate the whole assessment, and take from the Supreme Court the power to confirm a report founded upon a reasonable estimate of the prospective costs. The act of April, 1839, only requires the costs and charges of commissioners, and attorney and counsel, &c., to be taxed before they are paid, and not that they should be taxed before the assessment is made and confirmed, as that could not be done. It is no objection, therefore, to the collection of the assessment, that those costs had not been taxed when this bill was filed.

The objection that the corporation, as at present organized, has not the right to lay out new streets, or to alter old ones, in that part of the city which was not embraced in the permanent plan of improvements adopted by the commissioners appointod under the act of the 3d April, 1807, is one which, if well taken, would render the whole proceeding under the ordinance for the widening of John street, absolutely void. The power to open new streets, or to alter old ones, in this part of the city, is claimed by the corporation under the second clause of the 177th section of the act of the 9th of April, 1813, to reduce the several laws relating particularly to the city of New York into one act, (2 R. S. of 1813, p. 409.) By that clause the power was expressly given to the corporation, whever, or as often as it should, in the opinion of the Mayor, Aldermen, and Commonalty, *in Common Council convened*, be necessary or desirable for the public convenience or health to lay out, form and open new streets, &c., in that part of the city, or to extend, enlarge, straighten, alter. or otherwise improve, streets, &c., already laid out, or thereafter to be laid out.

It is not pretended that previous to the act of April, 1830, to amend the charter of the city of New York, the corporation, when convened in Common Council, under the charter and the laws then in force, would not have been authorized to pass an ordinance for the making of this improvement; but this act for the amendment of the city charter directs that neither the Mayor nor the Recorder shall be a member of the Common Council after the second Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the Common Council of the city; which boards are to meet in separate chambers, &c. And the complainant's counsel therefore insist that the Mayor, Aldermen, and Commonalty can no longer convene in Common Council, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in Common Council, according to the provisions of its charter, and not to the partioular officers who, at that time, represented the corporation in Common Council. And the act of 1830 having excluded the Mayor and Rocorder from the Common Council, and directed the Aldermen and Assistants to convene as a Common Council in two separate boards, the Mayor, Aldermen, and Commonalty of the city, that is the corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorizing the opening of a new street, or the alteration of a new one, under the 177th section of the act of 1813, was strictly a legislative power given to the corporation represented in its Common Council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen, and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to a preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law.—And if the whole proceedings in relation to the opening of tne street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot *would not even create a cloud upon his title.* For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a CLOUD upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should expresse my opinion at this time upon the question. Whether the 7th section of the act of April, 1830, requiring the ayes and noes to be taken, and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property, benefited by the proposed improvement, are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefited by the improve-rather than by a general tax upon the city at large. A court of equity, therefore, at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefited thereby, and upon those who have not.

It is true, the complainant alledges in his bill that his property is not benefited by the improvement. But that-allegation is not sworn to by any one, and it is, of course, contradicted by the report, under oath, of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

(Copy.) JOHN M. DAVISON, Register.

[From the Saratoga Sentinel–Extra of July 20, 1841.]

IN CHANCERY.

BEFORE THE CHANCELLOR.

Samuel Vandervoort
vs.
The Trustees of the village of Astoria.

J. B. SCOLES, for Complainant. G. WINTER, for Defendants.

In this case the Chancellor decid d that injunctions to stay public improvements should not be granted *ex-parte* by Injunction Masters, out of court, where there is no immediate danger of irreparable damages being done before the defendants can have an opportunity of being heard. That the Master, in all such cases, instead of granting the injunction in the first instance, should direct an order, to show cause before the court why an injunction should not be granted.

Injunction dissolved with costs to the defendants, without reference to the denial of any matters of the bill by the answer.

IN CHANCERY.

BEFORE THE ASSISTANT VICE CHANCELLOR.

Street Assessments.

Peter G. Stuyvesant and others,
vs.
The Mayor, Aldermen, and Commonalty of the city of New York.

Opinion of Murray Hoffman, Esq., Injunction Master.

The bill is brought before me as Injunction Master. I have been obliged by my sense of duty to grant an injunction in this and several cases on the eve of the sale advertised to take place on the 27th inst. I am sensible of the inconvenience to the city from an interference at this time, and do it with unfeigned reluctance.

But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterizes the proceedings complained of. I have a deep-rooted conviction that ultimately the decision must be against the corporation; and I believe that jurisdiction exists in this court to compel the corporation to try the question fairly in a single action at law between them and a complaining party. I think it is within the province of this court to prevent an innocent purchaser being deluded into litigation and probable loss, and to confine the controversy to the alleged wrong-doer and the injured party. This strikes me as the plain, just, and common-sense view of the matter. There are in this bill a number of complainants, the several owners of various parcels of property. They may all be bound by the result of one action. Thus, with perfect justice to the corporation, these questions may be tried in

the most simple and satisfactory manner, and a contest with a third party averted.

There has been no opinion as yet expressed by the Chancellor upon the point of jurisdiction, and I am at liberty to act upon the assumption and my own conviction that it exists.

I may, in a case of such moment, briefly advert to the reasons which led me on a former occasion to consider the neglect of the corporation to call the ayes and noes, and make the publication prescribed by the charter of 1830 a fatal omission.

[The assistant Vice Chancellor states some facts of his opinion in the case of Codwise vs. the Corporation, which it was intended shonld appear in this paper, but are crowded out for want of room.]

But in the present bill a new point is taken of much consequence. The proceedings for opening Art street commenced in April 1837. The report was completed, and the advertisement announcing that it would be presented to the Court for confirmation began on the 18th day of May, 1839. The report was filed on the 5th of June, 1839, and confirmed in the ensuing August. It is stated in the bill that, from the examination of the affidavits of publication, and the advertisement, it appears that the publication was made in but three papers, and does not appear that any notice was affixed in a public place contiguous to the premises. It is charged as a fact that the advertisement was only in three papers, and that no such notice was put up.

By the ninth section of the act of 20th April, 1839, it is provided that all motions (except as before provided) made under the act thereby amended, shall be, upon giving previous notice of the trial, place, and object thereof, published for at least fourteen days in four of the public newspapers, and by copies of such notice in handbills, to be posted up for the same space of time in three conspicuous places adjacent to the property to be affected. (See section 2 for this last clause.) It admits of no doubt that a motion for the confirmation of the report of commissioners falls within the ninth section.

The act repeals the amended act as far as it is inconsistent with the provisions of the new act; and it is directed to take effect on its passage, (the 20th of April, 1839,) but it expressly provided that no part of it except the *ninth* and *twelfth* sections shall affect any proceedings under the act thereby amended, which had been commenced previously to its going into effect.

It is an irresistible inference that the ninth and twelfth sections *do affect* prior proceedings, if those sections, when applied to such proceedings, are constitutional.

Of that I cannot entertain the slightest doubt. Both the Chancellor and Supreme Court have held that the Revised Statutes are applicable to all existing cases, so far as they affect merely the forms and modes of proceedings. (*The People* vs. *Livingston*, 6 Wendell, 526.) Every future proceeding in the assertion of a right or prosecution of a suit is to be governed by the new statutes. In this case, if the advertisement had been begun before the 20th of April, 1839, that would have been a proceeding already commenced, and would not have been affected by the ninth section. But as it was a proceeding commenced after that date, it necessarily falls within it.

In *Aymar* vs. *Gault* (2 Paige, 284) the doctrine was applied to the case of an absent party. The reference under the Revised Statutes was ordered, to take proof of the claim, although the suit was commenced before they went into operation.

In *Larkin* vs. *Mann* (2 Paige, 27) the rule was applied to the partition suits previously commenced. See also *Parsons* vs. *Browne* (7 Paige, 359).

This being the law, then it is clear that the present complainants are not bound by the proceedings at all; that they are now at liberty to take every objection of fact or law which they could have taken before the Supreme Court, as well as those which they could not then have taken.

I speak on the supposition that they did not actually attend and contest the confirmation. Without saying whether this would cure the defect or not, it is plain an argument may be raised upon it. But no principle of our law is more sacred than this, that no man shall be affected in person or property without the opportunity of being heard in the proper tribunal. From necessity, perhaps, personal notice has been dispensed with in many cases; these street proceedings among the number. The party who is assessed for benefit merely (no part of his property being taken), is never summoned before the Commissioners. He has no notice of the proceedings except by that publication for 14 days which the old act prescribed, or by the publication under the new act. His property and himself are bound upon the assumption that he has seen that notice. The law therefore must be observed to a scruple. No judge has a right to say that from great publicity, or from the actual taking of one paper containing the notice, or from any thing short of the absolute fulfilment of the requisitions of the statute, the party is to be bound.

What absurdity is it to imagine that the clear command of the Legislature that notice must be given in four papers, and by posting up copies in three adjacent places, is to be fulfilled by any other mode of notice!

I pass over another most important question in this bill viz: the carrying Art-street through a part of the city included in the map of 1807. It is needless to discuss it, in the view I have already taken.

I have, however, had my doubts since the decision of the Chancellor in Vandevoort vs. The Village of Astoria whether in these cases I ought, as injunction master, to do more than grant an order to show cause. Certainly the case here is very different; the Trustees of Astoria being in the act of making the improvement complained of. Here it is to prevent a recovery in this mode of the sum assessed for the improvement. I have concluded, however, that it is most proper for me to grant on order to show cause, with a temporary injunction.

I doubt whether I have a right to impose terms upon granting an injunction. Otherwise I should direct that the injunction be on the condition of the complainants filing a written consent with the bill, or endorsed upon it, submitting to abide the decision of an action to be had in a court of law by the Corporation against one of the parties, the form and other particulars attending the bringing such action, to be settled by this Court.

Martha Amory and others,
vs.
The Mayor, Aldermen, &c.

This case is, in its leading particulars, similar to that of Stuyvesant vs. The Corporation, before noticed. It is distinctly charged as to the proceedings in relation to the 6th avenue, that when the first publication of the notice of motion to confirm the report was made the act of 20th of April, 1839, was in force the rule of confirmation being made on the 6th of June, 1839. Here also the question under the 12th section is of great importance as the costs of the opening exceeds $10,000. Some questions may arise under this section; but this at least is clear: No part of the costs can be levied upon the party or his property, nor can a sale be made to pay them until the taxation has been made. How far if this were the only neglect, it would affect the whole assessment, I need not now enquire. I am clear that it justifies an interference with the present sale, which is to raise the whole amount, including the costs, provided this court has any jurisdiction at all; a point before examined.

John Haggerty and others,
vs.
The Mayor, Aldermen, &c.

The complainants in the bill, who are numerous, seek an injunction against selling their property assessed for the improvement of John street, and advertised for sale on the 27th inst.

I refer to my opinion in the case of Stuyvesant, vs. The Corporation, for the reasons upon which I have allowed a temporary injunction. It is however peculiarly incumbent upon me in this instance, to see that the case before me is substantially different from that of Wiggins, vs. The Corporation heretofore decided by the Chancellor, and in which an injunction was refused.

In the *first* place, the delay referred to by the Chancellor in the last clause of his opinion is fully accounted for in this bill; and as the Corporation never sued at law, and never advertised until the present notice of sale, there never was an opportunity for the complainants to resist the demand or to apply to this court. I have before held that until an advertisement was begun there was no jurisdiction.

Next, in the case of Wiggins no proceedings to sell the property had been taken.

Again, in that case the statements on the bill did not exclude the supposition that on the record of the proceedings it may have appeared that the ayes and noes were called. That difficulty is fully met in the present case.

Again, the bill was there defective upon the point of the complainant being the actual owner of the property assessed when he filed the bill.—The present bill is in this particular unobjectionable.

And lastly, a new and very important point is here introduced. The report was brought before the Supreme Court in ————, 1838. It was sent back for correction, and the motion for final confirmation made and the rule entered in September, 1839. At that time the 12th section of the act of 20th April, 1839, was in force. The costs were never taxed under that 12th section. The amount is added to the sum assessed, and each of the complainants' property is liable for and was to pay a proportion of such costs. The sale is to raise that proportion as well as the assessments for benefit. Now the section, as I have shown in my opinion in Stuyvesant vs. The Corporation affects proceedings subsequently taken. *It is wholly illegal* to charge the costs upon any party until they were taxed. Notice of the taxation is directed to be given in a public manner, and certainly without such notice and taxation the parties assessed cannot be bound to pay them.

It has been decided, from reasons of convenience and in the absence of any peremptory provision of the statute, that costs may be included in the assessment, and imposed prospectively by the Commissioners; and that an inconsiderable variation in the amount taxed from the amount imposed, will not affect the validity of the proceedings, nor prevent the confirmation of the report (Wiggin vs. The Mayor, &c, in Chancery, March 6, 1841.)

But if the section prescribing a taxation applies to this John street case at all, it is apparent that no party can be called upon to pay any portion of the costs until a due taxation has been had.—Without such taxation there can be no obligations to pay, and no lien on the party's property. What will be the consequence of this, and whether it may not be corrected by a taxation now and proportionate abatement, I need not inquire. The property is advertised to be sold for a debt, some of which at least is illegally imposed upon it.

By adverting to my opinion in the case of Westervelt & Codwise vs, the Corporation, it will be seen that it is settled law that the costs of the proceedings cannot be assessed upon the property without an express statute; that in a case in Albany, an assessment was set aside for want of such statutory provision; and that in the instance of opening streets in New York, the old act admitted the addition of the costs. Now I think the case will appear very clear if we suppose that it had been part of the old act that the cost must be taxed upon notice before they could be added to the assessment for benefit. Certainly they could not be recovered until taxed. I may add that, as the Supreme Court is empowered to make rules for carrying the act into effect, all inconveniences may readily be avoided.

M. HOFFMAN, Assistant Vice Chancellor.

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THE ASSESSMENT COSTS.

DECISION.

The motions made at the December Special Term of the Supreme Court, were by Mr. Emmet, one of the Ex-Counsel of the Corporation of the City of New-York, for the confirmation of the Reports of the Commissioners of Estimate and Assessment, for opening 37th street, 39th street, 128th street, 11th avenue, and Madison avenue.

Thirty-seventh and thirty-ninth street Assessments were commenced near eight years ago, viz: in June, 1836. The Common Council have never at any time, passed any resolution for to authorize an application to the Supreme Court for the appointment of Commissioners for opening these two streets. Yet notwithstanding this, an application was made to the Supreme Court, on a petition signed by the Mayor and Clerk of the Common Council, and Commissioners were appointed on the 24th June, 1836. The Report of the Street Committee of the Board of Assistants, stating the reasons why these streets were not to be opened by Commissioners, in detail, and the affidavit of the Chairman of the Committee, stating the reason why no resolution was introduced to authorize the application to the Supreme Court, are to be found in this volume, pages 141 and 142.

Andrew Warner, one of the Commissioners of Estimate and Assessment, in the 37th street proceeding, was examined as a witness in 1841, before the Select Committee of the Senate, appointed to investigate Assessment abuses in the City of New-York, and stated that he was sworn into office on the 24th of October, 1836, as one of the Commissioners for 37th street; that the Commissioners had completed their Report twelve or eighteen months previous to that time, and that it had not been presented to the Court for confirmation; has not heard Mr. Emmet state why he has not presented the report for confirmation. The witness also stated that the Commissioners were not all in the habit of attending the meetings, but were allowed compensation, the same as if they did attend.

The Report was finished, it appears, in 1840, and lay dormant after that time near four years before it was presented for confirmation.

Notice was given for taxing the fees of the Commissioners, Counsel and Surveyors, in these cases, before William Paxson Hallett, Esq., Clerk of the Supreme Court, who had himself acted as Commissioner in several streets, where the charges had been exorbitant. The Costs, &c., were taxed at more than TEN THOUSAND DOLLARS, to be assessed upon the land.

Objections were made to the taxation of the costs by Mr. Hallett, by the Counsel for the sufferers before the Court, on the ground that Mr. Emmet divided the fees with some of the Clerks of the Supreme Court, in Assessment matters, and read from Senate document No. 86, of 1843, a Report of a Clerk of the Supreme Court, to that effect.

In thirty-ninth street, Anson G. Phelps, Esq., was assessed on a piece of ground for the opening of this street; the same piece of ground had already been assessed for the pretended opening of fortieth street, $575, and also for the pretended opening of the 1st avenue, from 28th to 42d street, the further sum of $312, besides appropriating one third of the land for the avenue. This made $887, exclusive of the 39th street assessment; the interest of these two first assessments, exceed the value of the land assessed. Had the streets and avenues been opened by one sett of competent Commissioners, as was all that was authorized by the Common Council, the assessment on this piece of ground, would not have amounted to more than a few shillings, instead of exceeding more than FOUR TIMES THE VALUE OF THE LAND.

The Counsel for the sufferers, RICHARD MOTT, Esq., on the motion for confirmation, objected to the competency of the Court to act in these matters, under that provision of the Constitution which prohibits a Judge from holding any other office or trust, and insisted, that in appointing these Commissioners of Estimate and Assessments, and confirming their Reports, the Judges did not act as a Court, but acted as Commissioners. This the Courts have all held, as did also the Hon. Select Committee of the Senate, who examined into the assessment outrages. Chief Justice SPENCER and Chief Justice SAVAGE, have both held that the power exercised by the Court in Street matters, was in the capacity of a Commissioner and not as a Court.

Mr. Mott read from the Constitution of 1777, and also of 1823; section 25 of the former, and Sec. 7 of Article 5 of the latter, on the prohibiting Judges of the Supreme Court from holding any other office or trust.

He also read the respective letters of the Judges of the Circuit Court of the U. S., for the districts of North Carolina, Maryland, and Pennsylvania, addressed to the President of the United States, in 1792, in which they refused to serve under an Act of Congress imposing duties upon them in reference to invalid pensioners, on the ground of constitutional disability. He also read a letter from the Judges of the Circuit Court of the U. States, for the district of New York, in which they consented to act as COMMISSIONERS, but not as a Court. In these cases the Judges admitted that the duties required by the Act of Congress were of a meritorious character, and they therefore regretted their inability to act, considering the duty inconsistent with their oaths of office and the Constitution of the United States. These letters are to be found in the Municipal Gazette, No. 16, of Nov 17th, 1843, page 286, in connection with the other objections urged by the Counsel in these cases.

Mr. Mott also urged the provisions of the Constitution of 1777 and 1823, in connection with the Colonial law of 1691, which are set forth and discussed, on page 199, of the Municipal Gazette.

The provisions of the Constitution refered to, are Section 41, of the Constitution of 1777, and Sec. 7, of Article 4, of the Constitution of 1823; also, Section 2, of Article 7.

This great Constitutional Question, was most ably argued by Mr. Mott, and he has gained for himself a well earned fame, in the success which has attended his efforts.

Mr. Mott also placed before the Court, such public documents as conclusively show that these assessment proceedings are notoriously of a scandalous character, and did not commend themselves to the favorable consideration of the Court.

The Counsel moving for a confirmation, indulged in the use of very abusive language against citizens who had publicly opposed these assessment abuses, but was made to take his seat, and was deservedly rebuked by the Court.

This decision will relieve citizens from the payment of arbitrary and disgraceful assessments, for sham improvements, and will also release all lands sold for such assessments. Those who have paid assessments more than six years ago, are barred by the Statutes, as the Corporation will not hesitate to plead Statute limitation.

The streets on the agricultural part of the island, will not be harmed by this decision.

Those who have sold land bordering on a street or avenue, as laid out in 1807, have, by the Act, dedicated the land in the street or avenue, to public use, whether they owned on both or only on one side of the street, as the conveyance sweeps all the land they owned in the street or avenue opposite the ground conveyed.

Those who own both sides of the street or avenue, have nothing to do but to put up fences, and the street is made without the use of Surveyor, Counsel, or Commissioner, and in those cases where the above will not apply, the several owners may negotiate or the Corporation can do so, and if no ar-

rangement can be made, they can apply to the Legislature to authorize a proceeding by Jury, as provided for in the Colonial law, in No. 1, page 4.

Real Estate has risen in New-York in consequence of this decision, and is actually increased in value more than FORTY MILLIONS OF DOLLARS thereby.

In order that some correct idea may be formed of the character of the proceedings which the Supreme Court have, by this Decision, put a stop to, we will state a few as a specimen.

First, All the streets from 42d, up to and including 57th street, were proceeded in on the resolution of Alderman Ingraham, without the scrape of a pen on a petition from any land-owner.

Second, All the streets and avenues, up to and including 42d street, not opened prior to 1836, were proceeded in without any petition from any land-owner, and without any resolution of the Common Council directing any application to the Supreme Court for the appointment of Commissioners. This batch embraced twenty-seven streets and avenues. It was the plan of the Common Council to proceed in all these streets by one Commission, instead of which eighty-one Commissioners were improperly applied for and appointed.

Third, Manhattan Square was proceeded in on the resolution of Alderman Benson. No petition from any land-owner for this nonsensical operation.

Fourth, Mount Morris Square, (Snake Hill,) was proceeded in on the resolution of Alderman Ingraham. No petition from any land-owner for this moonshine protuberance.

We could extend this, but it is unnecessary.

Again:

Ninth avenue, from 45th street to the Bloomingdale road, was proceeded in on the petition of eighteen persons, neither of whom owned a foot of the land to be assessed or awarded for.

All these streets and avenues had been surveyed, laid out, and maps made of the whole ground by the Commissioners appointed by the State in 1807.

If the Corporation found it necessary to open one of these streets, &c., the Statutes authorized them to treat with the owners for the land, and which it was their bounden duty to have done, instead of commencing their shameful crusade against private property, in laying on the land HUNDREDS OF THOUSANDS OF DOLLARS OF FEES.

We give the following as a specimen of the whole:

COUNSEL FEES AND COURT CHARGES.

Seventh Avenue,	$3,976.77
Sixth do.	3,589.77
Tenth do.	2,100.00
Second do.	2,033.55
Manhattan Square,	1,449.13
Union Square,	1,889.00
Chapel Street,	3,443.00
Art Street,	1,896.75

SURVEYOR'S FEES, PAINTING MAPS, &c.

Seventh Avenue,	$2,801.00
Sixth do.	2,480.00
Tenth do.	2,440.00
Second do.	1,700.00
Manhattan Square,	3,070.39
Union Square	596.00
Chapel Street,	749.90
Art Street,	975.00

COMMISSIONERS FEES.

Tenth Avenue,	$2,640.00
Seventh do.	4,920.00
Sixth do.	2,928.00
Second do.	2,380.00
Manhattan Square,	1,572.00
Union Square,	1,769.00
Chapel Street,	2,429.00
Art Street,	1,476.00

CLERK HIRE.

Tenth Avenue,	$600.00
Seventh do.	200.00

ROOM HIRE.

Seventh Avenue,	$410.00

These Costs and Expenses were never taxed, nor were any bills of items ever furnished the Corporation, and yet these large amounts were paid out of the Public Treasury, by officers whose duty it was to withhold the money. Such officers deserve the severest censure.

ASSESSMENT CONFISCATION.

Having given a small sample of the Expenses of Street opening *gentry*, we will now state a few cases of Assessments.

The Estate of John Duffie was assessed for opening 38th street, from the 2d to the 3d avenue, $1,289.80; for opening 38th street again, from river to river, $10; and for opening 2d avenue, $117.50. These three assessments, with the interest up to the present time and expenses, exceed $2000. This assessment is on a piece of land ninety-eight feet square, and was valued by Thos. R. Ludlum, City Surveyor, at $450 altogether; see his testimony, Senate Document No. 100, page 151. The assessment and interest already exceed four times the value of the land.

Estate of John Schuyler. This assessment is on a piece of ground on the corner of 28th street and 7th avenue, 58 feet ten inches by 98 feet 10 inches. The assessment for opening 28th street, is $1,037.05 for opening 7th avenue, is $209.98. The assessments exceed twice the value of the land.

Estate of James Amory. This estate is assessed, including interest, more than $10,000, for the pretended opening of 6th and 7th avenues and Manhattan square. The estate furnished the land for the avenues, and should not be assessed at all. None of the improvements are made.

We could go on and enumerate others, among which is the estate of Mathew Dyckman, the estate of Wm. Edgar, and the estate of Mr. Pierson.

Parents who toil hard to accumulate estates for their children, and leave the world with the satisfaction that they have provided abundantly for those they leave behind, to have their children plundered of those estates, in this way, is an outrage upon all law and order, and a violation of every principle of justice.

PAINTED STREETS.

The Select Committee appointed by the Senate of this State, to investigate Assessment Outrages in the City of New-York, say, in their Report, Document No. 100, of 1842, page 16, that:

"On that branch of the complaint as to the imposition of heavy and oppressive assessments for improvements never actually made, the Committee ascertained that a very large portion of the streets and avenues formally opened from 1836 to 1839, were not actually opened; that nothing has been done beyond making awards and assessments by the Commissioners, and the confirmation of their Reports by the Supreme Court; and that although the assessments have been collected for such improvements in many instances, and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the same condition as they were before the taking of any proceedings for their opening; and in some cases such lands remain in the occupancy of their original owners, notwithstanding they have been paid for the same. And in numerous other instances, where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

"Out of a list of eighty-one streets and avenues, or parts of such highways, the Reports for the opening of which had been confirmed in 1837, 1838 and 1839, fifty-seven have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others, a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation. This attempt to collect

assessments not only by voluntary payment, but by enforced sales of the lands charged, without actually opening the streets and avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters. The Committee, therefore, submit this subject to the consideration of the Legislature.

"Several instances were shown to the Committee, where property had been offered for sale for the payment of assessments at two or three successive sales, without being able to get a bid, the amount of the assessments being more than the estimated value of the property. These large assessments operate against the interests of the city, for the owner will not pay the assessment or improve the property, and no person will buy it, and the Corporation cannot realize their money by a sale of the assessed premises, and the amount must be taxed upon the city; and thus the improvement of the upper part of the city, which is covered with these great assessments, must be stayed for many years, and now apparently for an indefinite period of time, unless the land should in some manner be relieved from the charge of those assessments. It did appear reasonable to the Committee that in analogy with a judgment, the lien of which ceases on real estate after the termination of ten years, the lien of those assessments should be at an end after the lapse of some definite period; what that should be, the Committee submit to the discretion of the Legislature."

COLD.

The present winter has, in many places, been very cold. My thermometer, which has a full Northern exposure, with the bulb protected from the wind, has at no time been lower than six degrees above zero.

Captain Parry, in his Arctic Expeditions, found no cold more intense than 55 degrees *below* zero. At this temperature, mercury is malleable. There are but few fluids known to us but what would become solids at a temperature of 300 degrees below zero.

I remember the celebrated cold Friday, it was a cold day indeed, and was followed by an intensely cold night. I was, during that day and night, in an encampment in a dense Northern forest. During the night, the trees kept up a continued cracking and splitting from the effects of the severity of the frost, and to such an extent that at times the noise was like the discharge of a volley of musketry. The ice over a large body of water, some miles distant, during the night cracked from one extremity to the other, with a tremendous explosion, and with a force that shook the ground on which our camp was located.

While the thermometer was at the lowest, the present winter, viz: six degrees *above* zero, I tested the water of one of the public pumps; the thermometer denoted 47 degrees, and the water of my cistern, at the same time, 36 degrees of temperature. The atmosphere of my kitchen was, near the upper ceiling, 48 degrees, and on the floor at the same time, 42 degrees.

The thermometer was invented by Sanctorios, in 1590, and was reduced to a scale by the genius of Farenheit, in 1724. We have in use four descriptions of thermometers, viz: Farenheit's, Centigrade's, Reamur's, and DeLisle's.

The boiling point of Farenheit's, is 212 degrees, Centigrade's 100 degrees, Reamur's 80 degrees and DeLisle's 0.

The freezing point of Farenheit's, is 32 degrees; Centigrade's, 0 degrees; Reamur's, 0 degrees; DeLisle, 150 degrees.

Cold is not always destructive to animal life, however intense it may be. Fish of some descriptions, when taken from the water in the severest weather in winter, and thrown upon the ice, become frozen stiff, but when put back into cold water, where the frost is extracted, they again become as active as before.

Some descriptions of vegetation is wholly destroyed by frost, while other kinds are not in the least affected by the most intense cold.

The most ponderous walls are thrown down by the frost. The smallest joint that will admit water, if seized upon by frost, will yield to the force of the expansion which the freezing of the water produces.

The marble steps of the City Hall, of New-York, are very heavy, and each flight consists of four pieces. There are, therefore, three joints. The middle joint is close, but the joint toward each end, is open about an inch, showing that the water which had penetrated the joints, had been expanded by the frost. The middle joint is made close by the same force that enlarged the others. Here are tons weight of stone moved by the freezing of less than a pint of water.

Cold air passes in veins through the atmosphere. Cold exists throughout the year a few thousand feet above our heads, and of great intensity.

The stratification of the atmosphere by cold, is very clearly illustrated by hail storms in hot weather. The hail passes in veins.

The nearer we approach the Sun in ascending into the atmosphere, the more intense we find the cold, and for aught we know, the planet Mercury, which is near the Sun, may be far colder than Georgium Sidus, which is far distant from it.

Heat and cold, under certain circumstances, and to a limited extent, we can measure, but beyond that, all is blank. The Pyromater, an instrument for measuring intense heat, is a recent invention, and a very important one, and time may unfold others, equally as important.

Cold does not penetrate the Earth to any very great extent where it is covered with snow, and much less than where it is exposed to the air.

When the cold approaches a city in which a pestilential fever rages, the infected atmosphere is at once disinfected; it is in this a physician to the sick.

The weary traveller, in the regions of country bordering on the Equator, when suffering from the heat of a vertical Sun, labors hard with a feather fan or some contrivance like it, to move a little cool air to revive his wilting frame.

Cold, where we have a surplus of it, like every thing else, we cease to value. It is a rich treasure, it is one of Nature's bounties; the sweet cold locks up in the great terrestrial store-house of Nature, the germs of vegetable and animal life.

To cold we are indebted for our chrystal bridges, vast in their extent and unequalled in their construction.

BOARD OF ASSISTANTS.

We should like to see the Board of Assistants made up of such citizens as James Kent, Jonathan Thompson, Stephen Allen, Preserved Fish, Wm. B. Crosby, John M. Bradhurst, George Newbould, Abraham Van Nest, Wm. F. Mott, Jonathan Goodhue, John Haggerty, Edward H. Pendleton, Saul Alley, John I. Palmer, Benjamin L. Swan, W. W. Fox, and Peter Schermerhorn; men full of years and full of experience, and of great purity of character. A Board composed of such men, would be a blessing to the City, and we ask where is the citizen who would not feel proud to take his stranger friend to see such a Board sitting in deliberate Council. A Board composed of these individuals, would possess more dignity, and command as much respect as any other deliberate assembly on the globe. It would be a Council of freemen, dignified by Nature, adorned by human cultivation, aud a better safe-guard to liberty and property, than the greatest standing army that was ever assembled together. It is to such men that our country has to look for safety.

The Board of Assistants, composed of such citizens, would in reality be what it purports to be, a BOARD OF ASSISTANTS.

The meetings of such a Board, in the day time, would render useless the thousand dollar chandeliers, and the crimson drapery and tinselled trappings of the Session room, for it would have the adorning of plain, sensible men, which is ornament enough.

No gold pencils need be displayed to take the eye of such men; and if a gift, they would scrutinize the motives of the doner, and the acts of the donee.

The banqueting room would find no advocates in such a Board.

Such a class of men would raise the character of what is called the "Little Board," to an elevation that would make it exceed the Roman Senate in name and fame.

THE SUPREME COURT ACTING AS STREET COMMISSIONERS.

There would be full as much propriety in making the Justices of the Supreme Court,

Canal Commissioners, as Street Commissioners.

We were much surprised in noticing in the postscript of Mr. Justice Bronson's letter to Mr. Mott, which we published on the 21st instant, that the Chief Justice dissented. Chief Justice Nelson was a member of the Convention that made the provision in the Constitution, that the Justices of the Supreme Court should hold no other office. If the Chief Justice goes on the doctrine of expediency; if he will come to New-York and consult such men as Jonathan Thompson, Robert C. Cornell, Walter Bowne, Stephen Allen, John M. Bradhurst, and others of the same standing, he will find that these assessment proceedings are very different from what they are represented to be by Ex-Commissioners of Assessment. Persons who have been the recipients of princely fees in these odious proceedings, have, it is generally believed by citizens of New-York, misrepresented these street assessments to the Chief Justice. The Chief Justice is a man of great purity of character and a most worthy citizen.

The first Street Commissioners appointed in this State, were by an Act of the Legislature, passed April 6th, 1792, for extending ROOSEVELT and FRANKFORT streets. These Commissioners were five in number, and were appointed by the Legislature. There was a peculiar feature in this Act, viz: that the Common Council should first have and obtain the consent of the owners through whose land the street should pass. The assessment to be made by the Commissioners, *after this preliminary*, was to be returned to the Common Council, under their hands and seals, and upon this, was to become a lien upon the land and a debt due the Corporation, for which they were authorized to sue for in any Court of record in this State.

This act is a very different kind of proceeding from the Act of April 9th, 1813. This was the first step taken in the appointment of Commissioners. The necessity of a jury was dispensed with in these two cases, because that the consent of the owners must be obtained before the land could be used, therefore there was no necessity for a jury. The consent of the owners was substituted.

The restraining clause of the Constitution of 1777, was well understood in those times. No attempt was made to turn the Supreme Court out of doors and make the Justices highway-masters.

The Act to which we refer, is to be found in No. 1, of the Municipal Gazette, page 5.

In the case of Elizabeth Pearson, in the Court of Chancery, in which his Honor the Chancellor gave the opinion which is to be found on page 195, there are some facts which ought to accompany that opinion.

About the year 1830 or 1831, the husband of Mrs. Pearson departed this life, leaving a wife and three children. He owned the premises situate on the north-east corner of Pearl and Centre streets, which rented for upwards of one thousand dollars per year. On this property was a mortgage in favor of some wards of the Court of Chancery, the interest of which was paid out of the rent of the premises, and also a mortgage to Mr. Stevenson. The Corporation assessed this property a large sum for extending Centre street, and for filling in and paving Centre street, and for sewers, &c. The assessments for the filling in were never signed by the Assessors as required by law, and the whole proceedings were notoriously shameful.—This property thus assessed was sold for the term of 27 years, by which means Mrs. Pearson and her children are rendered destitute and helpless. It was their whole, their only dependence, when Mr. Pearson left the world he supposed it was an abundant provision for the support of his family and the education of his children. It was so if the Corporation had not disinherited this little helpless family. But this is not all the Corporation have done to distress this oppressed family, as will be seen in the sequel.

Mrs. Pearson applied to the Assistant Vice Chancellor, Hon. Murray Hoffman, for an injunction to restrain the Corporation from executing a lease for the assessment, which he granted, requiring Mrs. Pearson to give security for the costs. A hard working mechanic of very limited means was her security. The Corporation demurred to the jurisdiction of the Court, which the Chancellor sustained, and dismissed the bill with costs.

The Corporation prosecuted the surety of Mrs. Pearson for the costs, and levied an execution upon the property of this hard-working mechanic, and he was obliged to raise out of his hard earnings about seventy dollars.

The widow and the fatherless are helpless. We forbear to comment.

The Chancellor in this opinion uses an expression which certainly must have been almost a slip of the pen in the hurry of business. In speaking of the decision of the Court for the correction of errors in the case of Messerole's children, he says "the Court *repudiated* the idea that the Court of Chancery has any power or right to interfere in such cases."

The decision to which the learned Chancellor refers was by a tolerably close vote.—If we mistake not, it was 13 to 9, and had the case been argued by the Counsel who filed the bill, it would have been the other way we are almost sure. General Bogardus filed this bill and carried it in the Court of Vice Chancellor McCoun, and in the Chancellors Court, but when it reached the Court of Errors he was near the confines of the grave, and unable to argue it. It was, however, argued by an able lawyer who knew nothing of the case until the evening before the argument.

We published the whole history of this case from papers which we obtained from Gen. Bogardus the Solicitor for the children of Mr. Messerole. The printed sheets were destroyed by fire. We will endeavor to obtain from the Executors of Gen. Bogardus the papers again, and will re-publish them. The Chancellors opinion, in that case, is well worth reading and does credit to his head as well as his heart.

Now the reason which the Chancellor assigned for taking jurisdiction and then changing his mind is certainly one which ought to have influenced him in giving costs. If he had erred, and Mrs. Pearson had been misled by this error, he should not have made her pay costs, unless the law was peremptory to compel him to do so, and if such is the law, that learned jurist ought not to have allowed a session of the legislature to pass without calling their attention to a remedy.

There is another matter in the opinion of the Chancellor in another case on the same page, which is that of restraining the Corporation being an "UNNECESSARY INCONVENIENCE TOTHE CORPORATION."

"Let justice be done" without looking to consequences.

The Chief Justice who gave a written opinion in this case in the Court for the correction of errors uses this strong language in reference to the jurisdiction of the Chancellor in these Street cases:

"I know the learned Chancellor has neither the desire or inclination to entertain it unless in obedience to a sense of duty, and the ancient jurisdiction of the Court following where the footprints of his learned and distinguised predecessors lead; and must believe that he has been *subdued and carried beyond the outer boundary of his court, by the hardship and injustice of this particular case.*"

"These *hard cases* make bad precedents in the Courts both of law and equity, and are usually found at the bottom of them."

ROBERT H. MORRIS.

Mayor Morris deserves the thanks of this community for the interest he has taken in the Tax question, and for numerous and well timed vetos.

Our citizens who pay large taxes speak in the highest terms of Mayor Morris. He is a public officer of great firmness of purpose, intelligent and honest. If he is a candidate for re-election he will no doubt be re-elected.

Alderman Breevoort, Alderman Brady, and Alderman Tillou, deserves the thanks of the tax payers for their attention to their interests.

NEW PARTIES.

Whichever party puts up the best men will succeed at the charter election.

BAR ROOM OF CITY HALL.

This appendage to the banqueting room of the Hall has been refitted with new carpets, &c. &c.

We have not heard whether they have procured gold waiters for their wine goblets.—Such a use of the public funds would be more appropriate than one half their appropriations.

DESTRUCTIVE ASSESSMENTS.

BEDFORD ROAD

AND

MR. MESSEROLE'S CHILDREN.

We give below the Speech of the venerable General Johnson, Mayor of Brooklyn, to the Common Council of that city.

The newspaper containing this Speech, was first shown us by the Hon. W. T. McCoun, Vice Chancellor, after the case of Messerole's children had been argued before him, and he remarked that he intended sending the paper to the Chancellor.

This Speech deserves to be treasured up, and we have printed an extra number of copies for extensive circulation throughout the United States, and also in England.

We deem it due to this important question to place the farewell address of the venerable Mayor of Brooklyn, who is a most excellent citizen, a man beloved and respected by all who know him, in connection with the Opinion of the worthy Chancellor of this State, in the matter of the ruinous assessment upon the estate of the infant children of Mr. Messerole, who were assessed so heavily for the Bedford Road, as to annihilate their title; and next to these, the Opinion of the Supreme Court, in which they state that the Constitution of the State has provided against the exercise of such summary street powers by that tribunal, which is the power which confirmed the Bedford Road Assessment alluded to by the Mayor and passed upon by the Chancellor.

We wish to call the attention of the reader to the first paragraph of the Opinion of the learned Chancellor, in which he says: "*that an assessment has been made upon the lands of the complainants, which must produce a total sacrifice of the property assessed, unless they can obtain relief in this Court, or by* LEGISLATIVE INTERFERENCE,"—in connection with the *quere* put by his Honor the Mayor of Brooklyn, in his Speech, when he asks: "*will the land assessed along Hamilton avenue and Bedford road, pay half the assessments? If not, are not the owners plundered, and the City also?*

Here is evidence indisputable and unquestionable as to an absolute confiscation of this estate, and we ask by whom? We answer, by a power unknown to the Constitution of the Commonwealth.

It was well said by the learned Chancellor that: "*unless they can obtain relief in this Court, or by Legislative interference,*" that the assessment must produce a total sacrifice, &c.

The Chancellor clearly saw that the Justices of the Supreme Court did not act in a judicial capacity, but merely as Road Commissioners, and therefore that they could not revive their own acts.

Among the powers possessed by the most absolute governments in Europe, there are none that can be compared in despotic character with the summary street powers which have been exercised over private property, in the State of New-York, for years past; and yet we boast of a CONSTITUTION, the purchase of BLOOD and TREASURE!

From the Long Island Star of May 7, 1838.

BROOKLYN COMMON COUNCIL.

MONDAY, April 30, 1838.

The MAYOR addressed the Board as follows, and retired, and the President, Alderman S. SMITH, took the Chair.

Gentlemen of the Common Council:

Be pleased to permit me to present a few remarks to this Board, before I leave the Chair.

When we entered upon our duties, the storm of adversity was passing over our country, sweeping away the golden visions of speculative prosperity, and leaving the blasted harvest of adversity on many fair plotted fields. Many tall trees, with gilded leaves and *paper* roots, were laid low. Our fair city has suffered by the storm, her sails were spread to every wanton lover, whom the lust of speculation brought among us. Our former cultivated farms are dotted with buildings, subject in many cases to reversions. This is a faint outline of the prospects caused by the re-action, which, in like cases, will always follow excessive speculation. Many great men, and many wise men, who had enough but wanted *more*, have been ensnared, and have fallen upon the alter of adversity.

When this city was incorporated, our deferred Market Debt was $20,000; two hundred thousand dollars were raised by loan for the erection of a City Hall; the Common Council *knew*, and our citizens *know*, that this sum was sufficient to build a Hall, equal in every respect to the Hall in the city of Albany, and to purchase a site for the building. The loan was made with this object in view. Why was it not done? Why were not the interested *schemes* of speculators, rejected by an unanimous vote, instead of one solitary NO?

The past cannot be re-called. The deed is done; but that *incubus* of folly will be felt after its votaries are no more.

No member of the Common Council, of any city of this State, can lawfully make a beneficial contract with the Board whereof he is a member; nor can *any* member of such Board enter into a contract whereby he is directly or indirectly benefitted.

In Brooklyn, the Common Council direct and the Mayor executes.

Again, Gentlemen: what authority had our Board of Aldermen, who are Trustees of the People, to lend their aid to interested men, to oppress and ruin the widow and the orphan, by opening, paving, or grading unnecessary streets? Improvements are betterments, not divestments. Were not Hamilton avenue, Myrtle avenue, and Bedford road, opened to gratify speculators *very near* the Board? Were not the assessments for opening, laid heavily on distant sections, to pay favorites *near* the Board? Will the land assessed along Hamilton avenue and Bedford road, pay half of the assessments? If not, are not the owners plundered, and the city also?

Motives produce acts which are often done before the design is seen.

The foregoing remarks are not made for individual purposes, but for the purpose of warning those who succeed us, to guard our city from the like errors.

I have now given a faint outline of our city as she was when the Board entered upon its duties, oppressed upon every side, but not disheartened. Our ship was shattered in her rigging, but her hull is sound. Our beautiful and healty city remains. We need no distant waters, we have the best in abundance below. We will be burthened a few years with taxes, still we can pay more and prosper.

We have united to stay unnecessary expenditures, and correct evils. We have preserved civil order, and promoted education. Our efficient Police has protected us from midnight fiends, and Providence from the fiery elements. Our Fire Department is improving.

On taking leave of this Board, be pleased, Gentlemen, to accept of my individual respects for your kindness and assistance during the past year; to the Clerk, Attorney, and Street Commissioner, together with all our *faithful* officers, my respects are also presented. Though we may seperate here! I hope *we* will meet hereafter, in that happy haven of rest, where no political distinctions will be known.

Alderman Underhill then offered the following Preamble and Resolution, which was read and adopted:

Whereas, the term of service in which his Honor JEREMIAH JOHNSON, has been elected to fill the arduous situation of Mayor of this city, is nearly terminated, and whereas, the connection necessarily arising between the individual filling that office and the members of this Board, give the latter ample opportunity of judging of the capability and zeal with which the duties of the Mayoralty has been performed; and whereas, this Board are deeply impressed with the conviction, that his Honor JEREMIAH JOHNSON, has on all occasions, exhibited an energy and industry in his station, no less honorable to himself than beneficial to the public; that the interest of this city, of which he has so long been a resident, have again, as they often have before, been highly promoted by his public spirit and anxious desire to promote the public weal, therefore

Resolved, That this Board do hereby tender to his Honor the MAYOR, their warmest thanks for the indefatigable zeal and untiring industry with which he has filled the duties of his office, and hereby express to him the conviction they strongly feel, that he has added another wreath to the crown he has so long deserved to wear, that of a PUBLIC BENEFACTOR.

THE CHANCELLOR.

"It is pretty evident in this case, that an assessment has been made on the lands of the complainants, which must probably produce a total sacrific of the property assessed, unless they can obtain relief, either in this Court or by Legislative interference. Judging from the facts before me, I cannot see how it was possible for the Commissioners of Estimate and Assessment, to have come to the conclusion that the lands assessed could be benefitted to the amount of about $14,000, by the contemplated improvement; even upon the principles on which they proceeded relative to the Bedford road as a public highway, already laid out and established. As I understand the case, the assessment limits only included of the complainant's lands 107 feet on each side of the Bedford road, as originally laid out by the turnpike Commissioners, and extending in length on that road about 968 feet. This would give to the complainants 76 lots of 25 feet front, and 107 feet deep, upon a street of 66 feet in width. And if the contemplated improvement was made, they would have the same number of lots of 100 feet in depth, upon an 80 feet street. These lots, at the valuation fixed upon them by the second answer of the defendants, at the time of the assessment when lands were the highest, were worth $250; making the sum of $19,000 for the lands assessed. And yet it is supposed these lots will be benefitted by the widening and extending of this street, $139.31; or about three fourth of their then estimated value, and nearly their full value one year thereafter, when the second answer was put in. It is possible, that some further benefits might accrue to these lots, by the extension of Bedford road beyond where it was already opened four rods wide, in addition to the benefit of having it fourteen feet broader in front of the lots assessed. But there is much reason to believe that the guardian ad litem who was appointed to take care of the rights of these infants, and who was himself one of the applicants for the proposed improvement, has, under the influence of mental hallucination, or otherwise, suffered their property to be assessed to about its full value, and probably much more than it is now worth; as a supposed benefit which that property was to receive from the contemplated improvement. If the whole proceedings, however, have been regular, and the Commissioners of Estimate and Assessment have merely erred in judgment, I think this Court has no jurisdiction to correct their error, or to give relief to the complainants. For there is no allegation of fraud or collusion on their part, nor on the part of the guardian ad litem, who was appointed in the mode prescribed by law to protect the rights of the complainants on that assessment, and to appeal from the decision of the Commissioners, if he believed they had done injustice to these infants.

The first objection to the regularity of the assessment is, that the Commissioners of Estimate and Assessment, have assumed that the turnpike road was not only regularly laid out, but that it was already the property of the public, so that the complainants were entitled to no compensation therefor. In this I think the Commissioners were clearly under a mistake. For the purpose of this decision, I shall take it for granted that the turnpike was properly laid out, and that the damages of the complainants for that part of their farm which was taken for the use of the Corporation were legally and constitutionally assessed, pursuant to the provisions of the general turnpike act of 1807. Still that act did not vest the title of the land in the turnpike company, even for the purposes of the road during the existence of the charter, until the actual payment of the damages which had been so assessed. The language of the Statute is, that the turnpike corporation, upon paying to the owners of the land the sum assessed and awarded by the appraisers in their inquisition, shall and may have and hold the lands to them and their successors and assigns, &c. (1 *R. L. of* 1813, §3, *p.* 231.) It is true, the statute does, by an implication, authorize the turnpike company to enter upon the land for the purpose of making their road thereon, if there is no person living on the land who is authorized to receive the damages, unless such damages shall be lawfully demanded. The title to the land, however, is still in the original owner; and the moment he demands the payment of the damages from the proper officers of the company, and the same are not paid, he may bring an action to recover the possession of the land. It is perfectly clear, therefore, that the complainants before they could be divested of their title to so much of their farm as was included in the old Bedford road, were entitled to the payment of at least the amount which was awarded to them by the appraisers, in 1828. And the opinion of Chief Justice Nelson, appears to be that they were entitled also to the benefit of the contingent right to the revision in the land, in case of the dissolution of the Corporation, or of the abandonment of the road. (*See Hooker* v. *The Utica and Minden Turnpike Company*, 12 *Wendell's Rep.* 371.) Whether the turnpike company was in existence at the time the Commissioners of Estimate and Assessment made their Report in the present case, does not distinctly appear from the pleadings; but the legal presumption is that it was, as I have not found any statute dissolving that Corporation, or authorizing it to abandon the road. It is clear, however, that if that Corporation should be legally dissolved without having paid the amount awarded to the complainants for damages, the legal title to that part of the Bedford road which is in question here, would belong absolutely to the complainants; and that such title could not be divested, for the purposes of this public street, without paying them the full value of the land, either in money or in the benefits which would thereby accrue to them by the increased value of their adjoining lands. It does not distinctly appear in this case whether the petition to the Common Council for the improvement, and the resolution of the City Corporation adopting the same, actually contemplated the taking of the lands included within the limits of the turnpike, as well as the two narrow strips on each side of the same, for the use of the Corporation as a public street. If the former was the case, then the confirmation of the report was irregular, and may still be opened; as the Commissioners have not in form appraised the damages to which the complainants, as the owners of the original site of the Bedford road through their farm, are entitled. And as I understand the recent decision of the Supreme Court *In the matter of Anthony street*, (20 *Wend. Rep.* 618,) there cannot be an absolute confirmation of the Report of Commissioners of Estimate and Assessment, so as to give any vested rights under the same, until the damages for all of the lands taken for the proposed improvement have been ascertained and settled, and are properly assessed upon the owners of those lands which will be benefitted by the improvement. If this is the correct construction of the Statute, and the resolution of the Mayor and Common Council actually contemplates the taking of the whole of the old Bedford road for the purposes of this improvement, they ought not to be permitted to proceed and enforce this assessment against the complainants personally, by virtue of the distress warrant, or by a sale of their lands which have been assessed, until the proper steps have been taken to divest their title to the whole of the lands which are to be taken for the improvement, by an assessment of the damages and an offset of the same against the supposed benefit of their adjacent lands.

I think, however, there is a more conclusive objection to the proceedings of the defendants, in this case; and that is, that the Mayor and Common Council had no legal authority to lay out and open this new street through the lands of the complainants, in one of the new wards of the city, subsequent to August, 1835; until the same had been authorized by the Commissioners appointed under the Act of the 23d of April, in that year, authorizing the appointment of Commissioners to lay out streets, avenues, and squares, in the City of Brooklyn. That Act, which took effect on the first of September after its passage, gives to the Commissioners, to be appointed by the Governor on the application of the Mayor and Common Council, the exclusive power to lay out streets, avenues and public squares, within that part of the city comprising the sixth, seventh, eighth and ninth wards, and to direct the closing of any streets, roads, highways, lanes, avenues or alleys which had not been theretofore approved of by the Mayor and Common Council. (*Laws of* 1835, *p.* 136, § 4.) The previous act of the same day amending the charter of the city of Brooklyn, which went into effect immediately, must be so construed as not to conflict with the provisions of the Act appointing these Commissioners to make a permanent

plan of this part of the city. It must therefore be construed to apply to that part of the city lying within the first five wards, and which was originally comprised within the bounds of the village Corporation; or at least, to such streets as they should think proper to lay out according to a settled plan, in the four other wards, previons to the time when the act for the appointment of Commissioners should take effect. Certainly it could not have been the intention of the Legislature that two classes of officers should have the power to lay out streets and avenues in that part of the city during the same period, and that each should proceed according to a settled plan of their own. Neither could the Mayor and Common Council continue their jurisdiction over the subject, (if their power extended to these four wards previous to the first of September,) by their neglect to apply to the Governor for the appointment of Commissioners, until after this street was laid out; if such was in fact the case. The duty for which the Commissioners were to be appointed, was in its nature exclusive, independent of the express provisions of the act upon that subject. And until they had been appointed and had authorized the opening of the street now under consideration, I am satisfied the Mayor and Common Council had no authority, after the first of September, 1835, to proceed by resolution to open the same, and to have Commissioners of Estimate and Assessment appointed pursuant to the directions of the Act of 1833.

The Vice Chancellor was therefore authorized to interfere by injunction to restrain the defendants, under color of authority, from proceeding in an illegal act, which must necessarily cast a cloud upon the complainant's title; and to set aside these unauthorized proceedings which had already taken place. (*Oakley* v. *The Trustees of Williamsburg*, 6 *Paige's Rep.* 262. *Pettit* v. *Shepherd*, 5 *Idem*, 501.) For these reasons, the order appealed from must be affirmed with costs."

IMPORTANT

ASSESSMENT DECISION.

SUPREME COURT,

February 8, 1844.

OPINION OF THE COURT.

Matter of Opening 39th street, in the City of New-York; also, 37th street; also, a New Street between the 4th and 5th avenues; also, the 11th avenue, between 32d and 47th street, and also 128th street.

Bronson, J.—The Statute in relation to the opening and laying out of streets, avenues, squares and public places, in the City of New-York, has been in operation thirty years; (2 *Revised Laws*, 342 408, §177 192;) and the question is now distinctly made, for the first time, whether we have the constitutional right to exercise the powers which the Legislature has attempted to confer upon us. But it is never too late to appeal to the fundamental law; and the question is none the less entitled to a careful examination because it touches our own authority. If, by common consent, and without having our attention called to the subject, we have heretofore taken cognizance of matters which did not rightfully belong to us, that cannot be a good reason for going on in the same way after our authority has been plainly drawn in question.

The constitution declares, (*Art.* V. §7,) that "the Justices of the Supreme Court shall hold no other office or public trust," and the question is, in what character do we act in these street cases. Although the power to appoint Commissioners of Estimate and Assessment, and to review their proceedings, is, by the words of the Statute, conferred upon the "Supreme Court," it has been fully settled that we do not act as a Court, but as Commissioners, to discharge this special trust or office. The question was considered in the *Matter of Beekman street*, (20 *John*, 269,) which was decided within a few years after the law was passed. It was there held, that our powers were derived wholly from the Statute, and were not incident to our judicial duties; that we do not act as a Court, but as Commissioners; and that the general powers and jurisdiction of the Court could not be brought into exercise. The case was likened to that of a Judge sitting as a Commissioner under the insolvent laws. The same doctrine had been laid down before this Statute was passed, under an act of the Legislature conferring similar powers upon the Albany Mayor's Court. *Stafford* v. *Mayor of Albany*, 7 *John*, 541.) It was there held, that the proceedings were not of a judicial nature; that there was no analogy between them and the judicial proceedings of a Court of Record in the progress of a cause; that the Court acted as Commissioners, and when an assessment had been confirmed, the Court was *functus officio*, and had no power to set aside the proceedings. In the *Matter of the Mayor of New-York*, (6 *Cow.* 571,) it was again affirmed that we do not act as a Court in these cases, but as Commissioners appointed by the Legislature; and this doctrine has uniformly prevailed down to the present day. (*Matter of Canal street*, 11 *Wend*, 154; *Matter of Mount Morris Square*, 2 *Hill* 14.) There have been other cases to the same effect, which, as they contained nothing new, have not been reported. The principle has been fully carried out, by refusing to set aside the proceedings in Street cases under any circumstances, on the ground that while sitting as Commissioners we had no power to re-call that which had once been done. When the parties have desired a review in a street case the Supreme Court has issued a *certiorari* to the Justices of that Court as Commissioners; and after having thus got the matter before us as a Court, and affirmed what we had previously done in another character, a writ of error has been brought in the Court of Errors. In these and all other forms in which the question has arisen, it has been uniformly held, that in executing the street law of 1813, we are but Commissioners discharging a special trust. The principle has been settled more than thirty years, and it is now quite too late to call it in question.

The same doctrine has been laid down by the Federal Judiciary. By an Act of Congress passed March 23, 1792, (2 *Bis.* 259,) the Circuit Courts of the U. S., were directed to inquire into and decide upon the claims of certain persons to be placed on the pension list. The note to *Hayburn's case*, (2 *Dall.* 409,) shows that several of those Courts declined to execute the law, on the ground that the duties which had been assigned to them were not of a judicial nature. There was no disqualifications to hold other offices, as there is under our Constitution. The Circuit Court for the District of New-York, composed of Chief Justice Jay and Judges Cushing and Duane, said the Act could only be considered as appointing Commissioners for the purposes mentioned in it, by *official* instead of *personal* description; that the Judges regarded themselves as being the Commissioners designated by the Act, and therefore as being at liberty to accept or decline that office. As the object was a benevolent one, and the Judges wished to manifest their respect for the Legislature, they accepted the trust. The Justices of this Court seem to have acted upon the same principle when they accepted the office of Street Commissioners, under the New-York law. Chief Justice Spencer, in delivering the opinion of the Court in the *Matter of Beekman street*, (20 *John*, 269,) said, "it might be a question how far the Legislature can impose such duties on the Judges." But he entirely overlooked the constitutional inhibition against holding any other office, which was substantially the same then as it is now, (*Const. of* 1777, *Art.* 25.) Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office, and execute the Statute. The farther inquiry is now presented, whether we have any power to act in the matter. Upon that question I cannot entertain a doubt. The Constitution having declared that the Justices of this Court shall not hold any other office or public trust, we cannot accept this appointment, however willing we may be to carry out the wishes of the Legislature. If we can execute the office of Street Commissioners for the City of New-York, the like powers may be conferred upon us in relation to any other town or county; or the duties of the office of Comptroller, Treasurer, or Sheriff, may be assigned to us; and thus the constitutional disqualification would be rendered a dead letter. For one, I can never give such a construction to the fundamental law as will amount to a practical nullification of its provisions. Indeed there is little room for construction in the case. If, in executing

ment. The motion was argued before Chief Justice NELSON, at the March Special Term, and he refused to interfere, on the ground of lapse of time, notwithstanding the application was made within six months of the confirmation of a report, which was presented and confirmed without notice. The Chief Justice also assumed to exercise what he termed the discretion of the Court, in the case. The discretion of the Court is not the will of the Judge. We have noticed this point on page 196 of this number.

The most powerful monarch in Europe never claimed as much authority over the private property of a subject, as has been exercised by the Supreme Court for years over the private property of the citizens of this City in street assessments.

We discussed some branches of this question, in the Municipal Gazettee of December, 1842.

The Court in this opinion, are so explicit with regard to the prohibitory clause of the Constitution, "that he who runs may read."

We are glad to see the doctrine of strict construction under way, and when once broached in political matters there is no difficulty in applying the principle to the piratical assessments in the City of New-York.

Re-Argument.

Mr. Emmett has served Mr. Mott with a notice of re-argument of his five street motions. His notice is entitled before the Supreme Court. What nonsense under the views here expressed by the Court. We will publish his affidavit on which he founds his notice of motion.

Another Assessment Cruelty.

The Assessment for setting curb and gutter in the 8th Avenue, amounts to $43.922-25. The assessors appointed by the Common Council to make the assessment, are the Street Commissioner, his Assistant and Clerk. The contract was made by the Street Commissioner, and the prices unreasonable.

When the Senate Committee were in session at Clinton Hall, this proceeding was brought before them, as one of the Assessment outragss. Mr. Perrine, a former Clerk in the Street Commissioner's office, was examined as a witness, he stated that: "there are no names of Assessors in any part of it, nor is it signed by any Assessors." The assessment was passed by the Board of Aldermen, Dec. 17th, 1838; by the Board of Assistants, Dec. 24th, 1838, and approved by the Mayor, Dec. 28th, 1838, although not signed by the Assessors. This is the way the public business is done. The Assessors are the same as those of Chapel street, and yet the two assessments are made upon entirely different principles; both cannot be right.

By a decision of the Supreme Court, all the Assessors must be present to make the assessment, but a majority may decide.

This is the assessment, for which the Street Commissioner sold the house and two lots belonging to Mary Stewart and her children, all their property. One of the children is sickly. The husband of Mary Stewart was a shoe-black, and he earned his money by hard labor, with which he purchased this property, and when he died he left it to his family.

The purchaser at the assessment sale of this property, on getting his lease, took possession, and put the furniture of the occupants out of doors, but he was prosecuted for forcible entry and detainer, and at once surrendered the premises, and has since brought an ejectment suit on his lease. A case has been made, and will be argued next month before a full Bench. Some charitable individual has volunteered a Counsel fee to defend the little home of the colored woman and her helpless children.

The owner of the premises had no notice of the assessment, or the sale.

The regulating the third avenue was paid out of the City Treasury, and so ought that of the eighth avenue.

Alderman NASH,

OF THE SEVENTH WARD.

On Monday evening, Alderman NASH tendered his resignation as Chairman of the Committee of Public Offices, Repairs, &c., assigning very satisfactory and substantial reasons therefor.

We have watched the movements of this member of the Common Council, with a great deal of interest; he is a plain spoken man, and when he discovers a wrong, he sets his face at once against it. He deserves the thanks of the public. We were pleased to see that he was sustained by Alderman SCOLES.

Alderman BREEVOORT,

OF THE TWELFTH WARD.

This gentleman, who is a man independent in mind as well as in property, took a bold stand in the Board of Aldermen, some time since, against the Street Commissioner. The Alderman deserves credit for acting independent of that officer, and having a mind and opinion of his own.

NOTE.—Several of the pages of this volume have been destroyed by fire. The present and last preceeding seven pages, are substitutes for those destroyed. Some of the other pages of the volume are being re-published in the same way.

The copies of the petition to the Legislature of 1843, which were on pages 241 to 244, and the re-print also, were destroyed by the torch of the incendiary, in 1843. We have re-printed these on page 254.

SUPREME COURT DECISIONS IN 1841.

At the January term of the Supreme Court the matter of the assessment for constructing a sewer in Twentieth street, on the Hudson river side of the island, was argued upon the return made to the certiorari issued in this cause, by Lewis H. Sandford, Esq., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. The Court held the case under advisement until the October term, near the close of the year, when they *quashed the certiorari.*

At this term of the court Chief Justice Nelson delivered an opinion on denying the motion, made at the December term of 1840, for a certiorari in the matter of re-paving and re-grading Chapel and adjoining streets. This opinion, and the material facts set forth in the affidavits and papers on which the motion was founded, will be found in its order in this number.

At the April special term, Mr. Justice Cowen presiding, motions were made for writs of certiorari in the matter of the proceedings in the assessment for opening Mount Morris square and Second avenue from Twenty-eighth to Eighty-sixth street. L. H. Sandford, Esq., for the Relators, submitted very full points to the Court, which were replied to by Peter A. Cowdrey, for the Mayor, &c. The Court held these two motions under advisement until November, 1841, when he gave a very full opinion, denying the material part of the motions.

At the May term of the Court, held by the full Bench, the cause in which the People ex rel. E. Meriam and others, were relators, and also that in which James Agnew and others were relators, involving the proceedings in the assessments for repaving and regrading Chapel and adjoining streets, and of building a sewer in Chapel and Thomas streets, came on for argument on the respective returns made to the certioraris issued in these causes. Lewis H. Sandford and Wm. M. Holland, Esqs., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. These causes were fully argued. Mr. Justice Bronson took the papers, and at the October term of 1841 delivered a brief opinion of one of the causes. The Court *quashed the certioraris.*

The motions in the matter of Art street, Seventh avenue, Ninth avenue, and Twenty-eighth street assessments for certioraris, are understood to have been disposed of by the Court in the same way as those of Mount Morris and Second avenue.

We shall review the opinions delivered by the Supreme Court in our own plain way, and we shall feel gratified if we succeed in convincing these high judicial officers that they have greatly erred in quashing the certioraris in the particular cases, and denying the writ of certioraris in others.

IN CHANCERY.

Before the Chancellor.

Timothy Wiggin, Banker, of London, in the kingdom of Great Britain, *vs.* the Mayor, &c., of New York.

THE CHANCELLOR.— The language of the bill in this case, leaves it doubtful whether the complainant at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law. The bill instead of alleging in the usual manner, that the complainant was at a particular date and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the 1st of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they do not sustain, does not appear to be one which in any manner concerns the complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the use of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. The Mayor, &c. of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure the complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think that the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widening of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Messerole vs. The Mayor, &c. of Brooklyn, (In Chan. April 7, 1840,) referred to in the argument, the commissioners had not erred in judgment as to what property was to be benefitted by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend 618.) There the court held that if the proceedings had been regular and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to the other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed would actually be benefitted by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alleg-

rangement can be made, they can apply to the Legislature to authorize a proceeding by Jury, as provided for in the Colonial law, in No. 1, page 4.

Real Estate has risen in New-York in consequence of this decision, and is actually increased in value more than FORTY MILLIONS OF DOLLARS thereby.

In order that some correct idea may be formed of the character of the proceedings which the Supreme Court have, by this Decision, put a stop to, we will state a few as a specimen.

First, All the streets from 42d, up to and including 57th street, were proceeded in on the resolution of Alderman Ingraham, without the scrape of a pen on a petition from any land-owner.

Second, All the streets and avenues, up to and including 42d street, not opened prior to 1836, were proceeded in without any petition from any land-owner, and without any resolution of the Common Council directing any application to the Supreme Court for the appointment of Commissioners. This batch embraced twenty-seven streets and avenues. It was the plan of the Common Council to proceed in all these streets by one Commission, instead of which eighty-one Commissioners were improperly applied for and appointed.

Third, Manhattan Square was proceeded in on the resolution of Alderman Benson. No petition from any land-owner for this nonsensical operation.

Fourth, Mount Morris Square, (Snake Hill,) was proceeded in on the resolution of Alderman Ingraham. No petition from any land-owner for this moonshine protuberance.

We could extend this, but it is unnecessary.

Again:

Ninth avenue, from 45th street to the Bloomingdale road, was proceeded in on the petition of eighteen persons, neither of whom owned a foot of the land to be assessed or awarded for.

All these streets and avenues had been surveyed, laid out, and maps made of the whole ground by the Commissioners appointed by the State in 1807.

If the Corporation found it necessary to open one of these streets, &c., the Statutes authorized them to treat with the owners for the land, and which it was their bounden duty to have done, instead of commencing their shameful crusade against private property, in laying on the land HUNDREDS OF THOUSANDS OF DOLLARS OF FEES.

We give the following as a specimen of the whole:

COUNSEL FEES AND COURT CHARGES.

Seventh Avenue,	$3,976.77
Sixth do.	3,589.77
Tenth do.	2,100.00
Second do.	2,033.55
Manhattan Square,	1,449.13
Union Square,	1,889.00
Chapel Street,	3,443.00
Art Street,	1,896.75

SURVEYOR'S FEES, PAINTING MAPS, &c.

Seventh Avenue,	$2,801.00
Sixth do.	2,480.00
Tenth do.	2,440.00
Second do.	1,700.00
Manhattan Square,	3,070.39
Union Square	596.00
Chapel Street,	749.90
Art Street,	975.00

COMMISSIONERS FEES.

Tenth Avenue,	$2,640.00
Seventh do.	4,920.00
Sixth do.	2,928.00
Second do.	2,380.00
Manhattan Square,	1,572.00
Union Square,	1,769.00
Chapel Street,	2,429.00
Art Street,	1,476.00

CLERK HIRE.

Tenth Avenue,	$600.00
Seventh do.	200.00

ROOM HIRE.

Seventh Avenue,	$410.00

These Costs and Expenses were never taxed, nor were any bills of items ever furnished the Corporation, and yet these large amounts were paid out of the Public Treasury, by officers whose duty it was to withhold the money. Such officers deserve the severest censure.

ASSESSMENT CONFISCATION.

Having given a small sample of the Expenses of Street opening *gentry*, we will now state a few cases of Assessments.

The Estate of John Duffie was assessed for opening 38th street, from the 2d to the 3d avenue, $1,289.80; for opening 38th street again, from river to river, $10; and for opening 2d avenue, $117.50. These three assessments, with the interest up to the present time and expenses, exceed $2000. This assessment is on a piece of land ninety-eight feet square, and was valued by Thos. R. Ludlum, City Surveyor, at $450 altogether; see his testimony, Senate Document No. 100, page 151. The assessment and interest already exceed four times the value of the land.

Estate of John Schuyler. This assessment is on a piece of ground on the corner of 28th street and 7th avenue, 58 feet ten inches by 98 feet 10 inches. The assessment for opening 28th street, is $1,037.05 for opening 7th avenue, is $209.98. The assessments exceed twice the value of the land.

Estate of James Amory. This estate is assessed, including interest, more than $10,000, for the pretended opening of 6th and 7th avenues and Manhattan square. The estate furnished the land for the avenues, and should not be assessed at all. None of the improvements are made.

We could go on and enumerate others, among which is the estate of Mathew Dyckman, the estate of Wm. Edgar, and the estate of Mr. Pierson.

Parents who toil hard to accumulate estates for their children, and leave the world with the satisfaction that they have provided abundantly for those they leave behind, to have their children plundered of those estates, in this way, is an outrage upon all law and order, and a violation of every principle of justice.

PAINTED STREETS.

The Select Committee appointed by the Senate of this State, to investigate Assessment Outrages in the City of New-York, say, in their Report, Document No. 100, of 1842, page 16, that:

"On that branch of the complaint as to the imposition of heavy and oppressive assessments for improvements never actually made, the Committee ascertained that a very large portion of the streets and avenues formally opened from 1836 to 1839, were not actually opened; that nothing has been done beyond making awards and assessments by the Commissioners, and the confirmation of their Reports by the Supreme Court; and that although the assessments have been collected for such improvements in many instances, and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the same condition as they were before the taking of any proceedings for their opening; and in some cases such lands remain in the occupancy of their original owners, notwithstanding they have been paid for the same. And in numerous other instances, where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

"Out of a list of eighty-one streets and avenues, or parts of such highways, the Reports for the opening of which had been confirmed in 1837, 1838 and 1839, fifty-seven have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others, a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation. This attempt to collect

assessments not only by voluntary payment, but by enforced sales of the lands charged, without actually opening the streets and avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters. The Committee, therefore, submit this subject to the consideration of the Legislature.

"Several instances were shown to the Committee, where property had been offered for sale for the payment of assessments at two or three successive sales, without being able to get a bid, the amount of the assessments being more than the estimated value of the property. These large assessments operate against the interests of the city, for the owner will not pay the assessment or improve the property, and no person will buy it, and the Corporation cannot realize their money by a sale of the assessed premises, and the amount must be taxed upon the city; and thus the improvement of the upper part of the city, which is covered with these great assessments, must be stayed for many years, and now apparently for an indefinite period of time, unless the land should in some manner be relieved from the charge of those assessments. It did appear reasonable to the Committee that in analogy with a judgment, the lien of which ceases on real estate after the termination of ten years, the lien of those assessments should be at an end after the lapse of some definite period; what that should be, the Committee submit to the discretion of the Legislature."

COLD.

The present winter has, in many places, been very cold. My thermometer, which has a full Northern exposure, with the bulb protected from the wind, has at no time been lower than six degrees above zero.

Captain Parry, in his Arctic Expeditions, found no cold more intense than 55 degrees *below* zero. At this temperature, mercury is malleable. There are but few fluids known to us but what would become solids at a temperature of 300 degrees below zero.

I remember the celebrated cold Friday, it was a cold day indeed, and was followed by an intensely cold night. I was, during that day and night, in an encampment in a dense Northern forest. During the night, the trees kept up a continued cracking and splitting from the effects of the severity of the frost, and to such an extent that at times the noise was like the discharge of a volley of musketry. The ice over a large body of water, some miles distant, during the night cracked from one extremity to the other, with a tremendous explosion, and with a force that shook the ground on which our camp was located.

While the thermometer was at the lowest, the present winter, viz: six degrees *above* zero, I tested the water of one of the public pumps; the thermometer denoted 47 degrees, and the water of my cistern, at the same time, 36 degrees of temperature. The atmosphere of my kitchen was, near the upper ceiling, 48 degrees, and on the floor at the same time, 42 degrees.

The thermometer was invented by Sanctorios, in 1590, and was reduced to a scale by the genius of Farenheit, in 1724. We have in use four descriptions of thermometers, viz: Farenheit's, Centigrade's, Reamur's, and DeLisle's.

The boiling point of Farenheit's, is 212 degrees, Centigrade's 100 degrees, Reamur's 80 degrees and DeLisle's 0.

The freezing point of Farenheit's, is 32 degrees; Centigrade's, 0 degrees; Reamur's, 0 degrees; DeLisle, 150 degrees.

Cold is not always destructive to animal life, however intense it may be. Fish of some descriptions, when taken from the water in the severest weather in winter, and thrown upon the ice, become frozen stiff, but when put back into cold water, where the frost is extracted, they again become as active as before.

Some descriptions of vegetation is wholly destroyed by frost, while other kinds are not in the least affected by the most intense cold.

The most ponderous walls are thrown down by the frost. The smallest joint that will admit water, if seized upon by frost, will yield to the force of the expansion which the freezing of the water produces.

The marble steps of the City Hall, of New-York, are very heavy, and each flight consists of four pieces. There are, therefore, three joints. The middle joint is close, but the joint toward each end, is open about an inch, showing that the water which had penetrated the joints, had been expanded by the frost. The middle joint is made close by the same force that enlarged the others. Here are tons weight of stone moved by the freezing of less than a pint of water.

Cold air passes in veins through the atmosphere. Cold exists throughout the year a few thousand feet above our heads, and of great intensity.

The stratification of the atmosphere by cold, is very clearly illustrated by hail storms in hot weather. The hail passes in veins.

The nearer we approach the Sun in ascending into the atmosphere, the more intense we find the cold, and for aught we know, the planet Mercury, which is near the Sun, may be far colder than Georgium Sidus, which is far distant from it.

Heat and cold, under certain circumstances, and to a limited extent, we can measure, but beyond that, all is blank. The Pyromater, an instrument for measuring intense heat, is a recent invention, and a very important one, and time may unfold others, equally as important.

Cold does not penetrate the Earth to any very great extent where it is covered with snow, and much less than where it is exposed to the air.

When the cold approaches a city in which a pestilential fever rages, the infected atmosphere is at once disinfected; it is in this a physician to the sick.

The weary traveller, in the regions of country bordering on the Equator, when suffering from the heat of a vertical Sun, labors hard with a feather fan or some contrivance like it, to move a little cool air to revive his wilting frame.

Cold, where we have a surplus of it, like every thing else, we cease to value. It is a rich treasure, it is one of Nature's bounties; the sweet cold locks up in the great terrestrial store-house of Nature, the germs of vegetable and animal life.

To cold we are indebted for our chrystal bridges, vast in their extent and unequalled in their construction.

BOARD OF ASSISTANTS.

We should like to see the Board of Assistants made up of such citizens as James Kent, Jonathan Thompson, Stephen Allen, Preserved Fish, Wm. B. Crosby, John M. Bradhurst, George Newbould, Abraham Van Nest, Wm. F. Mott, Jonathan Goodhue, John Haggerty, Edward H. Pendleton, Saul Alley, John I. Palmer, Benjamin L. Swan, W. W. Fox, and Peter Schermerhorn; men full of years and full of experience, and of great purity of character. A Board composed of such men, would be a blessing to the City, and we ask where is the citizen who would not feel proud to take his stranger friend to see such a Board sitting in deliberate Council. A Board composed of these individuals, would possess more dignity, and command as much respect as any other deliberate assembly on the globe. It would be a Council of freemen, dignified by Nature, adorned by human cultivation, and a better safe-guard to liberty and property, than the greatest standing army that was ever assembled together. It is to such men that our country has to look for safety.

The Board of Assistants, composed of such citizens, would in reality be what it purports to be, a BOARD OF ASSISTANTS.

The meetings of such a Board, in the day time, would render useless the thousand dollar chandeliers, and the crimson drapery and tinselled trappings of the Session room, for it would have the adorning of plain, sensible men, which is ornament enough.

No gold pencils need be displayed to take the eye of such men; and if a gift, they would scrutinize the motives of the doner, and the acts of the donee.

The banqueting room would find no advocates in such a Board.

Such a class of men would raise the character of what is called the "Little Board," to an elevation that would make it exceed the Roman Senate in name and fame.

THE SUPREME COURT ACTING AS STREET COMMISSIONERS.

There would be full as much propriety in making the Justices of the Supreme Court,

Canal Commissioners, as Street Commissioners.

We were much surprised in noticing in the postscript of Mr. Justice Bronson's letter to Mr. Mott, which we published on the 21st instant, that the Chief Justice dissented. Chief Justice Nelson was a member of the Convention that made the provision in the Constitution, that the Justices of the Supreme Court should hold no other office. If the Chief Justice goes on the doctrine of expediency; if he will come to New-York and consult such men as Jonathan Thompson, Robert C. Cornell, Walter Bowne, Stephen Allen, John M. Bradhurst, and others of the same standing, he will find that these assessment proceedings are very different from what they are represented to be by Ex-Commissioners of Assessment. Persons who have been the recipients of princely fees in these odious proceedings, have, it is generally believed by citizens of New-York, misrepresented these street assessments to the Chief Justice. The Chief Justice is a man of great purity of character and a most worthy citizen.

The first Street Commissioners appointed in this State, were by an Act of the Legislature, passed April 6th, 1792, for extending ROOSEVELT and FRANKFORT streets. These Commissioners were five in number, and were appointed by the Legislature. There was a peculiar feature in this Act, viz: that the Common Council should first have and obtain the consent of the owners through whose land the street should pass. The assessment to be made by the Commissioners, *after this preliminary*, was to be returned to the Common Council, under their hands and seals, and upon this, was to become a lien upon the land and a debt due the Corporation, for which they were authorized to sue for in any Court of record in this State.

This act is a very different kind of proceeding from the Act of April 9th, 1813. This was the first step taken in the appointment of Commissioners. The necessity of a jury was dispensed with in these two cases, because that the consent of the owners must be obtained before the land could be used, therefore there was no necessity for a jury. The consent of the owners was substituted.

The restraining clause of the Constitution of 1777, was well understood in those times. No attempt was made to turn the Supreme Court out of doors and make the Justices highway-masters.

The Act to which we refer, is to be found in No. 1, of the Municipal Gazette, page 5.

In the case of Elizabeth Pearson, in the Court of Chancery, in which his Honor the Chancellor gave the opinion which is to be found on page 195, there are some facts which ought to accompany that opinion.

About the year 1830 or 1831, the husband of Mrs. Pearson departed this life, leaving a wife and three children. He owned the premises situate on the north-east corner of Pearl and Centre streets, which rented for upwards of one thousand dollars per year. On this property was a mortgage in favor of some wards of the Court of Chancery, the interest of which was paid out of the rent of the premises, and also a mortgage to Mr. Stevenson. The Corporation assessed this property a large sum for extending Centre street, and for filling in and paving Centre street, and for sewers, &c. The assessments for the filling in were never signed by the Assessors as required by law, and the whole proceedings were notoriously shameful.—This property thus assessed was sold for the term of 27 years, by which means Mrs. Pearson and her children are rendered destitute and helpless. It was their whole, their only dependence, when Mr. Pearson left the world he supposed it was an abundant provision for the support of his family and the education of his children. It was so if the Corporation had not disinherited this little helpless family. But this is not all the Corporation have done to distress this oppressed family, as will be seen in the sequel.

Mrs. Pearson applied to the Assistant Vice Chancellor, Hon. Murray Hoffman, for an injunction to restrain the Corporation from executing a lease for the assessment, which he granted, requiring Mrs. Pearson to give security for the costs. A hard working mechanic of very limited means was her security. The Corporation demurred to the jurisdiction of the Court, which the Chancellor sustained, and dismissed the bill with costs.

The Corporation prosecuted the surety of Mrs. Pearson for the costs, and levied an execution upon the property of this hard-working mechanic, and he was obliged to raise out of his hard earnings about seventy dollars.

The widow and the fatherless are helpless. We forbear to comment.

The Chancellor in this opinion uses an expression which certainly must have been almost a slip of the pen in the hurry of business. In speaking of the decision of the Court for the correction of errors in the case of Messerole's children, he says "the Court *repudiated* the idea that the Court of Chancery has any power or right to interfere in such cases."

The decision to which the learned Chancellor refers was by a tolerably close vote.—If we mistake not, it was 13 to 9, and had the case been argued by the Counsel who filed the bill, it would have been the other way we are almost sure. General Bogardus filed this bill and carried it in the Court of Vice Chancellor McCoun, and in the Chancellors Court, but when it reached the Court of Errors he was near the confines of the grave, and unable to argue it. It was, however, argued by an able lawyer who knew nothing of the case until the evening before the argument.

We published the whole history of this case from papers which we obtained from Gen. Bogardus the Solicitor for the children of Mr. Messerole. The printed sheets were destroyed by fire. We will endeavor to obtain from the Executors of Gen. Bogardus the papers again, and will re-publish them. The Chancellors opinion, in that case, is well worth reading and does credit to his head as well as his heart.

Now the reason which the Chancellor assigned for taking jurisdiction and then changing his mind is certainly one which ought to have influenced him in giving costs. If he had erred, and Mrs. Pearson had been misled by this error, he should not have made her pay costs, unless the law was peremptory to compel him to do so, and if such is the law, that learned jurist ought not to have allowed a session of the legislature to pass without calling their attention to a remedy.

There is another matter in the opinion of the Chancellor in another case on the same page, which is that of restraining the Corporation being an "UNNECESSARY INCONVENIENCE TOTHE CORPORATION."

"Let justice be done" without looking to consequences.

The Chief Justice who gave a written opinion in this case in the Court for the correction of errors uses this strong language in reference to the jurisdiction of the Chancellor in these Street cases:

"I know the learned Chancellor has neither the desire or inclination to entertain it unless in obedience to a sense of duty, and the ancient jurisdiction of the Court following where the footprints of his learned and distinguised predecessors lead; and must believe that he has been *subdued and carried beyond the outer boundary of his court, by the hardship and injustice of this particular case.*"

"These *hard cases* make bad precedents in the Courts both of law and equity, and are usually found at the bottom of them."

ROBERT H. MORRIS.

Mayor Morris deserves the thanks of this community for the interest he has taken in the Tax question, and for numerous and well timed vetos.

Our citizens who pay large taxes speak in the highest terms of Mayor Morris. He is a public officer of great firmness of purpose, intelligent and honest. If he is a candidate for re-election he will no doubt be re-elected.

Alderman Breevoort, Alderman Brady, and Alderman Tillou, deserves the thanks of the tax payers for their attention to their interests.

NEW PARTIES.

Whichever party puts up the best men will succeed at the charter election.

BAR ROOM OF CITY HALL.

This appendage to the banqueting room of the Hall has been refitted with new carpets, &c. &c.

We have not heard whether they have procured gold waiters for their wine goblets.—Such a use of the public funds would be more appropriate than one half their appropriations.

DESTRUCTIVE ASSESSMENTS.

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BEDFORD ROAD

AND

MR. MESSEROLE'S CHILDREN.

We give below the Speech of the venerable General Johnson, Mayor of Brooklyn, to the Common Council of that city.

The newspaper containing this Speech, was first shown us by the Hon. W. T. McCoun, Vice Chancellor, after the case of Messerole's children had been argued before him, and he remarked that he intended sending the paper to the Chancellor.

This Speech deserves to be treasured up, and we have printed an extra number of copies for extensive circulation throughout the United States, and also in England.

We deem it due to this important question to place the farewell address of the venerable Mayor of Brooklyn, who is a most excellent citizen, a man beloved and respected by all who know him, in connection with the Opinion of the worthy Chancellor of this State, in the matter of the ruinous assessment upon the estate of the infant children of Mr. Messerole, who were assessed so heavily for the Bedford Road, as to annihilate their title; and next to these, the Opinion of the Supreme Court, in which they state that the Constitution of the State has provided against the exercise of such summary street powers by that tribunal, which is the power which confirmed the Bedford Road Assessment alluded to by the Mayor and passed upon by the Chancellor.

We wish to call the attention of the reader to the first paragraph of the Opinion of the learned Chancellor, in which he says: "*that an assessment has been made upon the lands of the complainants, which must produce a total sacrifice of the property assessed, unless they can obtain relief in this Court, or by* LEGISLATIVE INTERFERENCE,"—in connection with the *quere* put by his Honor the Mayor of Brooklyn, in his Speech, when he asks: "*will the land assessed along Hamilton avenue and Bedford road, pay half the assessments? If not, are not the owners plundered, and the City also?*

Here is evidence indisputable and unquestionable as to an absolute confiscation of this estate, and we ask by whom? We answer, by a power unknown to the Constitution of the Commonwealth.

It was well said by the learned Chancellor that: "*unless they can obtain relief in this Court, or by Legislative interference,*" that the assessment must produce a total sacrifice, &c.

The Chancellor clearly saw that the Justices of the Supreme Court did not act in a judicial capacity, but merely as Road Commissioners, and therefore that they could not revive their own acts.

Among the powers possessed by the most absolute governments in Europe, there are none that can be compared in despotic character with the summary street powers which have been exercised over private property, in the State of New-York, for years past; and yet we boast of a CONSTITUTION, the purchase of BLOOD and TREASURE!

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From the Long Island Star of May 7, 1838.

BROOKLYN COMMON COUNCIL.

MONDAY, April 30, 1838.

The MAYOR addressed the Board as follows, and retired, and the President, Alderman S. SMITH, took the Chair.

Gentlemen of the Common Council:

Be pleased to permit me to present a few remarks to this Board, before I leave the Chair.

When we entered upon our duties, the storm of adversity was passing over our country, sweeping away the golden visions of speculative prosperity, and leaving the blasted harvest of adversity on many fair plotted fields. Many tall trees, with gilded leaves and *paper* roots, were laid low. Our fair city has suffered by the storm, her sails were spread to every wanton lover, whom the lust of speculation brought among us. Our former cultivated farms are dotted with buildings, subject in many cases to reversions. This is a faint outline of the prospects caused by the re-action, which, in like cases, will always follow excessive speculation. Many great men, and many wise men, who had enough but wanted *more*, have been ensnared, and have fallen upon the alter of adversity.

When this city was incorporated, our deferred Market Debt was $20,000; two hundred thousand dollars were raised by loan for the erection of a City Hall; the Common Council *knew*, and our citizens *know*, that this sum was sufficient to build a Hall, equal in every respect to the Hall in the city of Albany, and to purchase a site for the building. The loan was made with this object in view. Why was it not done? Why were not the interested *schemes* of speculators, rejected by an unanimous vote, instead of one solitary NO?

The past cannot be re-called. The deed is done; but that *incubus* of folly will be felt after its votaries are no more.

No member of the Common Council, of any city of this State, can lawfully make a beneficial contract with the Board whereof he is a member; nor can *any* member of such Board enter into a contract whereby he is directly or indirectly benefitted.

In Brooklyn, the Common Council direct and the Mayor executes.

Again, Gentlemen: what authority had our Board of Aldermen, who are Trustees of the People, to lend their aid to interested men, to oppress and ruin the widow and the orphan, by opening, paving, or grading unnecessary streets? Improvements are betterments, not divestments. Were not Hamilton avenue, Myrtle avenue, and Bedford road, opened to gratify speculators *very near* the Board? Were not the assessments for opening, laid heavily on distant sections, to pay favorites *near* the Board? Will the land assessed along Hamilton avenue and Bedford road, pay half of the assessments? If not, are not the owners plundered, and the city also?

Motives produce acts which are often done before the design is seen.

The foregoing remarks are not made for individual purposes, but for the purpose of warning those who succeed us, to guard our city from the like errors.

I have now given a faint outline of our city as she was when the Board entered upon its duties, oppressed upon every side, but not disheartened. Our ship was shattered in her rigging, but her hull is sound. Our beautiful and healty city remains. We need no distant waters, we have the best in abundance below. We will be burthened a few years with taxes, still we can pay more and prosper.

We have united to stay unnecessary expenditures, and correct evils. We have preserved civil order, and promoted education. Our efficient Police has protected us from midnight fiends, and Providence from the fiery elements. Our Fire Department is improving.

On taking leave of this Board, be pleased, Gentlemen, to accept of my individual respects for your kindness and assistance during the past year; to the Clerk, Attorney, and Street Commissioner, together with all our *faithful* officers, my respects are also presented. Though we may seperate here! I hope *we* will meet hereafter, in that happy haven of rest, where no political distinctions will be known.

Alderman Underhill then offered the following Preamble and Resolution, which was read and adopted:

Whereas, the term of service in which his Honor JEREMIAH JOHNSON, has been elected to fill the arduous situation of Mayor of this city, is nearly terminated, and whereas, the connection necessarily arising between the individual filling that office and the members of this Board, give the latter ample opportunity of judging of the capability and zeal with which the duties of the Mayoralty has been performed; and whereas, this Board are deeply impressed with the conviction, that his Honor JEREMIAH JOHNSON, has on all occasions, exhibited an energy and industry in his station, no less honorable to himself than beneficial to the public; that the interest of this city, of which he has so long been a resident, have again, as they often have before, been highly promoted by his public spirit and anxious desire to promote the public weal, therefore

Resolved, That this Board do hereby tender to his Honor the MAYOR, their warmest thanks for the indefatigable zeal and untiring industry with which he has filled the duties of his office, and hereby express to him the conviction they strongly feel, that he has added another wreath to the crown he has so long deserved to wear, that of a PUBLIC BENEFACTOR.

THE CHANCELLOR.

"It is pretty evident in this case, that an assessment has been made on the lands of the complainants, which must probably produce a total sacrific of the property assessed, unless they can obtain relief, either in this Court or by Legislative interference. Judging from the facts before me, I cannot see how it was possible for the Commissioners of Estimate and Assessment, to have come to the conclusion that the lands assessed could be benefitted to the amount of about $14,000, by the contemplated improvement; even upon the principles on which they proceeded relative to the Bedford road as a public highway, already laid out and established. As I understand the case, the assessment limits only included of the complainant's lands 107 feet on each side of the Bedford road, as originally laid out by the turnpike Commissioners, and extending in length on that road about 968 feet. This would give to the complainants 76 lots of 25 feet front, and 107 feet deep, upon a street of 66 feet in width. And if the contemplated improvement was made, they would have the same number of lots of 100 feet in depth, upon an 80 feet street. These lots, at the valuation fixed upon them by the second answer of the defendants, at the time of the assessment when lands were the highest, were worth $250; making the sum of $19,000 for the lands assessed. And yet it is supposed these lots will be benefitted by the widening and extending of this street, $139.31; or about three fourth of their then estimated value, and nearly their full value one year thereafter, when the second answer was put in. It is possible, that some further benefits might accrue to these lots, by the extension of Bedford road beyond where it was already opened four rods wide, in addition to the benefit of having it fourteen feet broader in front of the lots assessed. But there is much reason to believe that the guardian ad litem who was appointed to take care of the rights of these infants, and who was himself one of the applicants for the proposed improvement, has, under the influence of mental hallucination, or otherwise, suffered their property to be assessed to about its full value, and probably much more than it is now worth; as a supposed benefit which that property was to receive from the contemplated improvement. If the whole proceedings, however, have been regular, and the Commissioners of Estimate and Assessment have merely erred in judgment, I think this Court has no jurisdiction to correct their error, or to give relief to the complainants. For there is no allegation of fraud or collusion on their part, nor on the part of the guardian ad litem, who was appointed in the mode prescribed by law to protect the rights of the complainants on that assessment, and to appeal from the decision of the Commissioners, if he believed they had done injustice to these infants.

The first objection to the regularity of the assessment is, that the Commissioners of Estimate and Assessment, have assumed that the turnpike road was not only regularly laid out, but that it was already the property of the public, so that the complainants were entitled to no compensation therefor. In this I think the Commissioners were clearly under a mistake. For the purpose of this decision, I shall take it for granted that the turnpike was properly laid out, and that the damages of the complainants for that part of their farm which was taken for the use of the Corporation were legally and constitutionally assessed, pursuant to the provisions of the general turnpike act of 1807. Still that act did not vest the title of the land in the turnpike company, even for the purposes of the road during the existence of the charter, until the actual payment of the damages which had been so assessed. The language of the Statute is, that the turnpike corporation, upon paying to the owners of the land the sum assessed and awarded by the appraisers in their inquisition, shall and may have and hold the lands to them and their successors and assigns, &c. (1 *R. L. of* 1813, §3, *p.* 231.) It is true, the statute does, by an implication, authorize the turnpike company to enter upon the land for the purpose of making their road thereon, if there is no person living on the land who is authorized to receive the damages, unless such damages shall be lawfully demanded. The title to the land, however, is still in the original owner; and the moment he demands the payment of the damages from the proper officers of the company, and the same are not paid, he may bring an action to recover the possession of the land. It is perfectly clear, therefore, that the complainants before they could be divested of their title to so much of their farm as was included in the old Bedford road, were entitled to the payment of at least the amount which was awarded to them by the appraisers, in 1828. And the opinion of Chief Justice Nelson, appears to be that they were entitled also to the benefit of the contingent right to the revision in the land, in case of the dissolution of the Corporation, or of the abandonment of the road. (*See Hooker* v. *The Utica and Minden Turnpike Company*, 12 *Wendell's Rep.* 371.) Whether the turnpike company was in existence at the time the Commissioners of Estimate and Assessment made their Report in the present case, does not distinctly appear from the pleadings; but the legal presumption is that it was, as I have not found any statute dissolving that Corporation, or authorizing it to abandon the road. It is clear, however, that if that Corporation should be legally dissolved without having paid the amount awarded to the complainants for damages, the legal title to that part of the Bedford road which is in question here, would belong absolutely to the complainants; and that such title could not be divested, for the purposes of this public street, without paying them the full value of the land, either in money or in the benefits which would thereby accrue to them by the increased value of their adjoining lands. It does not distinctly appear in this case whether the petition to the Common Council for the improvement, and the resolution of the City Corporation adopting the same, actually contemplated the taking of the lands included within the limits of the turnpike, as well as the two narrow strips on each side of the same, for the use of the Corporation as a public street. If the former was the case, then the confirmation of the report was irregular, and may still be opened; as the Commissioners have not in form appraised the damages to which the complainants, as the owners of the original site of the Bedford road through their farm, are entitled. And as I understand the recent decision of the Supreme Court *In the matter of Anthony street*, (20 *Wend. Rep.* 618,) there cannot be an absolute confirmation of the Report of Commissioners of Estimate and Assessment, so as to give any vested rights under the same, until the damages for all of the lands taken for the proposed improvement have been ascertained and settled, and are properly assessed upon the owners of those lands which will be benefitted by the improvement. If this is the correct construction of the Statute, and the resolution of the Mayor and Common Council actually contemplates the taking of the whole of the old Bedford road for the purposes of this improvement, they ought not to be permitted to proceed and enforce this assessment against the complainants personally, by virtue of the distress warrant, or by a sale of their lands which have been assessed, until the proper steps have been taken to divest their title to the whole of the lands which are to be taken for the improvement, by an assessment of the damages and an offset of the same against the supposed benefit of their adjacent lands.

I think, however, there is a more conclusive objection to the proceedings of the defendants, in this case; and that is, that the Mayor and Common Council had no legal authority to lay out and open this new street through the lands of the complainants, in one of the new wards of the city, subsequent to August, 1835; until the same had been authorized by the Commissioners appointed under the Act of the 23d of April, in that year, authorizing the appointment of Commissioners to lay out streets, avenues, and squares, in the City of Brooklyn. That Act, which took effect on the first of September after its passage, gives to the Commissioners, to be appointed by the Governor on the application of the Mayor and Common Council, the exclusive power to lay out streets, avenues and public squares, within that part of the city comprising the sixth, seventh, eighth and ninth wards, and to direct the closing of any streets, roads, highways, lanes, avenues or alleys which had not been theretofore approved of by the Mayor and Common Council. (*Laws of* 1835, *p.* 136, § 4.) The previous act of the same day amending the charter of the city of Brooklyn, which went into effect immediately, must be so construed as not to conflict with the provisions of the Act appointing these Commissioners to make a permanent

plan of this part of the city. It must therefore be construed to apply to that part of the city lying within the first five wards, and which was originally comprised within the bounds of the village Corporation; or at least, to such streets as they should think proper to lay out according to a settled plan, in the four other wards, previons to the time when the act for the appointment of Commissioners should take effect. Certainly it could not have been the intention of the Legislature that two classes of officers should have the power to lay out streets and avenues in that part of the city during the same period, and that each should proceed according to a settled plan of their own. Neither could the Mayor and Common Council continue their jurisdiction over the subject, (if their power extended to these four wards previous to the first of September,) by their neglect to apply to the Governor for the appointment of Commissioners, until after this street was laid out; if such was in fact the case. The duty for which the Commissioners were to be appointed, was in its nature exclusive, independent of the express provisions of the act upon that subject. And until they had been appointed and had authorized the opening of the street now under consideration, I am satisfied the Mayor and Common Council had no authority, after the first of September, 1835, to proceed by resolution to open the same, and to have Commissioners of Estimate and Assessment appointed pursuant to the directions of the Act of 1833.

The Vice Chancellor was therefore authorized to interfere by injunction to restrain the defendants, under color of authority, from proceeding in an illegal act, which must necessarily cast a cloud upon the complainant's title; and to set aside these unauthorized proceedings which had already taken place. (*Oakley* v. *The Trustees of Williamsburg*, 6 *Paige's Rep.* 262. *Pettit* v. *Shepherd*, 5 *Idem*, 501.) For these reasons, the order appealed from must be affirmed with costs."

IMPORTANT

ASSESSMENT DECISION.

SUPREME COURT,

FEBRUARY 8, 1844.

OPINION OF THE COURT.

Matter of Opening 39th street, in the City of New-York; also, 37th street; also, a New Street between the 4th and 5th avenues; also, the 11th avenue, between 32d and 47th street, and also 128th street.

BRONSON, J.—The Statute in relation to the opening and laying out of streets, avenues, squares and public places, in the City of New-York, has been in operation thirty years; (2 *Revised Laws*, 342 408, §177 192;) and the question is now distinctly made, for the first time, whether we have the constitutional right to exercise the powers which the Legislature has attempted to confer upon us. But it is never too late to appeal to the fundamental law; and the question is none the less entitled to a careful examination because it touches our own authority. If, by common consent, and without having our attention called to the subject, we have heretofore taken cognizance of matters which did not rightfully belong to us, that cannot be a good reason for going on in the same way after our authority has been plainly drawn in question.

The constitution declares, (*Art.* V. §7,) that "the Justices of the Supreme Court shall hold no other office or public trust," and the question is, in what character do we act in these street cases. Although the power to appoint Commissioners of Estimate and Assessment, and to review their proceedings, is, by the words of the Statute, conferred upon the "Supreme Court," it has been fully settled that we do not act as a Court, but as Commissioners, to discharge this special trust or office. The question was considered in the *Matter of Beekman street*, (20 *John*, 269,) which was decided within a few years after the law was passed. It was there held, that our powers were derived wholly from the Statute, and were not incident to our judicial duties; that we do not act as a Court, but as Commissioners; and that the general powers and jurisdiction of the Court could not be brought into exercise. The case was likened to that of a Judge sitting as a Commissioner under the insolvent laws. The same doctrine had been laid down before this Statute was passed, under an act of the Legislature conferring similar powers upon the Albany Mayor's Court. *Stafford* v. *Mayor of Albany*, 7 *John*, 541.) It was there held, that the proceedings were not of a judicial nature; that there was no analogy between them and the judicial proceedings of a Court of Record in the progress of a cause; that the Court acted as Commissioners, and when an assessment had been confirmed, the Court was *functus officio*, and had no power to set aside the proceedings. In the *Matter of the Mayor of New-York*, (6 *Cow.* 571,) it was again affirmed that we do not act as a Court in these cases, but as Commissioners appointed by the Legislature; and this doctrine has uniformly prevailed down to the present day. (*Matter of Canal street*, 11 *Wend*, 154; *Matter of Mount Morris Square*, 2 *Hill* 14.) There have been other cases to the same effect, which, as they contained nothing new, have not been reported. The principle has been fully carried out, by refusing to set aside the proceedings in Street cases under any circumstances, on the ground that while sitting as Commissioners we had no power to re-call that which had once been done. When the parties have desired a review in a street case the Supreme Court has issued a *certiorari* to the Justices of that Court as Commissioners; and after having thus got the matter before us as a Court, and affirmed what we had previously done in another character, a writ of error has been brought in the Court of Errors. In these and all other forms in which the question has arisen, it has been uniformly held, that in executing the street law of 1813, we are but Commissioners discharging a special trust. The principle has been settled more than thirty years, and it is now quite too late to call it in question.

The same doctrine has been laid down by the Federal Judiciary. By an Act of Congress passed March 23, 1792, (2 *Bis.* 259,) the Circuit Courts of the U. S., were directed to inquire into and decide upon the claims of certain persons to be placed on the pension list. The note to *Hayburn's case*, (2 *Dall.* 409,) shows that several of those Courts declined to execute the law, on the ground that the duties which had been assigned to them were not of a judicial nature. There was no disqualifications to hold other offices, as there is under our Constitution. The Circuit Court for the District of New-York, composed of Chief Justice Jay and Judges Cushing and Duane, said the Act could only be considered as appointing Commissioners for the purposes mentioned in it, by *official* instead of *personal* description; that the Judges regarded themselves as being the Commissioners designated by the Act, and therefore as being at liberty to accept or decline that office. As the object was a benevolent one, and the Judges wished to manifest their respect for the Legislature, they accepted the trust. The Justices of this Court seem to have acted upon the same principle when they accepted the office of Street Commissioners, under the New-York law. Chief Justice Spencer, in delivering the opinion of the Court in the *Matter of Beekman street*, (20 *John.* 269,) said, "it might be a question how far the Legislature can impose such duties on the Judges." But he entirely overlooked the constitutional inhibition against holding any other office, which was substantially the same then as it is now, (*Const. of* 1777, *Art.* 25.) Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office, and execute the Statute. The farther inquiry is now presented, whether we have any power to act in the matter. Upon that question I cannot entertain a doubt. The Constitution having declared that the Justices of this Court shall not hold any other office or public trust, we cannot accept this appointment, however willing we may be to carry out the wishes of the Legislature. If we can execute the office of Street Commissioners for the City of New-York, the like powers may be conferred upon us in relation to any other town or county; or the duties of the office of Comptroller, Treasurer, or Sheriff, may be assigned to us; and thus the constitutional disqualification would be rendered a dead letter. For one, I can never give such a construction to the fundamental law as will amount to a practical nullification of its provisions. Indeed there is little room for construction in the case. If, in executing

this Statute, we act as *Commissioners appointed by the Legislature*, and that point has already been settled, it is then almost too plain for discussion, that we are exercising another office or public trust than that of Justices of the Supreme Court.

If our decision can have the effect of opening the floodgates of controversy in relation to what has already been done under this Statute, I should feel great regret in not being able to arrive at a different conclusion. But I see little reason for doubt that what has already been done will stand, although we have been exercising an office which did not belong to us. It is a well settled and most salutary principle of the common law, that the acts of an officer *de facto*, so far as they concern the public or third persons, are valid, although he may not be an officer *de jure*. We held that principle plainly applicable to a case of this kind in *The People v. White*, (24 *Wend.* 520, 525;) and although the Chancellor expressed a different opinion when that case was before the Court of Errors, (*p.* 539,) I still think we were right. It is enough, however, for us to say, that the point has been settled. No rights already vested under this Statute, will be disturbed by the present decision. And as to the future, it may be presumed that the Legislature will provide some other mode of opening streets, when their attention shall be called to the subject. This law was undoubtedly passed, as it has been thus far executed, without adverting to the constitutional difficulty which lay in the way of our accepting the trust.

It follows from what has been said, that we can make no order, either one way or the other, on the motions for the confirmation of these reports.

NELSON, C. J., dissented.

(COPY.)

N. HILL, Jr.,
State Reporter.

Opinion of the Court.

This Opinion came to hand on Monday, and we lose no time in placing it before the People.

The views we expressed in the preceeding pages, were written and printed before the Opinion of the Court came to hand.

We adhere to these views notwithstanding the *dicta* of the Court as to the validity of what has been done in violation of the Constitution.

It matters not which horn of the dilemma is taken by the Court in these cases, the result is the same.

If the Justices acted as a Court, then their refusal to review these proceedings is without the shadow of an apology.

The Assessment abuses were notorious and without excuse, and there was no justifiable ground which could be urged to sustain the Court in refusing redress.

In 1840 an application was made by Mr. Fellows, in reference to the Report of the Commissioners, in the John street assessment. The motion was argued before Chief Justice NELSON, at the March Special Term, and he refused to interfere, on the ground of lapse of time, notwithstanding the application was made within six months of the confirmation of a report, which was presented and confirmed without notice. The Chief Justice also assumed to exercise what he termed the discretion of the Court, in the case. The discretion of the Court is not the will of the Judge. We have noticed this point on page 196 of this number.

The most powerful monarch in Europe never claimed as much authority over the private property of a subject, as has been exercised by the Supreme Court for years over the private property of the citizens of this City in street assessments.

We discussed some branches of this question, in the Municipal Gazettee of December, 1842.

The Court in this opinion, are so explicit with regard to the prohibitory clause of the Constitution, "that he who runs may read."

We are glad to see the doctrine of strict construction under way, and when once broached in political matters there is no difficulty in applying the principle to the piratical assessments in the City of New-York.

Re-Argument.

Mr. Emmett has served Mr. Mott with a notice of re-argument of his five street motions. His notice is entitled before the Supreme Court. What nonsense under the views here expressed by the Court. We will publish his affidavit on which he founds his notice of motion.

Another Assessment Cruelty.

The Assessment for setting curb and gutter in the 8th Avenue, amounts to $43.922-25. The assessors appointed by the Common Council to make the assessment, are the Street Commissioner, his Assistant and Clerk. The contract was made by the Street Commissioner, and the prices unreasonable.

When the Senate Committee were in session at Clinton Hall, this proceeding was brought before them, as one of the Assessment outragss. Mr. Perrine, a former Clerk in the Street Commissioner's office, was examined as a witness, he stated that: "there are no names of Assessors in any part of it, nor is it signed by any Assessors." The assessment was passed by the Board of Aldermen, Dec. 17th, 1838; by the Board of Assistants, Dec. 24th, 1838, and approved by the Mayor, Dec. 28th, 1838, although not signed by the Assessors. This is the way the public business is done. The Assessors are the same as those of Chapel street, and yet the two assessments are made upon entirely different principles; both cannot be right.

By a decision of the Supreme Court, all the Assessors must be present to make the assessment, but a majority may decide.

This is the assessment, for which the Street Commissioner sold the house and two lots belonging to Mary Stewart and her children, all their property. One of the children is sickly. The husband of Mary Stewart was a shoe-black, and he earned his money by hard labor, with which he purchased this property, and when he died he left it to his family.

The purchaser at the assessment sale of this property, on getting his lease, took possession, and put the furniture of the occupants out of doors, but he was prosecuted for forcible entry and detainer, and at once surrendered the premises, and has since brought an ejectment suit on his lease. A case has been made, and will be argued next month before a full Bench. Some charitable individual has volunteered a Counsel fee to defend the little home of the colored woman and her helpless children.

The owner of the premises had no notice of the assessment, or the sale.

The regulating the third avenue was paid out of the City Treasury, and so ought that of the eighth avenue.

Alderman NASH,

OF THE SEVENTH WARD.

On Monday evening, Alderman NASH tendered his resignation as Chairman of the Committee of Public Offices, Repairs, &c., assigning very satisfactory and substantial reasons therefor.

We have watched the movements of this member of the Common Council, with a great deal of interest; he is a plain spoken man, and when he discovers a wrong, he sets his face at once against it. He deserves the thanks of the public. We were pleased to see that he was sustained by Alderman SCOLES.

Alderman BREEVOORT,

OF THE TWELFTH WARD.

This gentleman, who is a man independent in mind as well as in property, took a bold stand in the Board of Aldermen, some time since, against the Street Commissioner. The Alderman deserves credit for acting independent of that officer, and having a mind and opinion of his own.

NOTE.—Several of the pages of this volume have been destroyed by fire. The present and last preceeding seven pages, are substitutes for those destroyed. Some of the other pages of the volume are being re-published in the same way.

The copies of the petition to the Legislature of 1843, which were on pages 241 to 244, and the re-print also, were destroyed by the torch of the incendiary, in 1843. We have re-printed these on page 254.

SUPREME COURT DECISIONS IN 1841.

At the January term of the Supreme Court the matter of the assessment for constructing a sewer in Twentieth street, on the Hudson river side of the island, was argued upon the return made to the certiorari issued in this cause, by Lewis H. Sandford, Esq., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. The Court held the case under advisement until the October term, near the close of the year, when they *quashed the certiorari.*

At this term of the court Chief Justice Nelson delivered an opinion on denying the motion, made at the December term of 1840, for a certiorari in the matter of re-paving and re-grading Chapel and adjoining streets. This opinion, and the material facts set forth in the affidavits and papers on which the motion was founded, will be found in its order in this number.

At the April special term, Mr. Justice Cowen presiding, motions were made for writs of certiorari in the matter of the proceedings in the assessment for opening Mount Morris square and Second avenue from Twenty-eighth to Eighty-sixth street. L. H. Sandford, Esq., for the Relators, submitted very full points to the Court, which were replied to by Peter A. Cowdrey, for the Mayor, &c. The Court held these two motions under advisement until November, 1841, when he gave a very full opinion, denying the material part of the motions.

At the May term of the Court, held by the full Bench, the cause in which the People ex rel. E. Meriam and others, were relators, and also that in which James Agnew and others were relators, involving the proceedings in the assessments for repaving and regrading Chapel and adjoining streets, and of building a sewer in Chapel and Thomas streets, came on for argument on the respective returns made to the certioraris issued in these causes. Lewis H. Sandford and Wm. M. Holland, Esqs., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. These causes were fully argued. Mr. Justice Bronson took the papers, and at the October term of 1841 delivered a brief opinion of one of the causes. The Court *quashed the certioraris.*

The motions in the matter of Art street, Seventh avenue, Ninth avenue, and Twenty-eighth street assessments for certioraris, are understood to have been disposed of by the Court in the same way as those of Mount Morris and Second avenue.

We shall review the opinions delivered by the Supreme Court in our own plain way, and we shall feel gratified if we succeed in convincing these high judicial officers that they have greatly erred in quashing the certioraris in the particular cases, and denying the writ of certioraris in others.

IN CHANCERY.

Before the Chancellor.

Timothy Wiggin, Banker, of London, in the kingdom of Great Britain, *vs.* the Mayor, &c., of New York.

THE CHANCELLOR.— The language of the bill in this case, leaves it doubtful whether the complainant at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law. The bill instead of alleging in the usual manner, that the complainant was at a particular date and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the 1st of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they do not sustain, does not appear to be one which in any manner concerns the complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the use of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. The Mayor, &c. of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure the complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think that the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widening of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Messerole vs. The Mayor, &c. of Brooklyn, (In Chan. April 7, 1840,) referred to in the argument, the commissioners had not erred in judgment as to what property was to be benefitted by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend 618.) There the court held that if the proceedings had been regular and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to the other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed would actually be benefitted by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alleg-

street after it has been once established by them, in conformity to the map and survey and gradation first established, or of any of the old streets after they have been made to conform to such general plan.—The defendants have no legal power therefore to alter the grade of this southerly section of First street, or of the adjacent streets which have been thus regulated and graded.

The inhabitants of this village, however, are not without remedy if the interest of the public requires a correction of any mistake which the trustees may have made either in laying out streets, or in fixing the gradations thereof. For it is perfectly competent for the legislative power which directed a general plan of the village to be adopted and adhered to by the trustees, to authorize them to make such alterations in the plan as may be found necessary either in regard to this particular street, or as to the streets of the village generally. And if the legislature shall think proper to authorize such alterations, it will be for the same power to prescribe the proper mode of ascertaining who are injured by such alterations, and of compensating them for such injury.

There is no ground for the objection in this case, that the complainants have waived their rights by delay, or by any acquiescence in the proceedings of the trustees. They protested against the alteration of the grade of the street the first opportunity they had for that purpose: and they followed it up with an application to this court for redress when they found that the defendants were determined to proceed notwithstanding such protest.

The order of the Vice Chancellor must therefore be reversed, with costs, and an injunction must be granted to restrain the defendants from proceeding with the proposed alteration of the former gradation of the street as originally established by the trustees. (See 6 Paige, 262)

DECISION IN THE MATTER OF WIDENING JOHN STREET.

IN CHANCERY.

BEFORE THE CHANCELLOR.

Timothy Wiggin
vs.
The Mayor, &c., of the city of New York.

This was an application for an injunction to restrain the collection of an assessment for the widening, straightening, and improving John street, in the city of New York, between Broadway and Pearl street. From the bill it appeared that the ordinance of the Common Council authorizing and directing this improvement, was passed in February, 1836; that shortly afterwards the Supreme Court appointed commissioners of estimate and assessment, who made their report in 1838, and the same was presented to that court for confirmation, but was afterwards sent back to the commissioners for revisal and correction; that the amended report was confirmed by the court in September, 1839, and that the order for the making of the improvement was carried into effect in May, 1840. The complainant charged in his bill upon information derived from E. Meriam, that the ayes and noes were not called upon the adoption of the resolution of the Common Council, authorizing the making of the improvement; nor were the votes of the Aldermen and Assistants, and the report of the committee on streets, upon which the ordinance was founded, published in any of the newspapers employed by the corporation. Various objections were stated in the bill as to the equity and justice of the assessment upon property which was supposed by the commissioners to be benefited by the improvement, which objections are noticed in the opinion of the court. The complainant also stated in his bill that the improvement was not within the part of the city as to which a permanent map and plan were required to be made by the commissioners under the act of April, 1807, and he therefore insisted that the Common Council, as organized under the act of 1830, amending the charter of the city, had no jurisdiction or authority to widen or alter John street.

W. Hunt and L. H. Sandford, for the complainant.

Peter A. Cowdrey, for the defendants.

THE CHANCELLOR.—The language of the bill in this case, leaves it doubtful whether the complainant, at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law.—The bill, instead of alleging in the usual manner, that the complainant was at a particular date, and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the first of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they did not sustain, does not appear to be one which in any manner concerns this complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the rise of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant, or otherwise, according as the interest of the one or the other will be affected hy the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforeseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. the Mayor, &c., of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment, made their assessment in this case upon correct principles in relation to to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure this complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widensng of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Meserole vs. the Mayor, &c., of Brooklyn, (in Chan. April 7, 1840,) referred to on the argument, the commissioners had not erred in judgment as to what property was to be benefited by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend., 618.) There the court held that if the proceedings had been regular, and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed, would actually be benefited by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alledging that the fronts on William street would be benefited by the improvement.

The same answer is applicable to the objection that $100 was included in the assessments for surveying and grading the triangle opposite to Cliff street under the resolution of May, 1837.

As the bill alledges that the cost of the proceeding have not yet been taxed, it cannot now be known whether the amount of the assessment will be more or less than the amount allowed for damages, and the costs and expenses of making the improvement. The mode of conducting these

proceedings, as prescribed by law, is such, that the assessments must be made and confirmed before the whole expense and costs of the proceedings can be ascertained, the commissioners, after having ascertained the damages for property taken, must necessarily proceed upon mere estimates of some of the costs, &c., which will probably be incurred thereafter in completing the proceedings. A mistake of a few dollars, therefore, one way or the other in estimating the amount of the expenses cannot vitiate the whole assessment, and take from the Supreme Court the power to confirm a report founded upon a reasonable estimate of the prospective costs. The act of April, 1839, only requires the costs and charges of commissioners, and attorney and counsel, &c., to be taxed before they are paid, and not that they should be taxed before the assessment is made and confirmed, as that could not be done. It is no objection, therefore, to the collection of the assessment, that those costs had not been taxed when this bill was filed.

The objection that the corporation, as at present organized, has not the right to lay out new streets, or to alter old ones, in that part of the city which was not embraced in the permanent plan of improvements adopted by the commissioners appointod under the act of the 3d April, 1807, is one which, if well taken, would render the whole proceeding under the ordinance for the widening of John street, absolutely void. The power to open new streets, or to alter old ones, in this part of the city, is claimed by the corporation under the second clause of the 177th section of the act of the 9th of April, 1813, to reduce the several laws relating particularly to the city of New York into one act, (2 R. S. of 1813, p. 409.) By that clause the power was expressly given to the corporation, whever, or as often as it should, in the opinion of the Mayor, Aldermen, and Commonalty, *in Common Council convened*, be necessary or desirable for the public convenience or health to lay out, form and open new streets, &c., in that part of the city, or to extend, enlarge, straighten, alter. or otherwise improve, streets, &c., already laid out, or thereafter to be laid out.

It is not pretended that previous to the act of April, 1830, to amend the charter of the city of New York, the corporation, when convened in Common Council, under the charter and the laws then in force, would not have been authorized to pass an ordinance for the making of this improvement; but this act for the amendment of the city charter directs that neither the Mayor nor the Recorder shall be a member of the Common Council after the second Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the Common Council of the city; which boards are to meet in separate chambers, &c. And the complainant's counsel therefore insist that the Mayor, Aldermen, and Commonalty can no longer convene in Common Council, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in Common Council, according to the provisions of its charter, and not to the partioular officers who, at that time, represented the corporation in Common Council. And the act of 1830 having excluded the Mayor and Rocorder from the Common Council, and directed the Aldermen and Assistants to convene as a Common Council in two separate boards, the Mayor, Aldermen, and Commonalty of the city, that is the corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorizing the opening of a new street, or the alteration of a new one, under the 177th section of the act of 1813, was strictly a legislative power given to the corporation represented in its Common Council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen, and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to a preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law.—And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot *would not even create a cloud upon his title.* For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a CLOUD upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should expresse my opinion at this time upon the question. Whether the 7th section of the act of April, 1830, requiring the ayes and noes to be taken, and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property, benefited by the proposed improvement, are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefited by the improve-rather than by a general tax upon the city at large. A court of equity, therefore, at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefited thereby, and upon those who have not.

It is true, the complainant alledges in his bill that his property is not benefited by the improvement. But that-allegation is not sworn to by any one, and it is, of course, contradicted by the report, under oath, of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

(Copy.) JOHN M. DAVISON, Register.

[From the Saratoga Sentinel—Extra of July 20, 1841.]

IN CHANCERY.
BEFORE THE CHANCELLOR.

Samuel Vandervoort
vs.
The Trustees of the village of Astoria.

J. B. SCOLES, for Complainant. G. WINTER, for Defendants.

In this case the Chancellor decid. d that injunctions to stay public improvements should not be granted *ex-parte* by Injunction Masters, out of court, where there is no immediate danger of irreparable damages being done before the defendants can have an opportunity of being heard. That the Master, in all such cases, instead of granting the injunction in the first instance, should direct an order, to show cause before the court why an injunction should not be granted.

Injunction dissolved with costs to the defendants, without reference to the denial of any matters of the bill by the answer.

IN CHANCERY.
BEFORE THE ASSISTANT VICE CHANCELLOR.

Street Assessments.

Peter G. Stuyvesant and others,
vs.
The Mayor, Aldermen, and Commonalty of the city of New York.

Opinion of Murray Hoffman, Esq., Injunction Master.

The bill is brought before me as Injunction Master. I have been obliged by my sense of duty to grant an injunction in this and several cases on the eve of the sale advertised to take place on the 27th inst. I am sensible of the inconvenience to the city from an interference at this time, and do it with unfeigned reluctance.

But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterizes the proceedings complained of. I have a deep-rooted conviction that ultimately the decision must be against the corporation; and I believe that jurisdiction exists in this court to compel the corporation to try the question fairly in a single action at law between them and a complaining party. I think it is within the province of this court to prevent an innocent purchaser being deluded into litigation and probable loss, and to confine the controversy to the alleged wrong-doer and the injured party. This strikes me as the plain, just, and common-sense view of the matter. There are in this bill a number of complainants, the several owners of various parcels of property. They may all be bound by the result of one action. Thus, with perfect justice to the corporation, these questions may be tried in

the most simple and satisfactory manner, and a contest with a third party averted.

There has been no opinion as yet expressed by the Chancellor upon the point of jurisdiction, and I am at liberty to act upon the assumption and my own conviction that it exists.

I may, in a case of such moment, briefly advert to the reasons which led me on a former occasion to consider the neglect of the corporation to call the ayes and noes, and make the publication prescribed by the charter of 1830 a fatal omission.

[The assistant Vice Chancellor states some facts of his opinion in the case of Codwise vs. the Corporation, which it was intended should appear in this paper, but are crowded out for want of room.]

But in the present bill a new point is taken of much consequence. The proceedings for opening Art street commenced in April 1837. The report was completed, and the advertisement announcing that it would be presented to the Court for confirmation began on the 18th day of May, 1839. The report was filed on the 5th of June, 1839, and confirmed in the ensuing August. It is stated in the bill that, from the examination of the affidavits of publication, and the advertisement, it appears that the publication was made in but three papers, and does not appear that any notice was affixed in a public place contiguous to the premises. It is charged as a fact that the advertisement was only in three papers, and that no such notice was put up.

By the ninth section of the act of 20th April, 1839, it is provided that all motions (except as before provided) made under the act thereby amended, shall be, upon giving previous notice of the trial, place, and object thereof, published for at least fourteen days in four of the public newspapers, and by copies of such notice in handbills, to be posted up for the same space of time in three conspicuous places adjacent to the property to be affected. (See section 2 for this last clause.) It admits of no doubt that a motion for the confirmation of the report of commissioners falls within the ninth section.

The act repeals the amended act as far as it is inconsistent with the provisions of the new act; and it is directed to take effect on its passage, (the 20th of April, 1839,) but it expressly provided that no part of it except the *ninth* and *twelfth* sections shall affect any proceedings under the act thereby amended, which had been commenced previously to its going into effect.

It is an irresistible inference that the ninth and twelfth sections *do affect* prior proceedings, if those sections, when applied to such proceedings, are constitutional.

Of that I cannot entertain the slightest doubt. Both the Chancellor and Supreme Court have held that the Revised Statutes are applicable to all existing cases, so far as they affect merely the forms and modes of proceedings. (*The People vs. Livingston*, 6 Wendell, 526.) Every future proceeding in the assertion of a right or prosecution of a suit is to be governed by the new statutes. In this case, if the advertisement had been begun before the 20th of April, 1839, that would have been a proceeding already commenced, and would not have been affected by the ninth section. But as it was a proceeding commenced after that date, it necessarily falls within it.

In *Aymar vs. Gault* (2 Paige, 284) the doctrine was applied to the case of an absent party. The reference under the Revised Statutes was ordered, to take proof of the claim, although the suit was commenced before they went into operation.

In *Larkin* vs. *Mann* (2 Paige, 27) the rule was applied to the partition suits previously commenced. See also *Parsons* vs. *Browne* (7 Paige, 359).

This being the law, then it is clear that the present complainants are not bound by the proceedings at all; that they are now at liberty to take every objection of fact or law which they could have taken before the Supreme Court, as well as those which they could not then have taken.

I speak on the supposition that they did not actually attend and contest the confirmation. Without saying whether this would cure the defect or not, it is plain an argument may be raised upon it. But no principle of our law is more sacred than this, that no man shall be affected in person or property without the opportunity of being heard in the proper tribunal. From necessity, perhaps, personal notice has been dispensed with in many cases; these street proceedings among the number. The party who is assessed for benefit merely (no part of his property being taken), is never summoned before the Commissioners. He has no notice of the proceedings except by that publication for 14 days which the old act prescribed, or by the publication under the new act. His property and himself are bound upon the assumption that he has seen that notice. The law therefore must be observed to a scruple. No judge has a right to say that from great publicity, or from the actual taking of one paper containing the notice, or from any thing short of the absolute fulfilment of the requisitions of the statute, the party is to be bound.

What absurdity is it to imagine that the clear command of the Legislature that notice must be given in four papers, and by posting up copies in three adjacent places, is to be fulfilled by any other mode of notice!

I pass over another most important question in this bill viz: the carrying Art-street through a part of the city included in the map of 1807. It is needless to discuss it, in the view I have already taken.

I have, however, had my doubts since the decision of the Chancellor in Vandevoort vs. The Village of Astoria whether in these cases I ought, as injunction master, to do more than grant an order to show cause. Certainly the case here is very different; the Trustees of Astoria being in the act of making the *improvement* complained of. Here it is to prevent a recovery in this mode of the sum assessed for the improvement. I have concluded, however, that it is most proper for me to grant on order to show cause, with a temporary injunction.

I doubt whether I have a right to impose *terms* upon granting an injunction. Otherwise I should direct that the injunction be on the condition of the complainants filing a written consent with the bill, or endorsed upon it, submitting to abide the decision of an action to be had in a court of law by the Corporation against one of the parties, the form and other particulars attending the bringing such action, to be settled by this Court.

Martha Amory and others,
vs.
The Mayor, Aldermen, &c.

This case is, in its leading particulars, similar to that of Stuyvesant vs. The Corporation, before noticed. It is distinctly charged as to the proceedings in relation to the 6th avenue, that when the first publication of the notice of motion to confirm the report was made the act of 20th of April, 1839, was in force the rule of confirmation being made on the 6th of June, 1839. Here also the question under the 12th section is of great importance as the costs of the opening exceeds $10,000. Some questions may arise under this section; but this at least is clear: No part of the costs can be levied upon the party or his property, nor can a sale be made to pay them until the taxation has been made. How far if this were the only neglect, it would affect the whole assessment, I need not now enquire. I am clear that it justifies an interference with the present sale, which is to raise the whole amount, including the costs, provided this court has any jurisdiction at all; a point before examined.

John Haggerty and others,
vs.
The Mayor, Aldermen, &c.

The complainants in the bill, who are numerous, seek an injunction against selling their property assessed for the improvement of John street, and advertised for sale on the 27th inst.

I refer to my opinion in the case of Stuyvesant, vs. The Corporation, for the reasons upon which I have allowed a temporary injunction. It is however peculiarly incumbent upon me in this instance, to see that the case before me is substantially different from that of Wiggins, vs. The Corporation heretofore decided by the Chancellor, and in which an injunction was refused.

In the *first* place, the delay referred to by the Chancellor in the last clause of his opinion is fully accounted for in this bill; and as the Corporation never sued at law, and never advertised until the present notice of sale, there never was an opportunity for the complainants to resist the demand or to apply to this court. I have before held that until an advertisement was begun there was no jurisdiction.

Next, in the case of *Wiggins* no proceedings to sell the property had been taken.

Again, in that case the statements on the bill did not exclude the supposition that on the record of the proceedings it may have appeared that the ayes and noes were called. That difficulty is fully met in the present case.

Again, the bill was there defective upon the point of the complainant being the actual owner of the property assessed when he filed the bill.—The present bill is in this particular unobjectionable.

And lastly, a new and very important point is here introduced. The report was brought before the Supreme Court in ————, 1838. It was sent back for correction, and the motion for final confirmation made and the rule entered in September, 1839. At that time the 12th section of the act of 20th April, 1839, was in force. The costs were never taxed under that 12th section. The amount is added to the sum assessed, and each of the complainants' property is liable for and was to pay a proportion of such costs. The sale is to raise that proportion as well as the assessments for benefit. Now the section, as I have shown in my opinion in Stuyvesant vs. The Corporation affects proceedings subsequently taken. It is wholly illegal to charge the costs upon any party until they were taxed. Notice of the taxation is directed to be given in a public manner, and certainly without such notice and taxation the parties assessed cannot be bound to pay them.

It has been decided, from reasons of convenience and in the absence of any peremptory provision of the statute, that costs may be included in the assessment, and imposed prospectively by the Commissioners; and that an inconsiderable variation in the amount taxed from the amount imposed, will not affect the validity of the proceedings, nor prevent the confirmation of the report (Wiggin vs. The Mayor, &c, in Chancery, March 6, 1841.)

But if the section prescribing a taxation applies to this John street case at all, it is apparent that no party can be called upon to pay any portion of the costs until a due taxation has been had.—Without such taxation there can be no obligations to pay, and no lien on the party's property. What will be the consequence of this, and whether it may not be corrected by a taxation now and proportionate abatement, I need not inquire. The property is advertised to be sold for a debt, some of which at least is illegally imposed upon it.

By adverting to my opinion in the case of Westervelt & Codwise vs, the Corporation, it will be seen that it is settled law that the costs of the proceedings cannot be assessed upon the property without an express statute; that in a case in Albany, an assessment was set aside for want of such statutory provision; and that in the instance of opening streets in New York, the old act admitted the addition of the costs. Now I think the case will appear very clear if we suppose that it had been part of the old act that the cost must be taxed upon notice before they could be added to the assessment for benefit. Certainly they could not be recovered until taxed. I may add that, as the Supreme Court is empowered to make rules for carrying the act into effect, all inconveniences may readily be avoided.

M. HOFFMAN, Assistant Vice Chancellor.

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THE ASSESSMENT COSTS.

DECISION.

The motions made at the December Special Term of the Supreme Court, were by Mr. Emmet, one of the Ex-Counsel of the Corporation of the City of New-York, for the confirmation of the Reports of the Commissioners of Estimate and Assessment, for opening 37th street, 39th street, 128th street, 11th avenue, and Madison avenue.

Thirty-seventh and thirty-ninth street Assessments were commenced near eight years ago, viz: in June, 1836. The Common Council have never at any time, passed any resolution for to authorize an application to the Supreme Court for the appointment of Commissioners for opening these two streets. Yet notwithstanding this, an application was made to the Supreme Court, on a petition signed by the Mayor and Clerk of the Common Council, and Commissioners were appointed on the 24th June, 1836. The Report of the Street Committee of the Board of Assistants, stating the reasons why these streets were not to be opened by Commissioners, in detail, and the affidavit of the Chairman of the Committee, stating the reason why no resolution was introduced to authorize the application to the Supreme Court, are to be found in this volume, pages 141 and 142.

Andrew Warner, one of the Commissioners of Estimate and Assessment, in the 37th street proceeding, was examined as a witness in 1841, before the Select Committee of the Senate, appointed to investigate Assessment abuses in the City of New-York, and stated that he was sworn into office on the 24th of October, 1836, as one of the Commissioners for 37th street; that the Commissioners had completed their Report twelve or eighteen months previous to that time, and that it had not been presented to the Court for confirmation; has not heard Mr. Emmet state why he has not presented the report for confirmation. The witness also stated that the Commissioners were not all in the habit of attending the meetings, but were allowed compensation, the same as if they did attend.

The Report was finished, it appears, in 1840, and lay dormant after that time near four years before it was presented for confirmation.

Notice was given for taxing the fees of the Commissioners, Counsel and Surveyors, in these cases, before William Paxson Hallett, Esq., Clerk of the Supreme Court, who had himself acted as Commissioner in several streets, where the charges had been exorbitant. The Costs, &c., were taxed at more than TEN THOUSAND DOLLARS, to be assessed upon the land.

Objections were made to the taxation of the costs by Mr. Hallett, by the Counsel for the sufferers before the Court, on the ground that Mr. Emmet divided the fees with some of the Clerks of the Supreme Court, in Assessment matters, and read from Senate document No. 86, of 1843, a Report of a Clerk of the Supreme Court, to that effect.

In thirty-ninth street, Anson G. Phelps, Esq., was assessed on a piece of ground for the opening of this street; the same piece of ground had already been assessed for the pretended opening of fortieth street, $575, and also for the pretended opening of the 1st avenue, from 28th to 42d street, the further sum of $312, besides appropriating one third of the land for the avenue. This made $887, exclusive of the 39th street assessment; the interest of these two first assessments, exceed the value of the land assessed. Had the streets and avenues been opened by one sett of competent Commissioners, as was all that was authorized by the Common Council, the assessment on this piece of ground, would not have amounted to more than a few shillings, instead of exceeding more than FOUR TIMES THE VALUE OF THE LAND.

The Counsel for the sufferers, RICHARD MOTT, ESQ., on the motion for confirmation, objected to the competency of the Court to act in these matters, under that provision of the Constitution which prohibits a Judge from holding any other office or trust, and insisted, that in appointing these Commissioners of Estimate and Assessments, and confirming their Reports, the Judges did not act as a Court, but acted as Commissioners. This the Courts have all held, as did also the Hon. Select Committee of the Senate, who examined into the assessment outrages. Chief Justice SPENCER and Chief Justice SAVAGE, have both held that the power exercised by the Court in Street matters, was in the capacity of a Commissioner and not as a Court.

Mr. Mott read from the Constitution of 1777, and also of 1823; section 25 of the former, and Sec. 7 of Article 5 of the latter, on the prohibiting Judges of the Supreme Court from holding any other office or trust.

He also read the respective letters of the Judges of the Circuit Court of the U. S., for the districts of North Carolina, Maryland, and Pennsylvania, addressed to the President of the United States, in 1792, in which they refused to serve under an Act of Congress imposing duties upon them in reference to invalid pensioners, on the ground of constitutional disability. He also read a letter from the Judges of the Circuit Court of the U. States, for the district of New York, in which they consented to act as COMMISSIONERS, but not as a Court. In these cases the Judges admitted that the duties required by the Act of Congress were of a meritorious character, and they therefore regretted their inability to act, considering the duty inconsistent with their oaths of office and the Constitution of the United States. These letters are to be found in the Municipal Gazette, No. 16, of Nov 17th, 1843, page 286, in connection with the other objections urged by the Counsel in these cases.

Mr. Mott also urged the provisions of the Constitution of 1777 and 1823, in connection with the Colonial law of 1691, which are set forth and discussed, on page 199, of the Municipal Gazette.

The provisions of the Constitution refered to, are Section 41, of the Constitution of 1777, and Sec. 7, of Article 4, of the Constitution of 1823; also, Section 2, of Article 7.

This great Constitutional Question, was most ably argued by Mr. Mott, and he has gained for himself a well earned fame, in the success which has attended his efforts.

Mr. Mott also placed before the Court, such public documents as conclusively show that these assessment proceedings are notoriously of a scandalous character, and did not commend themselves to the favorable consideration of the Court.

The Counsel moving for a confirmation, indulged in the use of very abusive language against citizens who had publicly opposed these assessment abuses, but was made to take his seat, and was deservedly rebuked by the Court.

This decision will relieve citizens from the payment of arbitrary and disgraceful assessments, for sham improvements, and will also release all lands sold for such assessments. Those who have paid assessments more than six years ago, are barred by the Statutes, as the Corporation will not hesitate to plead Statute limitation.

The streets on the agricultural part of the island, will not be harmed by this decision.

Those who have sold land bordering on a street or avenue, as laid out in 1807, have, by the Act, dedicated the land in the street or avenue, to public use, whether they owned on both or only on one side of the street, as the conveyance sweeps all the land they owned in the street or avenue opposite the ground conveyed.

Those who own both sides of the street or avenue, have nothing to do but to put up fences, and the street is made without the use of Surveyor, Counsel, or Commissioner, and in those cases where the above will not apply, the several owners may negotiate or the Corporation can do so, and if no ar-

rangement can be made, they can apply to the Legislature to authorize a proceeding by Jury, as provided for in the Colonial law, in No. 1, page 4.

Real Estate has risen in New-York in consequence of this decision, and is actually increased in value more than FORTY MILLIONS OF DOLLARS thereby.

In order that some correct idea may be formed of the character of the proceedings which the Supreme Court have, by this Decision, put a stop to, we will state a few as a specimen.

First, All the streets from 42d, up to and including 57th street, were proceeded in on the resolution of Alderman Ingraham, without the scrape of a pen on a petition from any land-owner.

Second, All the streets and avenues, up to and including 42d street, not opened prior to 1836, were proceeded in without any petition from any land-owner, and without any resolution of the Common Council directing any application to the Supreme Court for the appointment of Commissioners. This batch embraced twenty-seven streets and avenues. It was the plan of the Common Council to proceed in all these streets by one Commission, instead of which eighty-one Commissioners were improperly applied for and appointed.

Third, Manhattan Square was proceeded in on the resolution of Alderman Benson. No petition from any land-owner for this nonsensical operation.

Fourth, Mount Morris Square, (Snake Hill,) was proceeded in on the resolution of Alderman Ingraham. No petition from any land-owner for this moonshine protuberance.

We could extend this, but it is unnecessary.

Again:

Ninth avenue, from 45th street to the Bloomingdale road, was proceeded in on the petition of eighteen persons, neither of whom owned a foot of the land to be assessed or awarded for.

All these streets and avenues had been surveyed, laid out, and maps made of the whole ground by the Commissioners appointed by the State in 1807.

If the Corporation found it necessary to open one of these streets, &c., the Statutes authorized them to treat with the owners for the land, and which it was their bounden duty to have done, instead of commencing their shameful crusade against private property, in laying on the land HUNDREDS OF THOUSANDS OF DOLLARS OF FEES.

We give the following as a specimen of the whole:

COUNSEL FEES AND COURT CHARGES.

Seventh Avenue,	$3,976.77
Sixth do.	3,589.77
Tenth do.	2,100.00
Second do.	2,033.55
Manhattan Square,	1,449.13
Union Square,	1,889.00
Chapel Street,	3,443.00
Art Street,	1,896.75

SURVEYOR'S FEES, PAINTING MAPS, &c.

Seventh Avenue,	$2,801.00
Sixth do.	2,480.00
Tenth do.	2,440.00
Second do.	1,700.00
Manhattan Square,	3,070.39
Union Square	596.00
Chapel Street,	749.90
Art Street,	975.00

COMMISSIONERS FEES.

Tenth Avenue,	$2,640.00
Seventh do.	4,920.00
Sixth do.	2,928.00
Second do.	2,380.00
Manhattan Square,	1,572.00
Union Square,	1,769.00
Chapel Street,	2,429.00
Art Street,	1,476.00

CLERK HIRE.

Tenth Avenue,	$600.00
Seventh do.	200.00

ROOM HIRE.

Seventh Avenue,	$410.00

These Costs and Expenses were never taxed, nor were any bills of items ever furnished the Corporation, and yet these large amounts were paid out of the Public Treasury, by officers whose duty it was to withhold the money. Such officers deserve the severest censure.

ASSESSMENT CONFISCATION.

Having given a small sample of the Expenses of Street opening *gentry*, we will now state a few cases of Assessments.

The Estate of John Duffie was assessed for opening 38th street, from the 2d to the 3d avenue, $1,289.80; for opening 38th street again, from river to river, $10; and for opening 2d avenue, $117.50. These three assessments, with the interest up to the present time and expenses, exceed $2000. This assessment is on a piece of land ninety-eight feet square, and was valued by Thos. R. Ludlum, City Surveyor, at $450 altogether; see his testimony, Senate Document No. 100, page 151. The assessment and interest already exceed four times the value of the land.

Estate of John Schuyler. This assessment is on a piece of ground on the corner of 28th street and 7th avenue, 58 feet ten inches by 98 feet 10 inches. The assessment for opening 28th street, is $1,037.05 for opening 7th avenue, is $209.98. The assessments exceed twice the value of the land.

Estate of James Amory. This estate is assessed, including interest, more than $10,000, for the pretended opening of 6th and 7th avenues and Manhattan square. The estate furnished the land for the avenues, and should not be assessed at all. None of the improvements are made.

We could go on and enumerate others, among which is the estate of Mathew Dyckman, the estate of Wm. Edgar, and the estate of Mr. Pierson.

Parents who toil hard to accumulate estates for their children, and leave the world with the satisfaction that they have provided abundantly for those they leave behind, to have their children plundered of those estates, in this way, is an outrage upon all law and order, and a violation of every principle of justice.

PAINTED STREETS.

The Select Committee appointed by the Senate of this State, to investigate Assessment Outrages in the City of New-York, say, in their Report, Document No. 100, of 1842, page 16, that:

"On that branch of the complaint as to the imposition of heavy and oppressive assessments for improvements never actually made, the Committee ascertained that a very large portion of the streets and avenues formally opened from 1836 to 1839, were *not* actually opened; that nothing has been done beyond making awards and assessments by the Commissioners, and the confirmation of their Reports by the Supreme Court; and that although the assessments have been collected for such improvements in many instances, and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the same condition as they were before the taking of any proceedings for their opening; and in some cases such lands remain in the occupancy of their original owners, notwithstanding they have been paid for the same. And in numerous other instances, where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

"Out of a list of eighty-one streets and avenues, or parts of such highways, the Reports for the opening of which had been confirmed in 1837, 1838 and 1839, fifty-seven have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others, a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation. This attempt to collect

assessments not only by voluntary payment, but by enforced sales of the lands charged, without actually opening the streets and avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters. The Committee, therefore, submit this subject to the consideration of the Legislature.

"Several instances were shown to the Committee, where property had been offered for sale for the payment of assessments at two or three successive sales, without being able to get a bid, the amount of the assessments being more than the estimated value of the property. These large assessments operate against the interests of the city, for the owner will not pay the assessment or improve the property, and no person will buy it, and the Corporation cannot realize their money by a sale of the assessed premises, and the amount must be taxed upon the city; and thus the improvement of the upper part of the city, which is covered with these great assessments, must be stayed for many years, and now apparently for an indefinite period of time, unless the land should in some manner be relieved from the charge of those assessments. It did appear reasonable to the Committee that in analogy with a judgment, the lien of which ceases on real estate after the termination of ten years, the lien of those assessments should be at an end after the lapse of some definite period; what that should be, the Committee submit to the discretion of the Legislature."

COLD.

The present winter has, in many places, been very cold. My thermometer, which has a full Northern exposure, with the bulb protected from the wind, has at no time been lower than six degrees above zero.

Captain Parry, in his Arctic Expeditions, found no cold more intense than 55 degrees *below* zero. At this temperature, mercury is malleable. There are but few fluids known to us but what would become solids at a temperature of 300 degrees below zero.

I remember the celebrated cold Friday, it was a cold day indeed, and was followed by an intensely cold night. I was, during that day and night, in an encampment in a dense Northern forest. During the night, the trees kept up a continued cracking and splitting from the effects of the severity of the frost, and to such an extent that at times the noise was like the discharge of a volley of musketry. The ice over a large body of water, some miles distant, during the night cracked from one extremity to the other, with a tremendous explosion, and with a force that shook the ground on which our camp was located.

While the thermometer was at the lowest, the present winter, viz: six degrees *above* zero, I tested the water of one of the public pumps; the thermometer denoted 47 degrees, and the water of my cistern, at the same time, 36 degrees of temperature. The atmosphere of my kitchen was, near the upper ceiling, 48 degrees, and on the floor at the same time, 42 degrees.

The thermometer was invented by Sanctorios, in 1590, and was reduced to a scale by the genius of Farenheit, in 1724. We have in use four descriptions of thermometers, viz: Farenheit's, Centigrade's, Reamur's, and DeLisle's.

The boiling point of Farenheit's, is 212 degrees, Centigrade's 100 degrees, Reamur's 80 degrees and DeLisle's 0.

The freezing point of Farenheit's, is 32 degrees; Centigrade's, 0 degrees; Reamur's, 0 degrees; DeLisle, 150 degrees.

Cold is not always destructive to animal life, however intense it may be. Fish of some descriptions, when taken from the water in the severest weather in winter, and thrown upon the ice, become frozen stiff, but when put back into cold water, where the frost is extracted, they again become as active as before.

Some descriptions of vegetation is wholly destroyed by frost, while other kinds are not in the least affected by the most intense cold.

The most ponderous walls are thrown down by the frost. The smallest joint that will admit water, if seized upon by frost, will yield to the force of the expansion which the freezing of the water produces.

The marble steps of the City Hall, of New-York, are very heavy, and each flight consists of four pieces. There are, therefore, three joints. The middle joint is close, but the joint toward each end, is open about an inch, showing that the water which had penetrated the joints, had been expanded by the frost. The middle joint is made close by the same force that enlarged the others. Here are tons weight of stone moved by the freezing of less than a pint of water.

Cold air passes in veins through the atmosphere. Cold exists throughout the year a few thousand feet above our heads, and of great intensity.

The stratification of the atmosphere by cold, is very clearly illustrated by hail storms in hot weather. The hail passes in veins.

The nearer we approach the Sun in ascending into the atmosphere, the more intense we find the cold, and for aught we know, the planet Mercury, which is near the Sun, may be far colder than Georgium Sidus, which is far distant from it.

Heat and cold, under certain circumstances, and to a limited extent, we can measure, but beyond that, all is blank. The Pyromater, an instrument for measuring intense heat, is a recent invention, and a very important one, and time may unfold others, equally as important.

Cold does not penetrate the Earth to any very great extent where it is covered with snow, and much less than where it is exposed to the air.

When the cold approaches a city in which a pestilential fever rages, the infected atmosphere is at once disinfected; it is in this a physician to the sick.

The weary traveller, in the regions of country bordering on the Equator, when suffering from the heat of a vertical Sun, labors hard with a feather fan or some contrivance like it, to move a little cool air to revive his wilting frame.

Cold, where we have a surplus of it, like every thing else, we cease to value. It is a rich treasure, it is one of Nature's bounties; the sweet cold locks up in the great terrestrial store-house of Nature, the germs of vegetable and animal life.

To cold we are indebted for our chrystal bridges, vast in their extent and unequalled in their construction.

BOARD OF ASSISTANTS.

We should like to see the Board of Assistants made up of such citizens as James Kent, Jonathan Thompson, Stephen Allen, Preserved Fish, Wm. B. Crosby, John M. Bradhurst, George Newbould, Abraham Van Nest, Wm. F. Mott, Jonathan Goodhue, John Haggerty, Edward H. Pendleton, Saul Alley, John I. Palmer, Benjamin L. Swan, W. W. Fox, and Peter Schermerhorn; men full of years and full of experience, and of great purity of character. A Board composed of such men, would be a blessing to the City, and we ask where is the citizen who would not feel proud to take his stranger friend to see such a Board sitting in deliberate Council. A Board composed of these individuals, would possess more dignity, and command as much respect as any other deliberate assembly on the globe. It would be a Council of freemen, dignified by Nature, adorned by human cultivation, aud a better safe-guard to liberty and property, than the greatest standing army that was ever assembled together. It is to such men that our country has to look for safety.

The Board of Assistants, composed of such citizens, would in reality be what it purports to be, a BOARD OF ASSISTANTS.

The meetings of such a Board, in the day time, would render useless the thousand dollar chandeliers, and the crimson drapery and tinselled trappings of the Session room, for it would have the adorning of plain, sensible men, which is ornament enough.

No gold pencils need be displayed to take the eye of such men; and if a gift, they would scrutinize the motives of the doner, and the acts of the donee.

The banqueting room would find no advocates in such a Board.

Such a class of men would raise the character of what is called the "Little Board," to an elevation that would make it exceed the Roman Senate in name and fame.

THE SUPREME COURT ACTING AS STREET COMMISSIONERS.

There would be full as much propriety in making the Justices of the Supreme Court,

Canal Commissioners, as Street Commissioners.

We were much surprised in noticing in the postscript of Mr. Justice Bronson's letter to Mr. Mott, which we published on the 21st instant, that the Chief Justice dissented. Chief Justice Nelson was a member of the Convention that made the provision in the Constitution, that the Justices of the Supreme Court should hold no other office. If the Chief Justice goes on the doctrine of expediency; if he will come to New-York and consult such men as Jonathan Thompson, Robert C. Cornell, Walter Bowne, Stephen Allen, John M. Bradhurst, and others of the same standing, he will find that these assessment proceedings are very different from what they are represented to be by Ex-Commissioners of Assessment. Persons who have been the recipients of princely fees in these odious proceedings, have, it is generally believed by citizens of New-York, misrepresented these street assessments to the Chief Justice. The Chief Justice is a man of great purity of character and a most worthy citizen.

The first Street Commissioners appointed in this State, were by an Act of the Legislature, passed April 6th, 1792, for extending ROOSEVELT and FRANKFORT streets. These Commissioners were five in number, and were appointed by the Legislature. There was a peculiar feature in this Act, viz: that the Common Council should first have and obtain the consent of the owners through whose land the street should pass. The assessment to be made by the Commissioners, *after this preliminary*, was to be returned to the Common Council, under their hands and seals, and upon this, was to become a lien upon the land and a debt due the Corporation, for which they were authorized to sue for in any Court of record in this State.

This act is a very different kind of proceeding from the Act of April 9th, 1813. This was the first step taken in the appointment of Commissioners. The necessity of a jury was dispensed with in these two cases, because that the consent of the owners must be obtained before the land could be used, therefore there was no necessity for a jury. The consent of the owners was substituted.

The restraining clause of the Constitution of 1777, was well understood in those times. No attempt was made to turn the Supreme Court out of doors and make the Justices highway-masters.

The Act to which we refer, is to be found in No. 1, of the Municipal Gazette, page 5.

In the case of Elizabeth Pearson, in the Court of Chancery, in which his Honor the Chancellor gave the opinion which is to be found on page 195, there are some facts which ought to accompany that opinion.

About the year 1830 or 1831, the husband of Mrs. Pearson departed this life, leaving a wife and three children. He owned the premises situate on the north-east corner of Pearl and Centre streets, which rented for upwards of one thousand dollars per year. On this property was a mortgage in favor of some wards of the Court of Chancery, the interest of which was paid out of the rent of the premises, and also a mortgage to Mr. Stevenson. The Corporation assessed this property a large sum for extending Centre street, and for filling in and paving Centre street, and for sewers, &c. The assessments for the filling in were never signed by the Assessors as required by law, and the whole proceedings were notoriously shameful.—This property thus assessed was sold for the term of 27 years, by which means Mrs. Pearson and her children are rendered destitute and helpless. It was their whole, their only dependence, when Mr. Pearson left the world he supposed it was an abundant provision for the support of his family and the education of his children. It was so if the Corporation had not disinherited this little helpless family. But this is not all the Corporation have done to distress this oppressed family, as will be seen in the sequel.

Mrs. Pearson applied to the Assistant Vice Chancellor, Hon. Murray Hoffman, for an injunction to restrain the Corporation from executing a lease for the assessment, which he granted, requiring Mrs. Pearson to give security for the costs. A hard working mechanic of very limited means was her security. The Corporation demurred to the jurisdiction of the Court, which the Chancellor sustained, and dismissed the bill with costs.

The Corporation prosecuted the surety of Mrs. Pearson for the costs, and levied an execution upon the property of this hard-working mechanic, and he was obliged to raise out of his hard earnings about seventy dollars.

The widow and the fatherless are helpless. We forbear to comment.

The Chancellor in this opinion uses an expression which certainly must have been almost a slip of the pen in the hurry of business. In speaking of the decision of the Court for the correction of errors in the case of Messerole's children, he says "the Court *repudiated* the idea that the Court of Chancery has any power or right to interfere in such cases."

The decision to which the learned Chancellor refers was by a tolerably close vote.—If we mistake not, it was 13 to 9, and had the case been argued by the Counsel who filed the bill, it would have been the other way we are almost sure. General Bogardus filed this bill and carried it in the Court of Vice Chancellor McCoun, and in the Chancellors Court, but when it reached the Court of Errors he was near the confines of the grave, and unable to argue it. It was, however, argued by an able lawyer who knew nothing of the case until the evening before the argument.

We published the whole history of this case from papers which we obtained from Gen. Bogardus the Solicitor for the children of Mr. Messerole. The printed sheets were destroyed by fire. We will endeavor to obtain from the Executors of Gen. Bogardus the papers again, and will re-publish them. The Chancellors opinion, in that case, is well worth reading and does credit to his head as well as his heart.

Now the reason which the Chancellor assigned for taking jurisdiction and then changing his mind is certainly one which ought to have influenced him in giving costs. If he had erred, and Mrs. Pearson had been misled by this error, he should not have made her pay costs, unless the law was peremptory to compel him to do so, and if such is the law, that learned jurist ought not to have allowed a session of the legislature to pass without calling their attention to a remedy.

There is another matter in the opinion of the Chancellor in another case on the same page, which is that of restraining the Corporation being an "UNNECESSARY INCONVENIENCE TOTHE CORPORATION."

"Let justice be done" without looking to consequences.

The Chief Justice who gave a written opinion in this case in the Court for the correction of errors uses this strong language in reference to the jurisdiction of the Chancellor in these Street cases:

"I know the learned Chancellor has neither the desire or inclination to entertain it unless in obedience to a sense of duty, and the ancient jurisdiction of the Court following where the footprints of his learned and distinguised predecessors lead; and must believe that he has been *subdued and carried beyond the outer boundary of his court, by the hardship and injustice of this particular case.*"

"These *hard cases* make bad precedents in the Courts both of law and equity, and are usually found at the bottom of them."

ROBERT H. MORRIS.

Mayor Morris deserves the thanks of this community for the interest he has taken in the Tax question, and for numerous and well timed vetos.

Our citizens who pay large taxes speak in the highest terms of Mayor Morris. He is a public officer of great firmness of purpose, intelligent and honest. If he is a candidate for re-election he will no doubt be re-elected.

Alderman Breevoort, Alderman Brady, and Alderman Tillou, deserves the thanks of the tax payers for their attention to their interests.

NEW PARTIES.

Whichever party puts up the best men will succeed at the charter election.

BAR ROOM OF CITY HALL.

This appendage to the banqueting room of the Hall has been refitted with new carpets, &c. &c.

We have not heard whether they have procured gold waiters for their wine goblets.—Such a use of the public funds would be more appropriate than one half their appropriations.

DESTRUCTIVE ASSESSMENTS.

—

BEDFORD ROAD

AND

MR. MESSEROLE'S CHILDREN.

We give below the Speech of the venerable General Johnson, Mayor of Brooklyn, to the Common Council of that city.

The newspaper containing this Speech, was first shown us by the Hon. W. T. McCoun, Vice Chancellor, after the case of Messerole's children had been argued before him, and he remarked that he intended sending the paper to the Chancellor.

This Speech deserves to be treasured up, and we have printed an extra number of copies for extensive circulation throughout the United States, and also in England.

We deem it due to this important question to place the farewell address of the venerable Mayor of Brooklyn, who is a most excellent citizen, a man beloved and respected by all who know him, in connection with the Opinion of the worthy Chancellor of this State, in the matter of the ruinous assessment upon the estate of the infant children of Mr. Messerole, who were assessed so heavily for the Bedford Road, as to annihilate their title; and next to these, the Opinion of the Supreme Court, in which they state that the Constitution of the State has provided against the exercise of such summary street powers by that tribunal, which is the power which confirmed the Bedford Road Assessment alluded to by the Mayor and passed upon by the Chancellor.

We wish to call the attention of the reader to the first paragraph of the Opinion of the learned Chancellor, in which he says: "*that an assessment has been made upon the lands of the complainants, which must produce a total sacrifice of the property assessed, unless they can obtain relief in this Court, or by* LEGISLATIVE INTERFERENCE,"—in connection with the *quere* put by his Honor the Mayor of Brooklyn, in his Speech, when he asks: "*will the land assessed along Hamilton avenue and Bedford road, pay half the assessments? If not, are not the owners plundered, and the City also?*

Here is evidence indisputable and unquestionable as to an absolute confiscation of this estate, and we ask by whom? We answer, by a power unknown to the Constitution of the Commonwealth.

It was well said by the learned Chancellor that: "*unless they can obtain relief in this Court, or by Legislative interference,*" that the assessment must produce a total sacrifice, &c.

The Chancellor clearly saw that the Justices of the Supreme Court did not act in a judicial capacity, but merely as Road Commissioners, and therefore that they could not revive their own acts.

Among the powers possessed by the most absolute governments in Europe, there are none that can be compared in despotic character with the summary street powers which have been exercised over private property, in the State of New-York, for years past; and yet we boast of a CONSTITUTION, the purchase of BLOOD and TREASURE!

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From the Long Island Star of May 7, 1838.

BROOKLYN COMMON COUNCIL.

MONDAY, April 30, 1838.

The MAYOR addressed the Board as follows, and retired, and the President, Alderman S. SMITH, took the Chair.

Gentlemen of the Common Council:

Be pleased to permit me to present a few remarks to this Board, before I leave the Chair.

When we entered upon our duties, the storm of adversity was passing over our country, sweeping away the golden visions of speculative prosperity, and leaving the blasted harvest of adversity on many fair plotted fields. Many tall trees, with gilded leaves and *paper* roots, were laid low. Our fair city has suffered by the storm, her sails were spread to every wanton lover, whom the lust of speculation brought among us. Our former cultivated farms are dotted with buildings, subject in many cases to reversions. This is a faint outline of the prospects caused by the re-action, which, in like cases, will always follow excessive speculation. Many great men, and many wise men, who had enough but wanted *more*, have been ensnared, and have fallen upon the alter of adversity.

When this city was incorporated, our deferred Market Debt was $20,000; two hundred thousand dollars were raised by loan for the erection of a City Hall; the Common Council *knew*, and our citizens *know*, that this sum was sufficient to build a Hall, equal in every respect to the Hall in the city of Albany, and to purchase a site for the building. The loan was made with this object in view. Why was it not done? Why were not the interested *schemes* of speculators, rejected by an unanimous vote, instead of one solitary NO?

The past cannot be re-called. The deed is done; but that *incubus* of folly will be felt after its votaries are no more.

No member of the Common Council, of any city of this State, can lawfully make a beneficial contract with the Board whereof he is a member; nor can *any* member of such Board enter into a contract whereby he is directly or indirectly benefitted.

In Brooklyn, the Common Council direct and the Mayor executes.

Again, Gentlemen: what authority had our Board of Aldermen, who are Trustees of the People, to lend their aid to interested men, to oppress and ruin the widow and the orphan, by opening, paving, or grading unnecessary streets? Improvements are betterments, not divestments. Were not Hamilton avenue, Myrtle avenue, and Bedford road, opened to gratify speculators *very near* the Board? Were not the assessments for opening, laid heavily on distant sections, to pay favorites *near* the Board? Will the land assessed along Hamilton avenue and Bedford road, pay half of the assessments? If not, are not the owners plundered, and the city also?

Motives produce acts which are often done before the design is seen.

The foregoing remarks are not made for individual purposes, but for the purpose of warning those who succeed us, to guard our city from the like errors.

I have now given a faint outline of our city as she was when the Board entered upon its duties, oppressed upon every side, but not disheartened. Our ship was shattered in her rigging, but her hull is sound. Our beautiful and healty city remains. We need no distant waters, we have the best in abundance below. We will be burthened a few years with taxes, still we can pay more and prosper.

We have united to stay unnecessary expenditures, and correct evils. We have preserved civil order, and promoted education. Our efficient Police has protected us from midnight fiends, and Providence from the fiery elements. Our Fire Department is improving.

On taking leave of this Board, be pleased, Gentlemen, to accept of my individual respects for your kindness and assistance during the past year; to the Clerk, Attorney, and Street Commissioner, together with all our *faithful* officers, my respects are also presented. Though we may seperate here! I hope *we* will meet hereafter, in that happy haven of rest, where no political distinctions will be known.

Alderman Underhill then offered the following Preamble and Resolution, which was read and adopted:

Whereas, the term of service in which his Honor JEREMIAH JOHNSON, has been elected to fill the arduous situation of Mayor of this city, is nearly terminated, and whereas, the connection necessarily arising between the individual filling that office and the members of this Board, give the latter ample opportunity of judging of the capability and zeal with which the duties of the Mayoralty has been performed; and whereas, this Board are deeply impressed with the conviction, that his Honor JEREMIAH JOHNSON, has on all occasions, exhibited an energy and industry in his station, no less honorable to himself than beneficial to the public; that the interest of this city, of which he has so long been a resident, have again, as they often have before, been highly promoted by his public spirit and anxious desire to promote the public weal, therefore

Resolved, That this Board do hereby tender to his Honor the MAYOR, their warmest thanks for the indefatigable zeal and untiring industry with which he has filled the duties of his office, and hereby express to him the conviction they strongly feel, that he has added another wreath to the crown he has so long deserved to wear, that of a PUBLIC BENEFACTOR.

THE CHANCELLOR.

"It is pretty evident in this case, that an assessment has been made on the lands of the complainants, which must probably produce a total sacrific of the property assessed, unless they can obtain relief, either in this Court or by Legislative interference. Judging from the facts before me, I cannot see how it was possible for the Commissioners of Estimate and Assessment, to have come to the conclusion that the lands assessed could be benefitted to the amount of about $14,000, by the contemplated improvement; even upon the principles on which they proceeded relative to the Bedford road as a public highway, already laid out and established. As I understand the case, the assessment limits only included of the complainant's lands 107 feet on each side of the Bedford road, as originally laid out by the turnpike Commissioners, and extending in length on that road about 968 feet. This would give to the complainants 76 lots of 25 feet front, and 107 feet deep, upon a street of 66 feet in width. And if the contemplated improvement was made, they would have the same number of lots of 100 feet in depth, upon an 80 feet street. These lots, at the valuation fixed upon them by the second answer of the defendants, at the time of the assessment when lands were the highest, were worth $250; making the sum of $19,000 for the lands assessed. And yet it is supposed these lots will be benefitted by the widening and extending of this street, $139.31; or about three fourth of their then estimated value, and nearly their full value one year thereafter, when the second answer was put in. It is possible, that some further benefits might accrue to these lots, by the extension of Bedford road beyond where it was already opened four rods wide, in addition to the benefit of having it fourteen feet broader in front of the lots assessed. But there is much reason to believe that the guardian ad litem who was appointed to take care of the rights of these infants, and who was himself one of the applicants for the proposed improvement, has, under the influence of mental hallucination, or otherwise, suffered their property to be assessed to about its full value, and probably much more than it is now worth; as a supposed benefit which that property was to receive from the contemplated improvement. If the whole proceedings, however, have been regular, and the Commissioners of Estimate and Assessment have merely erred in judgment, I think this Court has no jurisdiction to correct their error, or to give relief to the complainants. For there is no allegation of fraud or collusion on their part, nor on the part of the guardian ad litem, who was appointed in the mode prescribed by law to protect the rights of the complainants on that assessment, and to appeal from the decision of the Commissioners, if he believed they had done injustice to these infants.

The first objection to the regularity of the assessment is, that the Commissioners of Estimate and Assessment, have assumed that the turnpike road was not only regularly laid out, but that it was already the property of the public, so that the complainants were entitled to no compensation therefor. In this I think the Commissioners were clearly under a mistake. For the purpose of this decision, I shall take it for granted that the turnpike was properly laid out, and that the damages of the complainants for that part of their farm which was taken for the use of the Corporation were legally and constitutionally assessed, pursuant to the provisions of the general turnpike act of 1807. Still that act did not vest the title of the land in the turnpike company, even for the purposes of the road during the existence of the charter, until the actual payment of the damages which had been so assessed. The language of the Statute is, that the turnpike corporation, upon paying to the owners of the land the sum assessed and awarded by the appraisers in their inquisition, shall and may have and hold the lands to them and their successors and assigns, &c. (1 *R. L. of* 1813, §3, *p.* 231.) It is true, the statute does, by an implication, authorize the turnpike company to enter upon the land for the purpose of making their road thereon, if there is no person living on the land who is authorized to receive the damages, unless such damages shall be lawfully demanded. The title to the land, however, is still in the original owner; and the moment he demands the payment of the damages from the proper officers of the company, and the same are not paid, he may bring an action to recover the possession of the land. It is perfectly clear, therefore, that the complainants before they could be divested of their title to so much of their farm as was included in the old Bedford road, were entitled to the payment of at least the amount which was awarded to them by the appraisers, in 1828. And the opinion of Chief Justice Nelson, appears to be that they were entitled also to the benefit of the contingent right to the revision in the land, in case of the dissolution of the Corporation, or of the abandonment of the road. (*See Hooker* v. *The Utica and Minden Turnpike Company*, 12 *Wendell's Rep.* 371.) Whether the turnpike company was in existence at the time the Commissioners of Estimate and Assessment made their Report in the present case, does not distinctly appear from the pleadings; but the legal presumption is that it was, as I have not found any statute dissolving that Corporation, or authorizing it to abandon the road. It is clear, however, that if that Corporation should be legally dissolved without having paid the amount awarded to the complainants for damages, the legal title to that part of the Bedford road which is in question here, would belong absolutely to the complainants; and that such title could not be divested, for the purposes of this public street, without paying them the full value of the land, either in money or in the benefits which would thereby accrue to them by the increased value of their adjoining lands. It does not distinctly appear in this case whether the petition to the Common Council for the improvement, and the resolution of the City Corporation adopting the same, actually contemplated the taking of the lands included within the limits of the turnpike, as well as the two narrow strips on each side of the same, for the use of the Corporation as a public street. If the former was the case, then the confirmation of the report was irregular, and may still be opened; as the Commissioners have not in form appraised the damages to which the complainants, as the owners of the original site of the Bedford road through their farm, are entitled. And as I understand the recent decision of the Supreme Court *In the matter of Anthony street*, (20 *Wend. Rep.* 618,) there cannot be an absolute confirmation of the Report of Commissioners of Estimate and Assessment, so as to give any vested rights under the same, until the damages for all of the lands taken for the proposed improvement have been ascertained and settled, and are properly assessed upon the owners of those lands which will be benefitted by the improvement. If this is the correct construction of the Statute, and the resolution of the Mayor and Common Council actually contemplates the taking of the whole of the old Bedford road for the purposes of this improvement, they ought not to be permitted to proceed and enforce this assessment against the complainants personally, by virtue of the distress warrant, or by a sale of their lands which have been assessed, until the proper steps have been taken to divest their title to the whole of the lands which are to be taken for the improvement, by an assessment of the damages and an offset of the same against the supposed benefit of their adjacent lands.

I think, however, there is a more conclusive objection to the proceedings of the defendants, in this case; and that is, that the Mayor and Common Council had no legal authority to lay out and open this new street through the lands of the complainants, in one of the new wards of the city, subsequent to August, 1835; until the same had been authorized by the Commissioners appointed under the Act of the 23d of April, in that year, authorizing the appointment of Commissioners to lay out streets, avenues, and squares, in the City of Brooklyn. That Act, which took effect on the first of September after its passage, gives to the Commissioners, to be appointed by the Governor on the application of the Mayor and Common Council, the exclusive power to lay out streets, avenues and public squares, within that part of the city comprising the sixth, seventh, eighth and ninth wards, and to direct the closing of any streets, roads, highways, lanes, avenues or alleys which had not been theretofore approved of by the Mayor and Common Council. (*Laws of* 1835, *p.* 136, § 4.) The previous act of the same day amending the charter of the city of Brooklyn, which went into effect immediately, must be so construed as not to conflict with the provisions of the Act appointing these Commissioners to make a permanent

plan of this part of the city. It must therefore be construed to apply to that part of the city lying within the first five wards, and which was originally comprised within the bounds of the village Corporation; or at least, to such streets as they should think proper to lay out according to a settled plan, in the four other wards, previons to the time when the act for the appointment of Commissioners should take effect. Certainly it could not have been the intention of the Legislature that two classes of officers should have the power to lay out streets and avenues in that part of the city during the same period, and that each should proceed according to a settled plan of their own. Neither could the Mayor and Common Council continue their jurisdiction over the subject, (if their power extended to these four wards previous to the first of September,) by their neglect to apply to the Governor for the appointment of Commissioners, until after this street was laid out; if such was in fact the case. The duty for which the Commissioners were to be appointed, was in its nature exclusive, independent of the express provisions of the act upon that subject. And until they had been appointed and had authorized the opening of the street now under consideration, I am satisfied the Mayor and Common Council had no authority, after the first of September, 1835, to proceed by resolution to open the same, and to have Commissioners of Estimate and Assessment appointed pursuant to the directions of the Act of 1833.

The Vice Chancellor was therefore authorized to interfere by injunction to restrain the defendants, under color of authority, from proceeding in an illegal act, which must necessarily cast a cloud upon the complainant's title; and to set aside these unauthorized proceedings which had already taken place. (*Oakley* v. *The Trustees of Williamsburg*, 6 *Paige's Rep.* 262. *Pettit* v. *Shepherd*, 5 *Idem*, 501.) For these reasons, the order appealed from must be affirmed with costs."

IMPORTANT

ASSESSMENT DECISION.

SUPREME COURT,

FEBRUARY 8, 1844.

OPINION OF THE COURT.

Matter of Opening 39th street, in the City of New-York; also, 37th street; also, a New Street between the 4th and 5th avenues; also, the 11th avenue, between 32d and 47th street, and also 128th street.

BRONSON, J.—The Statute in relation to the opening and laying out of streets, avenues, squares and public places, in the City of New-York, has been in operation thirty years; (2 *Revised Laws*, 342 408, §177 192;) and the question is now distinctly made, for the first time, whether we have the constitutional right to exercise the powers which the Legislature has attempted to confer upon us. But it is never too late to appeal to the fundamental law; and the question is none the less entitled to a careful examination because it touches our own authority. If, by common consent, and without having our attention called to the subject, we have heretofore taken cognizance of matters which did not rightfully belong to us, that cannot be a good reason for going on in the same way after our authority has been plainly drawn in question.

The constitution declares, (*Art.* V. §7,) that "the Justices of the Supreme Court shall hold no other office or public trust," and the question is, in what character do we act in these street cases. Although the power to appoint Commissioners of Estimate and Assessment, and to review their proceedings, is, by the words of the Statute, conferred upon the "Supreme Court," it has been fully settled that we do not act as a Court, but as Commissioners, to discharge this special trust or office. The question was considered in the *Matter of Beekman street*, (20 *John*, 269,) which was decided within a few years after the law was passed. It was there held, that our powers were derived wholly from the Statute, and were not incident to our judicial duties; that we do not act as a Court, but as Commissioners; and that the general powers and jurisdiction of the Court could not be brought into exercise. The case was likened to that of a Judge sitting as a Commissioner under the insolvent laws. The same doctrine had been laid down before this Statute was passed, under an act of the Legislature conferring similar powers upon the Albany Mayor's Court. *Stafford* v. *Mayor of Albany*, 7 *John*, 541.) It was there held, that the proceedings were not of a judicial nature; that there was no analogy between them and the judicial proceedings of a Court of Record in the progress of a cause; that the Court acted as Commissioners, and when an assessment had been confirmed, the Court was *functus officio*, and had no power to set aside the proceedings. In the *Matter of the Mayor of New-York*, (6 *Cow.* 571,) it was again affirmed that we do not act as a Court in these cases, but as Commissioners appointed by the Legislature; and this doctrine has uniformly prevailed down to the present day. (*Matter of Canal street*, 11 *Wend*, 154; *Matter of Mount Morris Square*, 2 *Hill* 14.) There have been other cases to the same effect, which, as they contained nothing new, have not been reported. The principle has been fully carried out, by refusing to set aside the proceedings in Street cases under any circumstances, on the ground that while sitting as Commissioners we had no power to re-call that which had once been done. When the parties have desired a review in a street case the Supreme Court has issued a *certiorari* to the Justices of that Court as Commissioners; and after having thus got the matter before us as a Court, and affirmed what we had previously done in another character, a writ of error has been brought in the Court of Errors. In these and all other forms in which the question has arisen, it has been uniformly held, that in executing the street law of 1813, we are but Commissioners discharging a special trust. The principle has been settled more than thirty years, and it is now quite too late to call it in question.

The same doctrine has been laid down by the Federal Judiciary. By an Act of Congress passed March 23, 1792, (2 *Bis.* 259,) the Circuit Courts of the U. S., were directed to inquire into and decide upon the claims of certain persons to be placed on the pension list. The note to *Hayburn's case*, (2 *Dall.* 409,) shows that several of those Courts declined to execute the law, on the ground that the duties which had been assigned to them were not of a judicial nature. There was no disqualifications to hold other offices, as there is under our Constitution. The Circuit Court for the District of New-York, composed of Chief Justice Jay and Judges Cushing and Duane, said the Act could only be considered as appointing Commissioners for the purposes mentioned in it, by *official* instead of *personal* description; that the Judges regarded themselves as being the Commissioners designated by the Act, and therefore as being at liberty to accept or decline that office. As the object was a benevolent one, and the Judges wished to manifest their respect for the Legislature, they accepted the trust. The Justices of this Court seem to have acted upon the same principle when they accepted the office of Street Commissioners, under the New-York law. Chief Justice Spencer, in delivering the opinion of the Court in the *Matter of Beekman street*, (20 *John*, 269,) said, "it might be a question how far the Legislature can impose such duties on the Judges." But he entirely overlooked the constitutional inhibition against holding any other office, which was substantially the same then as it is now, (*Const. of* 1777, *Art.* 25.) Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office, and execute the Statute. The farther inquiry is now presented, whether we have any power to act in the matter. Upon that question I cannot entertain a doubt. The Constitution having declared that the Justices of this Court shall not hold any other office or public trust, we cannot accept this appointment, however willing we may be to carry out the wishes of the Legislature. If we can execute the office of Street Commissioners for the City of New-York, the like powers may be conferred upon us in relation to any other town or county; or the duties of the office of Comptroller, Treasurer, or Sheriff, may be assigned to us; and thus the constitutional disqualification would be rendered a dead letter. For one, I can never give such a construction to the fundamental law as will amount to a practical nullification of its provisions. Indeed there is little room for construction in the case. If, in executing

ment. The motion was argued before Chief Justice NELSON, at the March Special Term, and he refused to interfere, on the ground of lapse of time, notwithstanding the application was made within six months of the confirmation of a report, which was presented and confirmed without notice. The Chief Justice also assumed to exercise what he termed the discretion of the Court, in the case. The discretion of the Court is not the will of the Judge. We have noticed this point on page 196 of this number.

The most powerful monarch in Europe never claimed as much authority over the private property of a subject, as has been exercised by the Supreme Court for years over the private property of the citizens of this City in street assessments.

We discussed some branches of this question, in the Municipal Gazettee of December, 1842.

The Court in this opinion, are so explicit with regard to the prohibitory clause of the Constitution, "that he who runs may read."

We are glad to see the doctrine of strict construction under way, and when once broached in political matters there is no difficulty in applying the principle to the piratical assessments in the City of New-York.

Re-Argument.

Mr. Emmett has served Mr. Mott with a notice of re-argument of his five street motions. His notice is entitled before the Supreme Court. What nonsense under the views here expressed by the Court. We will publish his affidavit on which he founds his notice of motion.

Another Assessment Cruelty.

The Assessment for setting curb and gutter in the 8th Avenue, amounts to $43.922-25. The assessors appointed by the Common Council to make the assessment, are the Street Commissioner, his Assistant and Clerk. The contract was made by the Street Commissioner, and the prices unreasonable.

When the Senate Committee were in session at Clinton Hall, this proceeding was brought before them, as one of the Assessment outragss. Mr. Perrine, a former Clerk in the Street Commissioner's office, was examined as a witness, he stated that: "there are no names of Assessors in any part of it, nor is it signed by any Assessors." The assessment was passed by the Board of Aldermen, Dec. 17th, 1838; by the Board of Assistants, Dec. 24th, 1838, and approved by the Mayor, Dec. 28th, 1838, although not signed by the Assessors. This is the way the public business is done. The Assessors are the same as those of Chapel street, and yet the two assessments are made upon entirely different principles; both cannot be right.

By a decision of the Supreme Court, all the Assessors must be present to make the assessment, but a majority may decide.

This is the assessment, for which the Street Commissioner sold the house and two lots belonging to Mary Stewart and her children, all their property. One of the children is sickly. The husband of Mary Stewart was a shoe-black, and he earned his money by hard labor, with which he purchased this property, and when he died he left it to his family.

The purchaser at the assessment sale of this property, on getting his lease, took possession, and put the furniture of the occupants out of doors, but he was prosecuted for forcible entry and detainer, and at once surrendered the premises, and has since brought an ejectment suit on his lease. A case has been made, and will be argued next month before a full Bench. Some charitable individual has volunteered a Counsel fee to defend the little home of the colored woman and her helpless children.

The owner of the premises had no notice of the assessment, or the sale.

The regulating the third avenue was paid out of the City Treasury, and so ought that of the eighth avenue.

Alderman NASH,

OF THE SEVENTH WARD.

On Monday evening, Alderman NASH tendered his resignation as Chairman of the Committee of Public Offices, Repairs, &c., assigning very satisfactory and substantial reasons therefor.

We have watched the movements of this member of the Common Council, with a great deal of interest; he is a plain spoken man, and when he discovers a wrong, he sets his face at once against it. He deserves the thanks of the public. We were pleased to see that he was sustained by Alderman SCOLES.

Alderman BREEVOORT,

OF THE TWELFTH WARD.

This gentleman, who is a man independent in mind as well as in property, took a bold stand in the Board of Aldermen, some time since, against the Street Commissioner. The Alderman deserves credit for acting independent of that officer, and having a mind and opinion of his own.

NOTE.—Several of the pages of this volume have been destroyed by fire. The present and last preceeding seven pages, are substitutes for those destroyed. Some of the other pages of the volume are being re-published in the same way.

The copies of the petition to the Legislature of 1843, which were on pages 241 to 244, and the re-print also, were destroyed by the torch of the incendiary, in 1843. We have re-printed these on page 254.

SUPREME COURT DECISIONS IN 1841.

At the January term of the Supreme Court the matter of the assessment for constructing a sewer in Twentieth street, on the Hudson river side of the island, was argued upon the return made to the certiorari issued in this cause, by Lewis H. Sandford, Esq., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. The Court held the case under advisement until the October term, near the close of the year, when they *quashed the certiorari.*

At this term of the court Chief Justice Nelson delivered an opinion on denying the motion, made at the December term of 1840, for a certiorari in the matter of re-paving and re-grading Chapel and adjoining streets. This opinion, and the material facts set forth in the affidavits and papers on which the motion was founded, will be found in its order in this number.

At the April special term, Mr. Justice Cowen presiding, motions were made for writs of certiorari in the matter of the proceedings in the assessment for opening Mount Morris square and Second avenue from Twenty-eighth to Eighty-sixth street. L. H. Sandford, Esq., for the Relators, submitted very full points to the Court, which were replied to by Peter A. Cowdrey, for the Mayor, &c. The Court held these two motions under advisement until November, 1841, when he gave a very full opinion, denying the material part of the motions.

At the May term of the Court, held by the full Bench, the cause in which the People ex rel. E. Meriam and others, were relators, and also that in which James Agnew and others were relators, involving the proceedings in the assessments for repaving and regrading Chapel and adjoining streets, and of building a sewer in Chapel and Thomas streets, came on for argument on the respective returns made to the certioraris issued in these causes. Lewis H. Sandford and Wm. M. Holland, Esqs., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. These causes were fully argued. Mr. Justice Bronson took the papers, and at the October term of 1841 delivered a brief opinion of one of the causes. The Court *quashed the certioraris.*

The motions in the matter of Art street, Seventh avenue, Ninth avenue, and Twenty-eighth street assessments for certioraris, are understood to have been disposed of by the Court in the same way as those of Mount Morris and Second avenue.

We shall review the opinions delivered by the Supreme Court in our own plain way, and we shall feel gratified if we succeed in convincing these high judicial officers that they have greatly erred in quashing the certioraris in the particular cases, and denying the writ of certioraris in others.

IN CHANCERY.

Before the Chancellor.

Timothy Wiggin, Banker, of London, in the kingdom of Great Britain, *vs.* the Mayor, &c., of New York.

THE CHANCELLOR.— The language of the bill in this case, leaves it doubtful whether the complainant at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law. The bill instead of alleging in the usual manner, that the complainant was at a particular date and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the 1st of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they do not sustain, does not appear to be one which in any manner concerns the complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the use of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. The Mayor, &c. of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure the complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think that the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widening of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Messerole vs. The Mayor, &c. of Brooklyn, (In Chan. April 7, 1840,) referred to in the argument, the commissioners had not erred in judgment as to what property was to be benefitted by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend 618.) There the court held that if the proceedings had been regular and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to the other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed would actually be benefitted by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alleg-

cond Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the common council of the city; which boards are to meet in separate chambers, &c. And the complainant's council therefore insists that the mayor, alderman and commonalty can no longer convene in common counsel, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in common council according to the provisions of its charter, and not to the particular officers who at that time represented the common council. And the act of 1830 having excluded the mayor and recorder from the common council, and directed the aldermen and assistants to convene as a common council in two separate boards, the mayor, aldermen and commonalty of the city, that is the Corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorising the opening of a new street, or the alteration of an old one, under the 177th section of the act of 1813, was strictly a legislative power given to the Corporation represented in its common council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing Commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the Corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law. And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot would not even create a cloud upon his title. For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a cloud upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should express my opinion at this time upon the question, whether the seventh section of the act of April, 1830, requiring the ayes and noes to be taken and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property benefitted by the proposed improvement are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication, did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefitted by the improvement rather than by a general tax upon the city at large. A court of equity at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefitted thereby and upon those who have not.

It is true the complainant alleges in his bill that his property has not benefitted by the improvement. But that allegation is not sworn to by any one, and it is of course contradicted by the report under oath of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

Copy.

JOHN M. DAVISON, Register.

From the Journal of Commerce of February 9, 1842.

VICE CHANCELLOR'S COURT.

HON. W. T. MC COON, VICE CHANCELLOR.

First Circuit.

DECISION.

Edmund Frost et al. vs. The Trustees of the Village of Williamsburgh.—This was a motion for an injunction to restrain the defendants from selling certain property for non-payment of assessments. The Court said that the recent decision of the Court of Errors, in the case of Meserole vs. The Corporation of Brooklyn, reversing the order of the Chancellor and Vice Chancellor, which restrained by

injunction the defendants from selling the property of the complainants for the non-payment of assessments, for the opening of Bedford Avenue, has definitely settled the question, *that however illegal may be the proceedings of the Corporation*, the Court of Chancery has no jurisdiction or right to interfere except where the wrongful proceedings lead to the commission of irreparable injury to the freehold, or where it would involve a multiplicity of suits at law, amounting to excessive and vexatious litigation, against which the party seeking relief under the ordinary head of equity jurisdiction, is entitled to be protected.—And whenever these grounds of equitable cognizance exist, they must be particularly stated. No such ground is stated or shown to exist in the present bill, and since the decision of Meserole case vs. the Corporation of Brooklyn, the Chancellor has been obliged to dissolve injunctions and dismiss bills on demurrer in about *fire and twenty cases* against the Corporation of the City of New York, in which they were proceeding to sell for the non-payment of assessments in the matter of opening and regulating streets, under circumstances *quite as strong if not stronger*, in favor of the complainants than the present. The injunction is therefore dissolved with costs.

EQUITY COURT.

IN CHANCERY.

CHANCELLOR'S OPINIONS DELIVERED JANUARY 24th, 1842.

Garret Van Doren and others vs. the Mayor, &c. of New York.

Garret H. Striker vs. the same.

Elizabeth Pearson and others vs. the same and Walter Stevenson.—These cases came before the Chancellor upon the demurrers of the defendants, the Corporation of New York, to the bills of the complainants respectively.

The object of the bill, in each case, was to restrain the Corporation from collecting certain assessments upon property claimed by the complainants in the city of New York, or in which they were supposed to have some interest either vested or contingent; such assessments having been imposed for the purpose of laying out streets and avenues, or opening sewers, &c.; or from selling the lands assessed, or advertising the same for sale, or giving any certificate or lease to the purchaser upon the sale thereof; and for a decree declaring the assessments, and all proceedings had in relation thereto, void, &c.

R. Mott and *W. M. Holland*, for complainants in two first causes.

L. H. Sandford, for complainants in last cause.

P. A. Cowdrey, for Corporation of New-York.

THE CHANCELLOR. The objection to the assessments that the Corporation, as at present organized, under the act of April, 1830, has no power to open streets, confirm assessments, &c., was decided against the complainant, in the case of *Wiggin vs. the Mayor, Aldermen and Commonalty of the city of New York*, in March last. And I have seen no reason to change the opinion there expressed, although that case was not in a situation to enable the complainant to review the decision upon that point, by appeal; as several technical objections existed to his right to the premises, as stated in the bill. But if this objection to the right of the Common Council was well taken, it would only show that this court had no jurisdiction in these cases. For a valid legal objection, appearing upon the face of the proceedings through which the adverse party can alone claim any right to the complainant's land, is not in law a cloud upon the complainant's title which can authorize a court of equity to stay or set aside such proceedings.

That can never be considered a legal cloud which cannot for a moment obstruct the unaided rays of legal science, when they are brought to bear upon the supposed obscurity. But when the claim of the adverse party is valid upon the face of the instrument or proceeding sought to be set aside, as where the defendant has procured and put upon record a deed obtained from the complainant by fraud, or upon an usurious consideration, which requires the establishment of extrinsic facts to show the supposed conveyance to be inoperative and void, a court of equity may interfere and set it aside as a cloud upon the real title to the land. (*Simpson v. Lord Howden*, 3 My. & Craig's Rep. 97.) *It was the overlooking of that distinction, in the hurry of business*, though I had recognized and acted upon it in other cases, which led me to affirm the decision of the Vice Chancellor, in the case of *Meserole v. the Mayor and Common Council of Brooklyn*, (8 Paige's Rep. 199.) But my decision in that case was properly reversed by the Court for the Correction of Errors, at its last term in December, 1841, *although the Chief Justice who delivered the opinion concurred with me in the conclusion that the proceedings of the Corporation of Brooklyn were illegal and void.*

The same difficulty exists in relation to the objections that the ayes and noes were not called and published upon the resolutions to make the improvements and to confirm the assessments which were confirmed by the Common Council, and that the resolutions and ordinances were not duly signed by the Mayor; and to various other objections which are made to the legal validity of the assessments. All of which objections appear upon the face of the proceedings through which the Corporation must justify the enforcement of the tax by execution, *and through which the purchasers at sales of the lands of these complainants for the assessments must necessarily make title.* If the complainants are right, therefore, in supposing the proceedings void on all or any of those grounds, upon which I express no opinion, there is ***no cloud*** upon their titles.—And as their remedy at law is perfect by an action of trespass if their personal property is seized upon a distress warrant for the assessments, *and they have a perfect defence at law to any suit brought against them by purchasers at the sales which have been made, or which may hereafter be made;* if the proceedings are void, this Court has no jurisdiction to interfere for their relief. On the other hand, if the proceedings are not void, but merely irregular, the remedy of the complainants clearly is not in this Court, which has no superintending jurisdiction over the regularity of the proceedings of the Corporation of New York in these assessment cases. Indeed, as I understand the prevailing opinion in the Court for the Correction of Errors, in the case of Meserole vs. the Mayor and Common Council of Brooklyn, that Court repudiated the idea that the Court of Chancery has any power or right to interfere in such cases, in relation to any supposed error or irregularity in the assessment, or in the proceedings of the Corporation, or of the commissioners of estimate and assessment. And this Court will not subject itself to the rebuke of that tribunal by interfering in any cases of this kind, except where it is absolutely necessary for the preservation of the complainant's rights.

The demurrers are well taken, and the complainant's bill must be dismissed WITH COSTS. And the injunctions, if any have been granted in these cases, must be dissolved.

Peter G. Stuyvesant and others vs. the Mayor &c. of New York, and John Ewen, street commissioner. (And 21 other causes involving same questions.)

W. M. Holland, for the complainants.

P. A. Cowdrey, for the defendants.

The CHANCELLOR.—These cases came before me on applications for injunction to restrain the Corporation of the city of New York from proceeding to sell the lands of the respective complainants for the payment of assessments imposed upon them for various improvements in that city. Indeed, taken together, they embrace nearly every improvement in the city of New York for the last six years, either in opening, widening, or grading streets, or in constructing sewers, &c. The number of complainants whose rights are in controversy, exceeds *one hundred and seventy*, and the aggregate amount of the assessments the validity of which is contested is immense. I have therefore been obliged to look into each case to see if there was any thing contained therein to give this Court jurisdiction, and justify it in interfering by a preliminary injunction to restrain the corporation and its street surveyor, who has been made a defendant in most of the cases, from proceeding to collect the assessments by a sale of the property assessed in the usual way.

As the complainants have by law two years to redeem their property after it shall have been sold, there does not appear to be any good reason for granting preliminary injunctions at this time, even if the cases, as made by the bills, would, if unexplained, entitle them to perpetual injunctions at the final hearing. The object, therefore, of applying for injunctions at this time, must probably be to save the complainants from the payment of the extra interest, allowed by the statute from the time of the sale, in case it turns out that they are wrong in supposing that this court can interfere for their relief against the final payment of these assessments. This of itself would be a sufficient answer to these applications at this time. And for that reason I refused to continue the temporary injunctions allowed by the Vice Chancellor upon granting the orders to show cause; so that the sales might be made by the Corporation, subject to the equitable rights of the complainants, if

they had any, to relief upon the final hearing, or on the final disposition of those applications.

The conclusion, however, at which I have arrived in the case of *Van Doren and others vs. the Mayor &c. of New York*, and in the two other cases where the objection to the right to any relief whatever in this Court was raised by demurrer, renders it necessary to put the decision of these applications upon the ground that there is no necessity of preliminary injunctions, to restrain the sales for assessments, those sales not in themselves producing any damage to the complainants, but the restraining them at this time being productive of great and ***unnecessary inconvenience to the corporation***, if it shall turn out in the end that the complainants are in the wrong, either as to the facts or the law. Nor do I deem it necessary to put the decision upon the ground, that in about two thirds of these bills, several persons having no common interest in the lands assessed as belonging to them respectively, have been improperly joined in the same suit, and thereby rendered their bills multifarious. For that objection would be obviated if the defendants, instead of demurring on that ground, should answer the bills without insisting upon that objection. It is not perfectly clear, either, that these cases do not come within the principle of some of the decisions in this state, in which complainants having separate and distinct interests have been permitted to join in one bill to obtain relief which was common to all; though I think it is clear these bills in which the owners of separate and distinct lots have joined, would be considered multifarious, according to the English cases on the subject. I except however from this remark, the cases of *Turner vs. Robinson*, (1 Sim. and Stuart's Rep. 313,) decided by Sir John Leach, and disapproved of by his successor; (2 Sim. 330 note, and 3 Idem 466;) and the case of *Kensington vs. White*, in the Exchequer, (3 Price 164.)—Both of which cases appear to be inconsistent with the whole course of English decisions on the subject of multifariousness.

I put my refusal to allow the injunctions in these cases, therefore, distinctly upon the ground that there is nothing in the bill, in either case, sufficient to authorize this Court to assume jurisdiction over the subject matter of the suit or any part thereof, so far as I have been able to understand the allegations in each bill; that a general demurrer will lie in each case for want of jurisdiction; and that to entertain these bills for any purpose would be to overrule the decision of the Court for the Correction of Errors in the case of *the city of Brooklyn v. Meserole*, referred to in *Van Doren's case*, as having been decided by that Court at its late term, in December, 1841.

The application for an injunction in each and every of these causes must therefore be denied, WITH COSTS.

JUDICIAL DISCRETION.

"The judicial department has no will in any case. Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law."—9. *Wheaton*, 806.

That distinguished Jurist, MR. JUSTICE STORY, quotes the above, and says of it that it was finely remarked by MR. CHIEF JUSTICE MARSHALL, and appends to it, a reference to the Commentaries of the venerable EX CHANCELLOR KENT.

LEGISLATIVE POWER.

Mr. Justice Story quotes from the Federalist, No. 78, among others, a paragraph in the following words:—

"There is no position which depends upon clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do, not only what their powers do not authorize, but what they forbid."

JUDICIAL LEGISLATION.

"But the answer to these and similar objections, is, that such considerations should have weight with those whose business it is to make laws; but they should not control the opinions of those whose business it is to expound the laws."

The above is the closing sentence of a paragraph in the manuscript opinion written by JOHN SAVAGE, *late Chief Justice of the Supreme Court of the State of New York.*

It is an opinion worthy of the man.

The following is also from another manuscript opinion of this truly great man.

"Much of our difficulty arises from judicial legislation: if other laws are necessary, let the legislature pass them."

JUDICIARY.

"The Courts must declare the sense of the law; and if they should be disposed to exercise *Will* instead of *Judgment*, the consequence would equally be the substitution of their pleasure for that of the legislative body."—Federalist of No. 78, quoted by Mr. Justice Story with approbation.

CHANCELLOR'S DECISIONS.

We have given all the opinions delivered by His Honor Chancellor Walworth, in assessment cases for the last five years, in full.

It will be seen by a careful reading of these several opinions, that the decisions of the Chancellor, have fluctuated. The opinion given in the suit of Meserole and others vs. the Mayor and Common Council of Brooklyn contrasted with that given a short time afterwards, in that of Timothy Wiggin vs. the Mayor &c. of New York, are difficult to reconcile as respects the assessment being a cloud upon the title.

We do not undertake to say that the Chancellor was wrong in refusing to entertain the bill filed in the latter case, and also in the several subsequent cases disposed of by him, but we feel it our duty to say, that he erred in requiring the complainants to pay costs; inasmuch as he himself remarks, in the opinion he gave in the Van Doren case, that in deciding the Brooklyn case, in the hurry of business, he overlooked a decision. We have occasion to know that in the case of Wiggin vs. the Mayor &c., the Solicitor of Mr. Wiggin obtained from the clerk of the Chancellor at Saratoga a manuscript copy of the opinion of His Honor in the Meserole case, and it was in consequence of the tenor of that opinion that this bill was filed.

It will be borne in mind that the decision made by the Chancellor in Wiggin's case was nearly a year previous to the decision of the appeal in Meserole's case in the Court for the Correction of Errors.

The cases in which the Chancellor sustained the demurrers against the complainants, were many of them of a very aggravated character. The bills filed in these cases were full, and in several cases the complainants set forth that the applications for the appointment of commissioners were not authorized by the Common Council.

The Chancellor may have taken a correct view of these questions in the last decision, and not in the first; but the change of opinion was a difficulty, and quite a serious one, to the complainants.

These matters have passed from the courts to a Committee appointed from the Honorable the Senate of this State to investigate assessment abuses in the city of New York, and that committee have made their report. The members of that committee are distinguished members of the Court for the Correction of Errors: their report will be found in this volume.

We desire to speak of the worthy Chancellor of this State with great respect; he is a most estimable citizen, and, notwithstanding the constant toil and labor in his Court, finds time to attend the benevolent and charitable institutions, and the religious societies of the day—of the most of which he is a conspicuous and valuable member.

It is a wonder how CHANCELLOR WALWORTH accomplishes such an amount of labor. Should his labors increase with his years, when he shall have reached the constitutional barrier of this State, as to the term beyond which judicial officers of a certain grade shall be deemed incompetent, he will have worn himself out with labor.

The salary of the Chancellor of this great State is two th usand, five hundred dollars per annum, a mere pittance for such services.

When we take into view the labor imposed upon the Chancellor, the limited duration of his office, and the compensation attached to it, the wonder is that any person can be found willing to accept of the appointment.

The salary of the Chancellor should be increased to $4,500, at least, and that of the Judges of the Supreme Court to $4000.

N. Y. MUNICIPAL GAZETTE...Extra.

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LEGISLATIVE POWER.

The Constitution of the United States contains this provision :—

"ARTICLE 1, § 1.—All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Constitution of the State of New York contains these provisions.

"§ 1. *The Legislative power of this State shall be vested in a Senate and an Assembly.*"

Can the Senate and Assembly of the State of New York delegate the right or power to pass penal laws to any other body of men ?

By *Article* 1, *Sec.* 12. "Every Bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it had originated," &c. The Constitution then proceeds to say, that the objections of the Governor shall be entered "at large on their Journal, and they shall proceed to reconsider it. If after such reconsideration two thirds of the members present shall agree to pass the Bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two thirds the members present, it shall become a law. But in all such cases, the votes in both houses shall be determined by *yeas and nays*, and the names of the persons voting for, and against the Bill, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return, in which case it *shall not become a law.*"

The Governor is thus vested by the Constitution with a negative upon the acts of the Legislature, but this negative is greatly qualified, inasmuch as the vote of two thirds of a bare quorum can pass a Bill after his refusal to sign in it, notwithstanding such refusal.

The Constitution provides that the members of the Senate and Assembly shall respectively be elected on a certain day, at a certain place, by persons possessing certain qualifications, and that they shall convene, &c. on a certain day, &c.

Thus the Constitution provides in what manner laws shall be enacted, and details with great precision the form and time. No Bill whatever can become a law of this State, unless enacted in the manner and form prescribed in the power thus given in the Constitution by the People, who are the Grantors of the Power.

The Constitution contains no power of substitution, no authority, or permission to the Senate and Assembly to delegate the power of making laws to any other body of men. The power is special, limited and restricted in every respect.

The Act of the Legislature of the State, passed April 7th, 1830, which is called the Amended Charter of the City of New York, contains this provision :—

"§ 1.—The Legislative power of the Corporation of the City of New York shall be vested in a Board of Aldermen and Board of Assistants, who, together, shall form the Common Council of the City."

The question then arises, can the Common Council of the City of New York pass laws? Can the Legislature of the State grant to the Common Council, or vest in that body the power to pass laws ?

To the first query, we answer in the negative, and add, that the City of New York is a part of the State of New York, and is governed by the laws of the State.

The reply to the second enquiry here propounded, is, that the Legislature of the State cannot in any manner or form, either direct or indirect, delegate the Legislative power vested in that body, that no power of substitution whatever is contained in the Constitution.

A citizen who executes a written power to another citizen to act for him, and in his name, if he intends the power thus given to be exercised by another, inserts a special clause authorizing his said agent and attorney, to substitute another, or others in his place and stead, &c.; but in the Constitution, the grantors of the power make no such provision in that instrument which contains the grant, and none can be presumed, or implied.

If the Common Council desire an ordinance to have the force of a law within the bounds of the City, that ordinance should be made into the shape of a Bill, and be acted on by the Legislature of the State, and approved by the Governor, in the manner and form prescribed by the Constitution.

The Common Council might with as much propriety pass an ordinance to regulate the rate of interest on money, as to pass an ordinance to regulate other matters than those which pertain to the management of the corporate property. The Common Council have no more right to pass an ordinance imposing a penalty on a citizen for a violation of their so-called laws, than a government of an incorporated bank has, and the passage of such ordinances are a violation of the Constitution of this State, and will be so held when taken to the high courts for adjudication, and this objection raised.

No one will for a moment doubt that there should be special laws relative to the City, but all such laws should be passed by the Legislature of the State, and not by the Common Council of the City.

The Common Council of the City of New York is not the Corporation of the City, but the powers of the Corporation are vested in the Common Council, to be exercised by that body in a certain manner, &c. And what, or who is the Corporation of New York? It is the citizens and inhabitants of New York, in whom is vested certain property which has been granted to them by the name and style of the Mayor, Aldermen and Commonalty of the City of New York, and the management of this Corporate property is committed to the Common Council and other particular officers.

The Common Council have the management of this Corporate property for the citizens and inhabitants, the same as the President and Directors of a Bank have of the capital stock which is the property of the Stockholders.

If this Corporate property consists of Market-houses, they have the right and power to say at what rate the stalls shall be leased and what hours the Market shall be opened, but they have no right to say that the citizen who owns a store shall not sell Pork, Beef, or Poultry in that store, nor can they pass any valid ordinance, making it a penalty for a citizen to sell meat on his own premises. We know that such ordinances have been passed by the Common Council, and that some of the Courts have held such ordinances valid, but such a decision would not be held valid by the Supreme Court of the United States.

There is a vast difference between the powers which may be vested by a Charter in a Political Corporation granted by an absolute government possessing unlimited power, and these which are possessed by our free Government exercising the limited and restricted powers conferred by the Constitution.

No one conversant with the provisions of our Constitution, will for one moment pretend to deny that even the Legislature of the State, is greatly restricted and limited in its power; and yet there are others, and some of them members of the common council, who pretend to say that the Common Council, a mere creature of the Legislature, can do that which the Legislatue of the State dare not attempt to do—this is, in effect, making the creature greater than the creator.

Hume, *De Lolme*, Sidney, Tucker and others, who have written much upon Legislative power, speak of it only in such cases as where its exercise is unlimited and unrestricted.

In our free country, this power is possessed by the people, and they are the grantors of power in all cases—the people are sovereign. The legislatures are mere grantees.

The Legislative power is, by able writers, said to be arbitrary, overwhelming power, and for this reason it was restricted, limited and defined in our Constitutions.

If it is necessary that municipal corporations, created by the Legislature of this State, should possess legislative power over a portion of this State, then the Constitution of the State should be amended, and this provision incorporated in that instrument; or if it is desirable that the Senate and Assembly should be authorised to delegate the legislative power vested in these bodies by the Constitution, then, in that case, a suitable clause to that effect should be embodied in that instrument.

If the Legislature were to frame a bill containing all necessary general provisions for the incorporation of all cities, towns and villages in this State, and frame a code of laws which should have a special application to the districts embraced within the chartered limits of each, it would reduce the labors of legislators greatly.

THE VETO POWER.

Much has been written and said in relation to the Veto power vested in various Executive officers.

We propose to examine those powers as now vested in the President of the United States, in the Governor of the State of New York, and in the Mayor of the City of New York.

In England, the refusal of the royal assent to a bill passed by Parliament, by the Sovereign, is absolute, and besides, the Sovereign has the power to prorogue Parliament, and even to dissolve that body and order a new election.

In France, the Constitution of 1791 provided that if the King refuse his assent to a bill passed by the Legislative Chambers, it is conclusive for that term; but if the Legislative Chambers enacted the same bill, in the same form, at two successive sessions, for two successive terms, it should become a law of the realm, notwithstanding the refusal of the royal assent.

In the colony of New York, the first Legislative Assembly which printed a journal of its proceedings, record a Veto of the Governor and Council in 1691, which was in the shape of an amendment made to a bill passed by the assembly, in relation to public improvements in the City of New York. This amendment of the Governor and Council was concurred in by the assembly, *unanimously*, and was subsequently confirmed by the King of England, and remained a law of the colony and State of New York for near a century.

The Constitution of the State of New York, adopted in 1777, contains the following provision:

"That the Governor, for the time being, the Chancellor, and the Judges of the Supreme Court, or any two of them together with the Governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the Legislature; and, for that purpose, shall assemble themselves, from time to time, when the Legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration, under any pretence whatever. And that all bills which shall have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision or consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto, in writing, to the Senate or House of Assembly, in which soever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if, after such re-consideration, two thirds of the said Senate or House of Assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections be sent to the other branch of the Legislature, where it shall also be reconsidered, and, if approved of by two thirds the members present, shall become a law."

"And in order to prevent unnecessary delays—

"*Be it further ordained*, That if any bill shall not be returned by the Council within ten days after it shall have been presented, the same shall become a law, unless the Legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the Legislature after the said ten days."

"The Governor to convene the Senate and Assembly on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year."

Thus the former Constitution of this State made the Governor, Chancellor and Judges of the Supreme Court, a council of revision, and gave to the Governor the power to prorogue the Legislature that the members might return to and consult their constituents. This negative power, thus vested, was not considered objectionable, but on the contrary, when the new Constitution was adopted, in 1821, it was changed and vested solely in the Governor, but the power to prorogue the Legislature was taken away.

The vote required to pass the bill, notwithstanding the objections, under the present constitution is the same as under the former, except that it is required that the vote shall be taken by ayes and noes, and the names of the members voting for or against the bill shall be recorded. The vote required is only two thirds of the members present, which may perhaps be but a minority of each house, or a bare majority form a quorum, and it is only two thirds of this bare majority which is required.

The exercise of the Veto power by the Governor of this State is therefore only that of a qualified negative.

The Veto power of the President of the United States is also a qualified negative. The Constitution of the United States is, however, silent as to the requirement of the Veto taken on the re-consideration of a bill returned by the Executive being by a vote of two thirds the members present or two thirds the members elected.

It would seem that the safer construction would be two thirds the members elected, but we understand that the more liberal and extended construction has been adopted by Congress.

So salutary has this qualified negative, possessed by the President, been found, that, in the experience of more than half a century, the exercise of this power has not been overruled by a constitutional vote by Congress.

The Constitution of the United States is very explicit with regard to the mode in which the vote of re-consideration shall be taken, and that the votes shall be taken by ayes and noes, and recorded in the journals.

When the provisions of the Constitution were debated in the convention, it was proposed to vest the qualified negative in the President and some other department of the Government, but this was strenuously opposed and overruled, and was finally rejected by a vote of eight States against three.

There is another qualification of this negative of the President, which is, that an entire new house of Representatives are elected by the people during his term of office, which, if this exercise of the qualified negative is not satisfactory to the people, they have the opportunity of thus overruling it, and also the term of office for which the Executive himself shall have been elected, will have an end every four years. Thus the frequency of the elections gives additional qualifications to this already qualified negative.

In the amended charter of the city of New York, although (as Mr. Samuel Stevens remarks in an article under the signature of "Third Ward," published in the New York American in 1829, when the city convention were sitting) they were only framing a bill for the State Legislature to pass into a law, that body took the United States Constitution for a model whereby to form a municipal charter; and in vesting the mayor with a qualified negative upon the acts of the Common Council, they made some alterations in that provision, which were, to require the objections of the executive to be published in the newspapers, and that the vote should be that of a majority of the members *elected* to each board, and also of requiring that *at least ten days* should elapse before the board to which the act should have been returned should proceed to re-consider the same. This change of the qualified negative of the Mayor makes his veto at the present moment a nullity. The City Charter, as the act of the Legislature is called, omits to state any thing in relation to acts passed by a Common Council, the members of which whose term of office may expire during the ten days which the Mayor is allowed to consider a proceeding, and decide whether or not he will give his assent. This was an oversight, and there can be no doubt but an act remaining in the hands of the Mayor unsigned when his term of office expires, would be inoperative.

The distribution of power is one of the great principles on which all free governments are based, and we propose to discuss this subject in a future number under that head.

SACREDNESS OF PRIVATE PROPERTY.

That distinguished citizen and eminent jurist, JUDGE STORY, one of the Justices of the Supreme Court of the United States, in his admirable Commentary upon the Constitution of the United States, thus remarks:—

"The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and rulers."

Mr. Justice Story cites Blackstone, Kent, Rawle, and also several cases which had been adjudicated.

The practice of the last few years in the city of New York to enforce the collection of sham-assessments for fictitious improvements, by a sale of the property pretended to be benefitted for terms of thousands of years, equal to, and in effect, selling the fee simple absolute, is taking private property for public use without just compensation, and in truth is absolute *confiscation*. It matters not to the owner whether his land is taken or his money, both are alike private property; for if he pays the assessment, in most cases he pays the value of the land in paying the assessment, and thus, in fact, re-purchases the land by redeeming it. Vast quantities of lands on the island of New York, have been assessed to such an extent that the interest of the assessment exceeds the value of the land, and also large quantities of other lands are assessed for the pretended opening of streets, avenues, and public squares, (which are not open or needed,) in greater sums than the land could be sold for.

The abuses have been so enormous, so flagrant, so high-handed, that the real estate has lost its value by the insecurity thus produced.

In the case of the streets and avenues, up to and including Forty-second street, referred to in the report of the committee from the Senate of this State, twenty-seven setts of Commissioners (in all eighty-one) were appointed to make an assessment for opening the streets and avenues in that district; whereas the committee of the common council reported in favor of but one sett, (three commissioners,) and did not, in fact, pass any resolution for an application to the Supreme Court for the appointment of even this one set.

It is time such proceedings had an end.

Anecdote of the reigning king of Prussia. —The following anecdote we cut from the columns of the Albany Daily Advertiser. It belongs to go along side of assessment matters, showing a contrast in the judicial proceedings of the courts of our State, compared with that of a kingly government.

"We have much pleasure in laying before our readers an interesting anecdote, which has been communicated to us by a gentleman recently from Berlin. Some time since an effort was made to get rid of a windmill, the close approximation of which to the royal palace rendered it in some degree a nuisance, and certainly an eye-sore. Overtures were accordingly made to the sturdy yeoman for the purchase of the obnoxious property; but whether it was that the man was possessed of a strong spirit of obstinacy, or was really deeply attached to his old family habitation, the result was that the offers, tho' tempting, were again and again refused. There are very generally some individuals attached to a court who are ready to suggest remedies, direct or indirect, for inconveniences or annoyances offered to royalty. Accordingly, upon a hint from some minion, a lawsuit was commenced against the obstinate miller for the recovery of certain sums alledged to be due for arrears of an impost on that portion of crown land which it was suggested was occupied by the mill in question. The sturdy holder of the "toll dish" was not altogether without friends or funds, and he prepared vigorously to take his stand in defence of his rights. The question came in due time before the courts of law, and the plaintiff having completely failed to establish any right on behalf of the crown, the miller obtained a verdict in his favor, with a declaration for payment of his costs in suit. This was certainly no small triumph, and merrily went round the unfurled sails of the old mill, and well pleased no doubt, was the owner with the sound, as they went whirling and whizzing under the influence of the gale, which certainly seemed to blow strongly in his favor. But he was not the first who has found that when drawn into a lawsuit, particularly with so formidable an opponent, a man is more likely to "gain a loss" than escape scot free. What with extra expenses, interruption of business, and rejoicings after the victory, the miller found himself pressed by considerable difficulties, and after in vain struggling a few months against the pressure, he at length formed a manly resolution, gained access to the monarch, and, after roughly apologizing for his having thwarted his majesty's wishes, frankly admitted that his wants alone had rendered him complient, but that he was prepared to accept the sum originally offered for the property. The king, after conversing with the miller a few minutes, hand d him a draught for a considerable amount, saying, "I think, my honest friend, you will find that sufficient to meet the emergency; if not, come and talk to me again on the subject. As to the mill, I assure you that I will have none of it. The sight of it now gives me more pleasure than it ever occasioned pain; for I see in it an object that assures me of ***a guaranty for the safety of my people, and a pledge for my own happiness by its demonstration of the existence of a power and a principle higher than the authority of the crown, and more valuable than all the privileges of royalty.***"—[London Paper.]

COMMISSIONERS OR A JURY.

Taking land for Public Avenues, Streets and Squares.

The position of the Assessment question, and the highly important opinions of Chief Justice NELSON, Justice BRONSON and Justice COWEN *of the Supreme Court.*

The Constitution of 1777 contains this provision;—

"That trial by Jury in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever, and further, that the Legislature of this State shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law."

The act of the General Assembly of the Colony of New York, passed Oct. 1st, 1691, and confirmed by William III, May 11th, 1697, contains this provision:

"And for other ground, the Mayor, Aldermen and Common Council shall and may treat and agree with the owner and others interested therein; and if there shall be any person that shall refuse to treat in the manner aforesaid, in such case the ***Mayor and Aldermen, in their Court,*** are hereby authorized by virtue of this act, to issue out a warrant or warrants to the Sheriff of the said city, who is hereby required to empannel and return a jury before the *said Court of Mayor and Aldermen*, which Jury, upon the oath to be administered by the said court, are to enquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same, as by the said Mayor, Aldermen and Common Council, shall be adjudged fit to be converted for the purposes aforesaid, and such *verdict of the Jury, and judgment of the said Court of Mayor and Aldermen thereupon*, and the payment of the said sum or sums of money so awarded and adjudged to the owner or others having estates or interest or tender or refusal thereof, shall be binding" &c. *This Colonial act was in force when the Constitution of* 1777 *was adopted.*

The trial by jury extends to property, as well as persons, and therefore the act of 1807 and 1813, authorizing the appointment of three commissioners to take land instead of a jury, is unconstitutional and void.

The Constitution of 1821 *contains these provisions:*—

"The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever, and no new court shall be instituted, but such as shall proceed according to the course of the common law." Art. 7, § 12.

"The Governor shall nominate by message in writing, and with the consent of the Senate, shall appoint all *Judicial officers* except Justices of the peace." Art. 4, § 7.

In the decision of the Supreme Court in January, 1841, in the matter of the application of Elmendorf and others for a Certiorari to be directed to the mayor, aldermen and commonalty of the city of New York,

point skilful and competent persons Assessors to make estimates and assessments for building sewers, regulating streets, &c., and the Assessors so appointed are directed to assess the expense of the work, &c., on the owners and occupants of houses and lots deemed to be benefitted thereby, and to certify their assessments in writing to the mayor, aldermen and commonalty, in common council convened; and such assessment, when ratified or confirmed by the said Common council, shall be a lien upon the houses and lots so assessed, and in case of neglect or refusal to pay such assessment, the mayor, recorder and aldermen, or any five of them, are authorized to issue a warrant of distress under their hands and seals, which may be levied upon the goods and chattels, &c. The act of April 16th, 1816, provides further, that in case the owner or occupant, on being twice called upon, refuses or neglects to pay the assessment, his lands may be sold therefor.

Now we insist that in this, the Common council and the assessors are both acting in a *judicial capacity*, and are as much a court as the Commissioners of sewers; and the assessment, when confirmed, is in the nature of a Judgment, being made a lien upon the land, and the warrant being in substance an execution.

We think we have stated enough here to show that Commissioners of Estimate and Assessment cannot take lands for public use from any individual, without his consent, nor can they impose any assessment on adjoining owners: that whenever lands are required in the city of New York, for public use, *a jury* is the only mode of proceeding. And besides, if it should be held that commissioners could take land, such commissioners *can only be appointed by the Governor.* Thus the proceedings of commissioners *are void.*

As to Assessors, these too are *judicial* officers, and the members of the Common council also act or assume to act in a *judicial* capacity, in confirming assessments, issuing warrants, &c. These officers are *none of them appointed by the Governor*, and the Constitution is explicit on this head; it excepts Justices of the Peace, Special Justices, &c.

It is of no use to have a written Constitution, if officers who are sworn to support it will disregard its great principles and requirements.

We think that the learned Judges of the Supreme court were right in *quashing* the writs they had allowed, and in refusing those which were applied for, and that the assessments are absolutely VOID. We are aware that we differ from the learned counsel on both sides in the views now put forth, but it is our deliberate opinion, after examining the question very extensively.

We also think that it was the duty of the court to settle the question of the legality of these assessments, instead of enacting a statute of "PUBLIC INCONVENIENCE"—which enactment most assuredly is not authorized by the Constitution of the State, nor is it sanctioned by public opinion. Neither public or private inconvenience have any place in such cases. Let justice be done—let the law be strictly complied with.

Judicial powers of the Board of Aldermen and Board of Assistants, composing the Common Council of the City of New York.

The following sections of the act, Entitled "*An ACT to reduce several Laws relating particularly to the City of New York into one Act*"—passed April 9th, 1813—constitute all the provisions of the Statute authorizing the imposition of assessments on the owners or occupants of houses and lots for the class of improvements therein specified, and there is no other provisions of law which authorize any assessment to be imposed by the mayor, aldermen and commonalty for this class of improvements.

§ 175.—*And be it further enacted*, That it shall be lawful for the said mayor, aldermen and commonalty, to cause common sewers, drains and vaults, to be made in any part of the said city, and to order and direct the pitching and paving the streets thereof, and cutting into any drain or sewer, and the altering, amending, cleansing and scouring of any street, vault, sink or common sewer, within the said city; and the raising, reducing, levelling or fencing in, any vacant or adjoining lots in the said city; and to cause estimates of the expense of conforming to such regulations to be made, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire; and the said mayor, aldermen and commonalty shall appoint such skilful and competent disinterested persons as they shall or may think proper to make every such estimate and assessment, who before they enter upon the execution of their trust, shall severally take an oath before the mayor or recorder of the said city, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and the said persons, after having made such estimate and assessment, shall certify the same in writing to the said mayor, aldermen and commonalty, in common council convened, and being ratified by the said council, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively, and shall be a lien or charge on such lots as aforesaid; and such owners or occupants shall also respectively be liable upon demand, to pay the sum at which such houses or lots respectively shall be assessed, to such person as the said common council shall appoint to receive the same; and in default of such payment or any part thereof, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals to levy the same by distress and sale of the goods and chattels of such owner or occupant refusing or neglecting to pay the same, rendering the overplus (if any), after deducting the charges of such distress and sale to such owner or occu-

pant, and the money, when paid or recovered, shall be applied towards making, altering, amending, pitching, paving, cleansing and scouring such streets, and making and repairing such vaults, drains and sewers as aforesaid, and raising, reducing, levelling or fencing in, such lots as aforesaid. *Provided however*, That nothing herein contained shall affect any agreement between any landlord and tenant, respecting the payment of any such charges, but they shall be answerable to each other in the same manner as if this act had never been made; and if the money so to be assessed be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, it shall then be lawful for the person paying, to sue for, and recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

§ 176. *And be it further enacted*, That if upon completing any such regulation, it shall appear to the said mayor, aldermen and commonalty, that a greater sum of money had been *bona fide* expended in making such regulation than the sum estimated and collected aforesaid, it shall then be lawful for the said mayor, aldermen and commonalty, to cause a further assessment equal to such excess, to be made and collected in manner aforesaid; and in case the sum actually expended shall be less than the sum expressed in such estimate, and collected as aforesaid, the surplus shall forthwith be returned to the persons from whom the same were collected. or their legal representatives.—2 R. L. p. 407,

The sections above quoted contain a special power, given to a select class of persons, to make certain improvements particularly named in manner and form therein stated.

It will be noticed that this is a special power given by the Statute to a select class of persons. The mayor, aldermen and commonalty, as then known and entitled, were the mayor, recorder, aldermen and assistant aldermen of the city of New York. These public officers composed the city council, and assembled in one body in the same council chamber.

The mayor, and also the recorder of the city, were appointed by the State council of appointment—the aldermen and assistants were elected by the freeholders of the respective city wards.

In 1821 the Constitution of the State was remodelled, or rather, a new Constitution was formed, one of the provisions of which was that the mayors of cities should be appointed by the respective common councils of each. This provision, as to the city of New York, was altered in 1833 by an amendment of the State Constitution in that particular; and now it is provided that the mayor of the city of New York shall be elected annually by the People.

The recorder, by the Constitution of 1821, shall be appointed by the Governor and Senate.

By the Amended Charter of the city of New York [Session Laws of 1830, ch. 122] the legislative power of the corporation is vested in a board of aldermen and board of assistants who, together, shall form the Common council of the city.—§ 1.

By the fifteenth section, of the same act, neither the mayor nor recorder shall be members of the Common council after the second Tuesday of May, 1831.

By the 7th section, of the act as above, the boards are required to keep a journal of their proceedings and to meet in separate chambers; and, by section twelve, all acts, before they shall take effect, shall be first approved by the mayor, &c. &c.

The apportionment of judicial officers under the Constitution of 1821.

By the 7th section of Article IV. of the Constitution, the Governor shall, by message in writing, nominate, and, with the consent of the Senate, appoint all judicial officers except justices of the peace; by section 14 special justices and assistant justices of the city of the city of New York are excepted, and by sec. 1 of Art. V. the members of the court for the Correction of Errors are excepted.

We here raise two Questions, viz:—

1. *Are Assessors, who are appointed by the board of Aldermen and board of Assistants, with the Mayor's approval, Judicial officers?*

2. *Do the boards of Aldermen and Assistants, sitting in separate chambers, in ratifying Assessments made by Assessors appointed by themselves, and the Mayor also in approving such acts, act judicially?*

To the first question, we answer that the 175th section above quoted authorizes an estimate of the expense of the work, as a preliminary measure, previous to making the assessment of the expense upon the owners and occupants intended to be benefitted thereby, by skilful, competent, disinterested persons, to be appointed by the mayor, ald. and com.; and this assessment is to be made in such proportion as they deem the advantage acquired by such owner or occupant. Their estimate and assessment shall be certified in writing to the mayor, aldermen and commonalty, in Common council convened, but has no binding force until ratified by said Common council. This ratification is, therefore, to all intents and purposes, a judgment, which is by the same section made a lien upon the houses and lots of such owners and occupants, &c., and upon this ratification or judgment, a warrant of distress is authorized to issue under the hands and seals of the mayor, recorder and aldermen, or any five of them, of which the mayor or recorder are to be one; and by the act of April 12th, 1816, the mayor, aldermen and commonalty, in default of payment of such assessment, are authorized to sell or lease the houses or lots so assessed for an unlimited number of years, even to the end of time. The Constitution adopted in 1777, and which was in force when these two acts above referred to were passed, contained no limitation as to the appointment of judicial officers, or at least we have found no such provision in that instrument. At the time of the passage of these two acts the mayor and recorder were both appointed by the council of appointment, and after the adoption of the new Constitution in 1821 the recorder was appointed by the Governor and Senate as a judicial officer, and continued to be a member of the Common council; but the amended charter of April 7th, 1830, *excluded* that officer after the second Tuesday of May from a seat in the Common council, and he is now no longer a member of that body; nor does any Judicial officer hold a seat in either board composing the Common council: therefore, there is no authority under the Constitution for the Common council to act in a judicial capacity, the law of 1813 and 1816 being both abrogated by the Constitution of 1821.

The Assessors, therefore, as standing alone, are not judicial officers; but their acts, taken in connection with the proceedings of the mayor, aldermen and assistants, constitute proceedings which are, in their operation and effects or consequences, the highest exercise of judicial authority in matters pertaining to the rights of property.

The Answer to the second question has been mainly anticipated in the reply to the first question.—The Amended Charter was the result of measures growing out of complaints in the assessment made for building Canal street sewer, which was an assessment of near one hundred thousand dollars by assessors appointed under the 175th section before quoted which had been confirmed by the Common council composed of the mayor, recorder, aldermen and assistant aldermen. The dissatisfaction which this assessment produced caused applications to be made to the Common council for an amendment of the City Charter, and accordingly an application was made by that body (under the corporation seal) to the Legislature of the State. This application was accompanied by a bill, which was passed by the Legislature, conditioned to become a law if the majority of the electors of the city of New York by their vote by ballot signified their acceptance of it. This they did not do—less than 700 votes, of the whole number of voters in the city, were cast in its favor. This was in 1824.

In 1828 the Legislature, on the application of the Common council, re-enacted the same bill, with the same conditions, and it was again submitted to the electors of the city of New York, and by them again rejected.

This bill provided for the exercise of all the powers which had ever been conferred by charter or by law on the mayor, aldermen and commonalty, or the mayor, aldermen and commonalty in Common council convened, or the mayor, recorder, aldermen and assistant aldermen, thereafter to compose two boards meeting in separate chambers, with concurrent jurisdiction.

The next proceeding was the Convention which met in June, 1829, to frame a bill for the Legislature to pass into a law amending the City Charter, and here a great mistake was made in taking the Constitution of the United States for a model to frame a bill for the Legislature to pass into a law, unless we assume it to be conceded that the business of the Common council was to be confined to the affairs of the corporation as a corporation

Had the complainants in these cases derived benefits equal to the assessments, and then complained of the exercise of a power unknown to our laws, there would have been some little apology for withholding relief; but in these cases the extreme of the reverse is the case. The complainants are injured, and, notwithstanding, are called upon to pay such immense sums of money in the shape of assessments on their lands as to amount to a repurchase of their own lands for cash.

The Common council, by their solemn act, deliberately considered and unanimously adopted, admit that property has been assessed beyond its value, and they resolved that the Counsel be directed to take measures under the direction of the finance committees to obtain a review of the assessment in 1841.

This is an acknowledgment of improper proceedings by the very body who confirmed or ratified the assessments made by their own officers whom they had appointed Assessors.

In the enlightened governments of Europe we hear of no such doctrine being set up, to deprive citizens or subjects of their estates, as that of "public inconvenience," or even of public necessity. Private property, by the governments of Europe, is held sacred and inviolate, and in no case can private property be taken for public use unless the most ample compensation is first made to the owners; and such is the great and fundamental doctrine in our own land—such is the law of the Constitution—such is the will of the People!

It has been said that the owners and occupants of houses and lands which are assessed for this class of miscalled improvements receive compensation in the advantages which the property derives by its increased value. Where is the increased value in cases where the assessment imposed exceeds the value of the land deemed to be benefitted? And where, we again ask, is the compensation in other cases in which the bare interest of the assessment exceeds the value of the property assessed?

When property is offered to be leased by the Corporation for a period extending throughout all time to any person who will pay the assessment, and none can be found willing, as it were, to accept the land as a gift on such conditions,—is it not evidence of the most convincing and conclusive character that the assessment has been most shameful and unjust—that it is nothing short of an act of confiscation? Is either the letter or the spirit of the law complied with in the making of the assessment? Certainly not. The assessment is a mere arbitrary apportionment of the contract price of certain work upon a selected piece of ground by mere mathematical calculation. The assessors are required to be skilful, competent, disinterested. Why these qualifications if the assessment is a mere apportionment, a mere distribution by figures without regard to damage or benefit? Most preposterous! and yet we are told that it will be a "public inconvenience" to set aside such assessments, or to compel the Corporation to review their proceedings.

When our Government made a claim upon Mexico to make restitution and satisfaction to our citizens for the spoilations committed by her officers upon their private property, there was no such doctrine set up by the Mexican government, or its constituted authorities, as "public inconvenience"; and if it had been pleaded, it would have only aggravated the injury.

Private property is sacred in all civilized countries, and also in some of the most barbarous; and no government can long exist which does not respect, and so hold it. It is the very foundation of government, and as Mr. Justice Story very justly remarks in his admirable Commentary on the Constitution—"Indeed, in a free government, almost all other rights would become utterly worthless if the government possessed an uncontrollable power over the private fortune of every citizen."

In principle, there is no difference between taking land from a citizen and converting it to public use without compensation and taking money. Both are alike private property, and both are alike protected by the Constitution. It makes no difference to the citizen which is taken, his money or his land.

During the last war, when the American army found it necessary to destroy the dwellings and other property of our citizens, to prevent it from falling into the hands of the enemy, in all cases full and complete compensation was by our Government made to the owners. These sufferers were not told that they are compensated for the loss of property thus destroyed by the protection which is afforded by the Government to their persons and their other property.

These assessments upon private property, which have been ordered by the common council and ratified by that body, are large in amount. In some cases, a single individual has been assessed the sum of thirty thousand dollars; others ten and fifteen thousand dollars each.

Lands of citizens have thus been invaded. The soil, which before had been productive, has been covered several feet deep with gravel and sand, and a charge made for this kind of covering by the load, at a rate that actually makes it a complete confiscation. We have now before us a paper containing an advertisement by the street commissioner of a piece of land to be sold for the non-payment of an assessment which is stated to contain 165 lots, equal to about ten and a half acres. This land is situate between 115th and 124th streets and the Fifth and Eighth avenues, being near seven miles from the City Hall. The assessment is stated at sixteen thousand and sixty-three dollars, which is about one hundred dollars per lot, or sixteen hundred dollars per acre. The advertisement states that the assessment was confirmed on the 31st of May, 1837, since which time it has been on interest, at the rate of 7 per cent. per annum. This then, is on interest five years and three months, which amounts to the sum of five thousand nine hundred and three dollars and fifteen cents, which is near six hundred dollars per acre. This property was advertised to be sold for this assessment in June, 1840, and was offered for sale without getting a bid. Although this property is on one piece of

gr ound, it was advertised for sale as 165 lots. The charge for the advertisement alone was two dollars per lot, which was equal, for the piece of land, to three hundred and thirty dollars for the advertising alone!

The same land was again advertised for sale, for the same assessment, in October 1841, but could not be sold for the want of bidders.

This land belongs to the estate of a person some years since deceased.

This assessment is one of those referred to in the following proceedings of the common council.

—

From Senate Doc. No. 100, *page* 277.

Preamble and Resolutions for paying Contractors and applying to the Legislature for act to buy under sales for assessments.

Whereas, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule, prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the common council, and which were to be paid for by assessments on the property benefitted, and as soon as the amounts of said assessments were collected.

And whereas, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same, only in part made, and most of them returned as unpaid and uncollectable, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state, advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; but the amount due on said assessments could not be realized, by reason of their being no bids at such sale for said property, *the amount of said assessments being more than the present market value of said property so liable*, in consequence whereof the said contractors are still unpaid; the common council, in order to relieve them, and anticipating the collection of said assessment, and which may hereafter be made, and trusting that they may be authorized by the Legislature, to raise by tax the amount which they may so advance, and to secure themselves and city treasury, from any loss, by being authorized to purchase in at any sale, such property, for which there may be no bids; do adopt the following resolutions:

1. *Resolved*, that the counsel prepare a law, under the direction of the law committee, to be applied for, to the Legislature, authorizing the corporation to become purchasers of property which may hereafter be offered for sale, for payment of assessments agreeable to law; to refund them for any advances which may have been made by them, to contractors or others, for the improvement for which such assessments were imposed. Such law to contain all needful provisions to secure the rights of parties interested therein, and that such property be held as a trust fund to repay such advances.

2. *Resolved*, that the comptroller be authorized to pay the several contractors the amounts respectively due them, for the several improvements made in pursuance of the ordinances of the common council, in all cases where the property assessed therefor, was benefitted by such improvement, has been offered for sale, and could not be sold by reason for the want of any bid, at the recent sale of property for assessments, or in cases, in which the sale of such property has been enjoined by the Court of Chancery, such payment to be made on the first day of October next.

3. *Resolved*, that the comptroller include the estimated amount required for the above payment, in the amount of the next annual tax bill, to be applied for to the next Legislature.

4. *Resolved*, that the counsel to the corporation, under the direction of the law committee, *take measures to obtain a revision of assessments, mentioned in the annexed schedule as may be judged expedient, and agreeable to law.*

Adopted by the board of assistants, February 25, 1841.

Adopted by the board of aldermen, February 22, 1841.

Adopted by the acting mayor, February 25, 1841.

Volume 8, of the printed proceedings of the common council, printed by authority of the common council, page 121 and 122.

December 24, 1841, compared with the printed Document in vol. 8, of proceedings of common council, page 121 and 122, and correct. G. FURMAN, *Chairman.*

—

We find in the street commissioner's advertisement for the sale of lots in June, 1840, a lot 24 feet 6 inches front, by about 100 feet deep, advertised for sale for an unpaid assessment for filling in Fifth street. The assessment is one thousand eight hundred and forty-five dollars and sixteen cents—confirmed June 28th, 1830—interest to June 28, 1840, being ten years, at 7 per cent. per annum, $1291.62, which makes the amount, in all, $3136.78. This lot is on the corner of avenue B, and is hardly worth one quarter of the amount.

We notice in another case for the regulating and repaving of Chapel street, that Mr. Andrew Lockwood, who owns 14 houses of a block fronting on that street, was assessed the sum of $1480.90. Instead of being benefitted that amount, his property was actually injured more than ten thousand dollars.

Mr. Riley, in the same street, was assessed for the same proceeding $732.71, by which, instead of being benefitted that sum, his property was injured more than five thousand dollars. In fact, ten thousand dollars would not make him good for the injuries he has suffered by the proceeding.

Other citizens in the same street have also suffered largely by the same proceeding. In this case, the contract price for the repaving of the street was five times that which had been paid for repaving the same street previously, and the work of the first repaving was much better than the last.

We notice another case in the Eighth avenue. Mr. Scott was assessed on a piece of ground —— feet front, $——— for regulating this avenue. Some years since, this very property was taxed to pay for working the Third avenue, which was such a proceeding in every respect as the Eighth avenue. In this case of Mr. Scott's, the lot was sold for the assessments, and he redeemed it by paying over seven hundred dollars. In the case in which this property was sold the assessment was never signed, or certified by the assessors, and still the common council ratified it, without any examination; and the street commissioner, who was one of the assessors named in the ordinance for making the estimate and assessment, actually sold the land under these proceedings.

The assessment for building a sewer in 122d street.—This sewer is, part of it, built on piles, over a salt meadow, and above the ground which is assessed for draining. Even the bottom of the sewer is higher than the ground which is assessed, and the water cannot be got into the sewer from the surface unless it is pumped into it by hand or machinery. In this case, the sewer was actually in a state of dilapidation before the assessment was confirmed. Some of the lands assessed for the sewer are actually separated from it by an immense ledge of rocks, and the waters which fall on this ground have a contrary course from the sewer.

——o——

MEMORIALS TO THE LEGISLATURE.

The following is a copy of Six Memorials presented to the Legislature at the last session by the Hon. Gabriel Furman. The Anti-Assessment Committee deem it necessary to state, for the information of Honorable Members of the Legislature who may not be familiar with the names of the signers, that four of them are distinguished Ex-Mayors of the city of N. York, another Ex-Recorder, and another the present Recorder. Nineteen have been Members of the Board of Aldermen, twelve have been members of the Board of Assistant Aldermen and of the Corporation; ten are Presidents of Banks, twenty-eight Presidents of Insurance Offices, the Assistant Register of the Court of Chancery, the Postmaster of the city, and Collector of the Port, thirty-six of the most respectable commercial and mercantile firms in the city, and a great number of the most highly respectable citizens; — showing most clearly the state of public opinion on this most highly important question.

Robert Smith, *Chairman.*

ORABLE, THE LEGISLATURE OF THE STATE OF NEW YORK:

City of New York, most respectfully represent to your Honorable Body, that the extraordinary and
ercised by the Corporation of the City of New York, in assessing private property for what are called
estrained by Legislative enactments.
d in various public officers in Assessment matters have been greatly abused, and the consequences
the value of real estate, and render titles doubtful and insecure.
t very full exhibits of the disastrous consequences of the abuses complained of will be made to your
e subject may be taken into the serious consideration of the Legislature, and that the Legislature may
he owners of real estate, and such as in their wisdom may seem meet. And in duty bound, &c.

ıy,	James Boorman,	Robert C. Cornell,	Brown, Brothers & Co.
Thompson,	Jonathan Goodhue,	Wm. B. Crosby,	John Haggerty & Co.
wbould,	Peter Schermerhorn,	James J. Jones,	C. & L. Dennison & Co.
lmer,	John Haggerty,	Wm. C. Rhinlander,	Robert Buloid & Co.
Weed,	John H. Tallman,	Duncan P. Campbell,	Andrew Foster & Sons,
Knapp,	John D. Wolfe,	Peter G. Stuyvesant,	Joseph Foulke & Sons,
evens,	Saul Alley,	Stephen Whitney,	Hendricks & Brothers,
s,	A. D. Cushman,	James Roosevelt,	Peter Harmony & Co.
vitt,	Christopher Wolfe,	Peter Lorillard,	John H. Howland, Sons & Co.
land,	Gardner G. Howland,	James Brown,	Ogden Waddington & Co.
Lawrence,	John B. Lawrence,	James G. King,	Masters Markoe & Co.
esborough,	Robert B. Minturn,	Wm. F. Mott,	Austin, Wilmerding & Co.
ogers,	Moses Taylor,	Wm. W. Fox,	Wolfe, Spies & Gillespie,
Mercein,	Samuel S. Howland,	Benjamin L. Swan,	Platt & Brothers,
s,	Stewart Browne,	Edmund H. Pendleton,	Tonnelle & Hall,
e,	Henry Andrew,	Peter Lorillard, jun.	Centre & Co.
Ogden,	Henry Grinnell,	Henry Breevort,	Leonard and Valentine Kirby,
ens,	James Fellows,	Jonathan Hunt,	William and John James,
rne,	Daniel Parish,	W. W. Todd,	Charles Wardell & Co.
ook, jun.	Richard Kingsland,	James Boyd,	Underhill & Ferris,
nes,	William Adee,	John Rathbone, jun.	Nevins, Townsend & Co.
Schieffelin,	David Hadden,	John R. Murray,	Seymour & Co.
ett,	James W. Otis,	Samuel Thomson,	Davis, Brooks & Co.
hiley,	Daniel S. Miller,	David L. Haight,	Babcock & Co.
ght,	Peteliah Perrit,	Maturin Livingston,	Woolsey & Woolsey,
trand,	Adam Treadwell,	E. Morewood,	R. Hoe & Co.
	Francis Olmsted,	Peter Embury,	Mott & Brother,
R. Winthrop,	Robert Hyslop,	A. A. Alvord,	R. L. & A. Stuart,
wn,	Horace Waldo,	Burtis Skidmore,	D. C. & W. Pell,
	William H. Russell,	Geo. C. Thorburn,	S. B. Reeves & Co.
ver,	Henry Parish,	Eben Meriam,	Phelps, Dodge & Co.
Tisdale,	Thatcher Tucker,	Alex. T. Stewart,	John Johnson's Son,
,	Calvin W. How,	Stuart Mollan,	R. & D. S. Dyson,
onds,	Anson G. Phelps,	Richard Mortimer,	Wood, Johnson & Burrit,
rnell,	Joseph Sampson,	James Gillispie,	Young, Smith & Co.
onald,	Thomas S. Cargill,	Henry W. Dalson,	Charles A. Talbot,
	Martin Hoffman,	Samuel M. Thompson,	Roe Lockwood,
yster,	F. Marquand,	Robert C. Skidmore,	Cyrus W. Field,
hant,	John Wadsworth,	James A. Burtis,	G. O. Kinney,
ing,	William Scott,	John Tonnelle,	Alex. Lawrence,
iman,	Edward Minturn,	Morris Ketchum,	John P. Atkinson,
leaf,	Edgar H. Laing,	James K. Hamilton,	Jacob B. Elmendorf,
erwaite,	Peter Morton,	John Ridley,	Adoniram Chandler,
	John Milhau,	John L. Norton,	Valentine Mott,
nes,	Joseph Kernochan,	Richard F. Carman,	T. Anthony,
s,	Wm. H. Aspinwall,	Smith W. Anderson,	John Morton,
ver,	George M. Woolsey,	Nathaniel Paulding,	William Leggett,
Hope,	William Colgate,	Herman Bruen,	F. S. Fellows,
cock,	Samuel Marsh,	Jasper Grosvenor,	John O. Fay,
,	Moses Tucker,	Thos. L. Clark,	John M. Bruce,
ittimore,	John R. Suydam,	George Sutton,	P. M. Suydam,
	James Harriot,	John Allan,	C. V. S. Roosevelt,
ite,	John M. Dodd,	Andrew Lockwood,	Charles A. Clinton,
gar,	Uriah R. Scribner,	Richard Wight,	John S. Voorhes,
oore,	Caleb Bartlett,	O. Halsted,	Edgar Harriot,
y,	E. P. Davis,	C. H. Marshall,	Matthias Bruen,
sley,	D. H. Haight,	James P. Griffing,	Stanton Bebee,
es,	John Halsey, jun.	Smith Harriot,	J. J. Stewart,
ckerman,	S. S. Ward,	C. N. Keirsted,	Daniel A. Webster,
ol,	Wm. S. Browning,	N. W. West,	Charles M. Holmes,
	Wm. C. Hickock,	John Johnson,	Richard Ten Eyck,
,	G. Van Doren,	Charles de Bevoise,	Walter Legget,
,	Charles H. Russell,	Richard Mott,	Garret H. Striker.

N. Y. MUNICIPAL GAZETTE...Extra.

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VOL. 1. NEW YORK, APRIL 9, 1842. No. —

ASSESSMENTS.

REPORT

Of the Select Committee from the Senate of this State, appointed to investigate Assessment Abuses in the City of New York,

COMPOSED OF THE

HON. GABRIEL FURMAN,
HON. GULIAN C. VERPLANCK,
HON. JOHN B. SCOTT.

In order to present the material portions of this important Report, we have classified the subject matter of the report, and accompanied each portion with remarks and references, that the reader may be able to obtain some knowledge of this all-important subject.

The COMMITTEE say:—

"In the investigation of the matters thus committed to their charge, the Committee were occupied during almost the whole of the last autumn in the city of New York, and also in the month of December, and to the period of the meeting of the present Legislature."

Again, the Committee remark:

"On the 18th September last the Committee received a Communication from the Memorialists, on whose application the investigation was ordered, tendering to their use the commodious Lecture-room in Clinton Hall, New York, free of expense or charge to the State, which was accepted."

The Committee, after detailing certain matters as to the public officers, say that—

"In the course of their examination, the most prominent matters complained of appeared to be,

"*First*, In the manner of opening streets, avenues and public squares in the city; in the appointment of the commissioners of estimate and assessment; in the expenses of those commissioners, and the time spent in the discharge of their duties.

"*Secondly*, The imposition of heavy and oppressive assessments for improvements never actually made, except upon paper; and which assessments were frequently ruinous, being more than the value of the property assessed; and the great difficulty which owners of real estate in that city, and particularly in the upper and unimproved portions of it, experienced, from the fact of using arbitrary map numbers instead of street numbers and farm numbers.

"And, *Thirdly*, The great difficulty which the citizens had encountered in obtaining a review and correction of any errors committed by the commissioners and assessors in making any of such awards or assessments for the opening of said streets, avenues or public squares, from the fact that, although the Court of Chancery at first assumed jurisdiction of such cases on the ground that such assessments being made by a statute, a lien upon real estate was a cloud upon the title, and might, if unjust and unequitable, be removed in equity, it has since denied having cognizance of such matters; and the Supreme Court have in some instances denied a certiorari, to remove such proceedings, and others where the writ had been granted, had afterwards quashed the same and refused the parties any relief, referring them to an action at law for trespass against the individual members of the common council, or against the officers of the corporation personally, who should attempt the collection of such assessment.

"The committee will examine these several propositions which contain the substance of the long and tedious investigation through which they have progressed, and will submit to the consideration of the Legislature the conclusions to which they have arrived upon these several heads.

"*First.* The manner of opening streets, avenues and public squares, in that city, in the appointment of the commissioners of estimate and assessment, in the expenses of those commissioners, and the time spent in the discharge of their duties.

"That there have been great and serious abuses in the mode of opening streets and avenues in the city of New York, and in the expenses attending the same, cannot be doubted by any person who has examined the subject; and these evils have mainly arisen from the loose and unguarded manner in which that important branch of authority has been exercised.

"For while in England, in the city of London, in Birmingham and other places, whose proper municipal regulations would seem to require as liberal extension of power to their local corporate governments as that of New York, streets cannot be opened or widened without an act of Parliament specially passed for that purpose, upon a due examination of all the circumstances of the case; yet, in the city of New York, they are opened or widened, and that in large numbers together, by a single resolution adopted by the two boards of the common council, without any control, as was the case in opening all the streets and parts of streets not previously opened up to and including 42d street, by a resolution of April 6, 1835; and subsequently, September 12, 1836, another resolution was adopted to open all the streets from 42d street to 57th street. The reservoir on Murray's Hill, in the city of New York, is on 42d street.

"This loose practice has grown up in modern times, for the more guarded one of an application to the supreme legislative authority was in existence in that city, subsequent to 1792, when to authorize the first widening of John street an application was made to the Legislature, then in session in that city, and before either house would act upon the petition, they sent a committee to examine the ground; upon the report of which committee, they enacted that the damages to the owners whose lands were taken, should be appraised by a jury who should be composed of merchants, showing how careful they were in former legislation on this important subject.

"This appraisement is now made by three commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the counsel of the corporation, although there have been instances where one of those commissioners has been selected by the court from names proposed by the corporation council, and by the opponents to the application, and another has been named by those opponents.

"It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so VERY GREAT as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the commissioners for the same exhibited before the committee.

"In the opening of the Seventh avenue, from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was **$21,141 .41,** while the *FEES* and expenses amounted to the large sum of **$12,435 .70,** and if to that is added the collector's Fees for *collecting* the assessments, **$1,115.00,** it will show a total of expenses *paid* by the Owners of Land on that portion of the Seventh avenue for its *formal* opening, amounting to **$13,550.70!**

"The amount paid to the commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen months'* services for each commissioner, in making the estimate of the land taken for opening that avenue, and assessing that value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, THE COMMISSIONERS WERE *EACH ENGAGED* **THREE TIMES THE WHOLE PERIOD** THAT THE LEGISLATURE *IS EMPLOYED IN LEGISLATING FOR THE STATE,*

cond Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the common council of the city; which boards are to meet in separate chambers, &c. And the complainant's council therefore insists that the mayor, alderman and commonalty can no longer convene in common counsel, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in common council according to the provisions of its charter, and not to the particular officers who at that time represented the common council. And the act of 1830 having excluded the mayor and recorder from the common council, and directed the aldermen and assistants to convene as a common council in two separate boards, the mayor, aldermen and commonalty of the city, that is the Corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorising the opening of a new street, or the alteration of an old one, under the 177th section of the act of 1813, was strictly a legislative power given to the Corporation represented in its common council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing Commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the Corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law. And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot would not even create a cloud upon his title. For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a cloud upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should express my opinion at this time upon the question, whether the seventh section of the act of April, 1830, requiring the ayes and noes to be taken and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property benefitted by the proposed improvement are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication, did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefitted by the improvement rather than by a general tax upon the city at large. A court of equity at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefitted thereby and upon those who have not.

It is true the complainant alleges in his bill that his property has not benefitted by the improvement. But that allegation is not sworn to by any one, and it is of course contradicted by the report under oath of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

Copy.

JOHN M. DAVISON, Register.

From the Journal of Commerce of February 9, 1842.

VICE CHANCELLOR'S COURT.

HON. W. T. MC COON, VICE CHANCELLOR.

First Circuit.

DECISION.

Edmund Frost et al. vs. The Trustees of the Village of Williamsburgh.—This was a motion for an injunction to restrain the defendants from selling certain property for nonpayment of assessments. The Court said that the recent decision of the Court of Errors, in the case of Meserole vs. The Corporation of Brooklyn, reversing the order of the Chancellor and Vice Chancellor, which restrained by

injunction the defendants from selling the property of the complainants for the non-payment of assessments, for the opening of Bedford Avenue, has definitely settled the question, *that however illegal may be the proceedings of the Corporation*, the Court of Chancery has no jurisdiction or right to interfere except where the wrongful proceedings lead to the commission of irreparable injury to the freehold, or where it would involve a multiplicity of suits at law, amounting to excessive and vexatious litigation, against which the party seeking relief under the ordinary head of equity jurisdiction, is entitled to be protected.—And whenever these grounds of equitable cognizance exist, they must be particularly stated. No such ground is stated or shown to exist in the present bill, and since the decision of Meserole case vs. the Corporation of Brooklyn, the Chancellor has been obliged to dissolve injunctions and dismiss bills on demurrer in about *fire and twenty cases* against the Corporation of the City of New York, in which they were proceeding to sell for the non-payment of assessments in the matter of opening and regulating streets, under circumstances *quite as strong if not stronger*, in favor of the complainants than the present. The injunction is therefore dissolved with costs.

EQUITY COURT.

IN CHANCERY.

CHANCELLOR'S OPINIONS DELIVERED JANUARY 24th, 1842.

Garret Van Doren and others vs. the Mayor, &c. of New York.

Garret H. Striker vs. the same.

Elizabeth Pearson and others vs. the same and Walter Stevenson.—These cases came before the Chancellor upon the demurrers of the defendants, the Corporation of New York, to the bills of the complainants respectively.

The object of the bill, in each case, was to restrain the Corporation from collecting certain assessments upon property claimed by the complainants in the city of New York, or in which they were supposed to have some interest either vested or contingent; such assessments having been imposed for the purpose of laying out streets and avenues, or opening sewers, &c.; or from selling the lands assessed, or advertising the same for sale, or giving any certificate or lease to the purchaser upon the sale thereof; and for a decree declaring the assessments, and all proceedings had in relation thereto, void, &c.

R. Mott and *W. M. Holland*, for complainants in two first causes.

L. H. Sandford, for complainants in last cause.

P. A. Cowdrey, for Corporation of New-York.

THE CHANCELLOR. The objection to the assessments that the Corporation, as at present organized, under the act of April, 1830, has no power to open streets, confirm assessments, &c., was decided against the complainant, in the case of *Wiggin vs. the Mayor, Aldermen and Commonalty of the city of New York*, in March last. And I have seen no reason to change the opinion there expressed, although that case was not in a situation to enable the complainant to review the decision upon that point, by appeal; as several technical objections existed to his right to the premises, as stated in the bill. But if this objection to the right of the Common Council was well taken, it would only show that this court had no jurisdiction in these cases. For a valid legal objection, appearing upon the face of the proceedings through which the adverse party can alone claim any right to the complainant's land, is not in law a cloud upon the complainant's title which can authorize a court of equity to stay or set aside such proceedings.

That can never be considered a legal cloud which cannot for a moment obstruct the unaided rays of legal science, when they are brought to bear upon the supposed obscurity. But when the claim of the adverse party is valid upon the face of the instrument or proceeding sought to be set aside, as where the defendant has procured and put upon record a deed obtained from the complainant by fraud, or upon an usurious consideration, which requires the establishment of extrinsic facts to show the supposed conveyance to be inoperative and void, a court of equity may interfere and set it aside as a cloud upon the real title to the land. (*Simpson v. Lord Howden*, 3 My. & Craig's Rep. 97.) *It was the overlooking of that distinction, in the hurry of business*, though I had recognized and acted upon it in other cases, which led me to affirm the decision of the Vice Chancellor, in the case of *Meserole v. the Mayor and Common Council of Brooklyn*, (8 Paige's Rep. 199.) But my decision in that case was properly reversed by the Court for the Correction of Errors, at its last term in December, 1841, *although the Chief Justice who delivered the opinion concurred with me in the conclusion that the proceedings of the Corporation of Brooklyn were illegal and void.*

The same difficulty exists in relation to the objections that the ayes and noes were not called and published upon the resolutions to make the improvements and to confirm the assessments which were confirmed by the Common Council, and that the resolutions and ordinances were not duly signed by the Mayor; and to various other objections which are made to the legal validity of the assessments. All of which objections appear upon the face of the proceedings through which the Corporation must justify the enforcement of the tax by execution, *and through which the purchasers at sales of the lands of these complainants for the assessments must necessarily make title.* If the complainants are right, therefore, in supposing the proceedings void on all or any of those grounds, upon which I express no opinion, there is ***no cloud*** upon their titles.—And as their remedy at law is perfect by an action of trespass if their personal property is seized upon a distress warrant for the assessments, *and they have a perfect defence at law to any suit brought against them by purchasers at the sales which have been made, or which may hereafter be made;* if the proceedings are void, this Court has no jurisdiction to interfere for their relief. On the other hand, if the proceedings are not void, but merely irregular, the remedy of the complainants clearly is not in this Court, which has no superintending jurisdiction over the regularity of the proceedings of the Corporation of New York in these assessment cases. Indeed, as I understand the prevailing opinion in the Court for the Correction of Errors, in the case of Meserole vs. the Mayor and Common Council of Brooklyn, that Court repudiated the idea that the Court of Chancery has any power or right to interfere in such cases, in relation to any supposed error or irregularity in the assessment, or in the proceedings of the Corporation, or of the commissioners of estimate and assessment. And this Court will not subject itself to the rebuke of that tribunal by interfering in any cases of this kind, except where it is absolutely necessary for the preservation of the complainant's rights.

The demurrers are well taken, and the complainant's bill must be dismissed WITH COSTS. And the injunctions, if any have been granted in these cases, must be dissolved.

—

Peter G. Stuyvesant and others vs. the Mayor &c. of New York, and John Ewen, street commissioner. (And 21 other causes involving same questions.)

W. M. Holland, for the complainants.

P. A. Cowdrey, for the defendants.

The CHANCELLOR.—These cases came before me on applications for injunction to restrain the Corporation of the city of New York from proceeding to sell the lands of the respective complainants for the payment of assessments imposed upon them for various improvements in that city. Indeed, taken together, they embrace nearly every improvement in the city of New York for the last six years, either in opening, widening, or grading streets, or in constructing sewers, &c. The number of complainants whose rights are in controversy, exceeds *one hundred and seventy*, and the aggregate amount of the assessments the validity of which is contested is immense. I have therefore been obliged to look into each case to see if there was any thing contained therein to give this Court jurisdiction, and justify it in interfering by a preliminary injunction to restrain the corporation and its street surveyor, who has been made a defendant in most of the cases, from proceeding to collect the assessments by a sale of the property assessed in the usual way.

As the complainants have by law two years to redeem their property after it shall have been sold, there does not appear to be any good reason for granting preliminary injunctions at this time, even if the cases, as made by the bills, would, if unexplained, entitle them to perpetual injunctions at the final hearing. The object, therefore, of applying for injunctions at this time, must probably be to save the complainants from the payment of the extra interest, allowed by the statute from the time of the sale, in case it turns out that they are wrong in supposing that this court can interfere for their relief against the final payment of these assessments. This of itself would be a sufficient answer to these applications at this time. And for that reason I refused to continue the temporary injunctions allowed by the Vice Chancellor upon granting the orders to show cause; so that the sales might be made by the Corporation, subject to the equitable rights of the complainants, if

are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law."—9. *Wheaton*, 806.

That distinguished Jurist, MR. JUSTICE STORY, quotes the above, and says of it that it was finely remarked by MR. CHIEF JUSTICE MARSHALL, and appends to it, a reference to the Commentaries of the venerable EX CHANCELLOR KENT.

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LEGISLATIVE POWER.

Mr. Justice Story quotes from the Federalist, No. 78, among others, a paragraph in the following words:—

"There is no position which depends upon clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do, not only what their powers do not authorize, but what they forbid."

—

JUDICIAL LEGISLATION.

"But the answer to these and similar objections, is, that such considerations should have weight with those whose business it is to make laws; but they should not control the opinions of those whose business it is to expound the laws."

The above is the closing sentence of a paragraph in the manuscript opinion written by JOHN SAVAGE, *late Chief Justice of the Supreme Court of the State of New York.*

It is an opinion worthy of the man.

The following is also from another manuscript opinion of this truly great man.

"Much of our difficulty arises from judicial legislation: if other laws are necessary, let the legislature pass them."

—

JUDICIARY.

"The Courts must declare the sense of the law; and if they should be disposed to exercise *Will* instead of *Judgment*, the consequence would equally be the substitution of their pleasure for that of the legislative body."—Federalist of No. 78, quoted by Mr. Justice Story with approbation.

CHANCELLOR'S DECISIONS.

We have given all the opinions delivered by His Honor Chancellor Walworth, in assessment cases for the last five years, in full.

It will be seen by a careful reading of these several opinions, that the decisions of the Chancellor, have fluctuated. The opinion given in the suit of Meserole and others vs. the Mayor and Common Council of Brooklyn contrasted with that given a short time afterwards, in that of Timothy Wiggin vs. the Mayor &c. of New York, are difficult to reconcile as respects the assessment being a cloud upon the title.

We do not undertake to say that the Chancellor was wrong in refusing to entertain the bill filed in the latter case, and also in the several subsequent cases disposed of by him, but we feel it our duty to say, that he erred in requiring the complainants to pay costs; inasmuch as he himself remarks, in the opinion he gave in the Van Doren case, that in deciding the Brooklyn case, in the hurry of business, he overlooked a decision. We have occasion to know that in the case of Wiggin vs. the Mayor &c., the Solicitor of Mr. Wiggin obtained from the clerk of the Chancellor at Saratoga a manuscript copy of the opinion of His Honor in the Meserole case, and it was in consequence of the tenor of that opinion that this bill was filed.

It will be borne in mind that the decision made by the Chancellor in Wiggin's case was nearly a year previous to the decision of the appeal in Meserole's case in the Court for the Correction of Errors.

The cases in which the Chancellor sustained the demurrers against the complainants, were many of them of a very aggravated character. The bills filed in these cases were full, and in several cases the complainants set forth that the applications for the appointment of commissioners were not authorized by the Common Council.

The Chancellor may have taken a correct view of these questions in the last decision, and not in the first; but the change of opinion was a difficulty, and quite a serious one, to the complainants.

These matters have passed from the courts to a Committee appointed from the Honorable the Senate of this State to investigate assessment abuses in the city of New York, and that committee have made their report. The members of that committee are distinguished members of the Court for the Correction of Errors: their report will be found in this volume.

We desire to speak of the worthy Chancellor of this State with great respect; he is a most estimable citizen, and, notwithstanding the constant toil and labor in his Court, finds time to attend the benevolent and charitable institutions, and the religious societies of the day—of the most of which he is a conspicuous and valuable member.

It is a wonder how CHANCELLOR WALWORTH accomplishes such an amount of labor. Should his labors increase with his years, when he shall have reached the constitutional barrier of this State, as to the term beyond which judicial officers of a certain grade shall be deemed incompetent, he will have worn himself out with labor.

The salary of the Chancellor of this great State is two th usand, five hundred dollars per annum, a mere pittance for such services.

When we take into view the labor imposed upon the Chancellor, the limited duration of his office, and the compensation attached to it, the wonder is that any person can be found willing to accept of the appointment.

The salary of the Chancellor should be increased to $4,500, at least, and that of the Judges of the Supreme Court to $4000.

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LEGISLATIVE POWER.

The Constitution of the United States contains this provision :—

"ARTICLE 1, § 1.—All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Constitution of the State of New York contains these provisions.

"§ 1. *The Legislative power of this State shall be vested in a Senate and an Assembly.*"

Can the Senate and Assembly of the State of New York delegate the right or power to pass penal laws to any other body of men ?

By *Article* 1, *Sec.* 12. "Every Bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it had originated," &c. The Constitution then proceeds to say, that the objections of the Governor shall be entered "at large on their Journal, and they shall proceed to reconsider it. If after such reconsideration two thirds of the members present shall agree to pass the Bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two thirds the members present, it shall become a law. But in all such cases, the votes in both houses shall be determined by *yeas and nays*, and the names of the persons voting for, and against the Bill, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return, in which case it *shall not become a law.*"

The Governor is thus vested by the Constitution with a negative upon the acts of the Legislature, but this negative is greatly qualified, inasmuch as the vote of two thirds of a bare quorum can pass a Bill after his refusal to sign in it, notwithstanding such refusal.

The Constitution provides that the members of the Senate and Assembly shall respectively be elected on a certain day, at a certain place, by persons possessing certain qualifications, and that they shall convene, &c. on a certain day, &c.

Thus the Constitution provides in what manner laws shall be enacted, and details with great precision the form and time. No Bill whatever can become a law of this State, unless enacted in the manner and form prescribed in the power thus given in the Constitution by the People, who are the Grantors of the Power.

The Constitution contains no power of substitution, no authority, or permission to the Senate and Assembly to delegate the power of making laws to any other body of men. The power is special, limited and restricted in every respect.

The Act of the Legislature of the State, passed April 7th, 1830, which is called the Amended Charter of the City of New York, contains this provision :—

"§ 1.—The Legislative power of the Corporation of the City of New York shall be vested in a Board of Aldermen and Board of Assistants, who, together, shall form the Common Council of the City."

The question then arises, can the Common Council of the City of New York pass laws? Can the Legislature of the State grant to the Common Council, or vest in that body the power to pass laws ?

To the first query, we answer in the negative, and add, that the City of New York is a part of the State of New York, and is governed by the laws of the State.

The reply to the second enquiry here propounded, is, that the Legislature of the State cannot in any manner or form, either direct or indirect, delegate the Legislative power vested in that body, that no power of substitution whatever is contained in the Constitution.

A citizen who executes a written power to another citizen to act for him, and in his name, if he intends the power thus given to be exercised by another, inserts a special clause authorizing his said agent and attorney, to substitute another, or others in his place and stead, &c.; but in the Constitution, the grantors of the power make no such provision in that instrument which contains the grant, and none can be presumed, or implied.

If the Common Council desire an ordinance to have the force of a law within the bounds of the City, that ordinance should be made into the shape of a Bill, and be acted on by the Legislature of the State, and approved by the Governor, in the manner and form prescribed by the Constitution.

The Common Council might with as much propriety pass an ordinance to regulate the rate of interest on money, as to pass an ordinance to regulate other matters than those which pertain to the management of the corporate property. The Common Council have no more right to pass an ordinance imposing a penalty on a citizen for a violation of their so-called laws, than a government of an incorporated bank has, and the passage of such ordinances are a violation of the Constitution of this State, and will be so held when taken to the high courts for adjudication, and this objection raised.

No one will for a moment doubt that there should be special laws relative to the City, but all such laws should be passed by the Legislature of the State, and not by the Common Council of the City.

The Common Council of the City of New York is not the Corporation of the City, but the powers of the Corporation are vested in the Common Council, to be exercised by that body in a certain manner, &c. And what, or who is the Corporation of New York? It is the citizens and inhabitants of New York, in whom is vested certain property which has been granted to them by the name and style of the Mayor, Aldermen and Commonalty of the City of New York, and the management of this Corporate property is committed to the Common Council and other particular officers.

The Common Council have the management of this Corporate property for the citizens and inhabitants, the same as the President and Directors of a Bank have of the capital stock which is the property of the Stockholders.

If this Corporate property consists of Market-houses, they have the right and power to say at what rate the stalls shall be leased and what hours the Market shall be opened, but they have no right to say that the citizen who owns a store shall not sell Pork, Beef, or Poultry in that store, nor can they pass any valid ordinance, making it a penalty for a citizen to sell meat on his own premises. We know that such ordinances have been passed by the Common Council, and that some of the Courts have held such ordinances valid, but such a decision would not be held valid by the Supreme Court of the United States.

There is a vast difference between the powers which may be vested by a Charter in a Political Corporation granted by an absolute government possessing unlimited power, and these which are possessed by our free Government exercising the limited and restricted powers conferred by the Constitution.

No one conversant with the provisions of our Constitution, will for one moment pretend to deny that even the Legislature of the State, is greatly restricted and limited in its power; and yet there are others, and some of them members of the common council, who pretend to say that the Common Council, a mere creature of the Legislature, can do that which the Legislatue of the State dare not attempt to do—this is, in effect, making the creature greater than the creator.

Hume, *De Lolme*, Sidney, Tucker and others, who have written much upon Legislative power, speak of it only in such cases as where its exercise is unlimited and unrestricted.

In our free country, this power is possessed by the people, and they are the grantors of power in all cases—the people are sovereign. The legislatures are mere grantees.

less, they shall not receive any salary or consideration, under any pretence whatever. And that all bills which shall have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision or consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto, in writing, to the Senate or House of Assembly, in which soever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if, after such re-consideration, two thirds of the said Senate or House of Assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections be sent to the other branch of the Legislature, where it shall also be reconsidered, and, if approved of by two thirds the members present, shall become a law."

"And in order to prevent unnecessary delays—

"*Be it further ordained*, That if any bill shall not be returned by the Council within ten days after it shall have been presented, the same shall become a law, unless the Legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the Legislature after the said ten days."

"The Governor to convene the Senate and Assembly on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year."

Thus the former Constitution of this State made the Governor, Chancellor and Judges of the Supreme Court, a council of revision, and gave to the Governor the power to prorogue the Legislature that the members might return to and consult their constituents. This negative power, thus vested, was not considered objectionable, but on the contrary, when the new Constitution was adopted, in 1821, it was changed and vested solely in the Governor, but the power to prorogue the Legislature was taken away.

The vote required to pass the bill, notwithstanding the objections, under the present constitution is the same as under the former, except that it is required that the vote shall be taken by ayes and noes, and the names of the members voting for or against the bill shall be recorded. The vote required is only two thirds of the members present, which may perhaps be but a minority of each house, or a bare majority form a quorum, and it is only two thirds of this bare majority which is required.

The exercise of the Veto power by the Governor of this State is therefore only that of a qualified negative.

The Veto power of the President of the United States is also a qualified negative. The Constitution of the United States is, however, silent as to the requirement of the Veto taken on the re-consideration of a bill returned by the Executive being by a vote of two thirds the members present or two thirds the members elected.

It would seem that the safer construction would be two thirds the members elected, but we understand that the more liberal and extended construction has been adopted by Congress.

So salutary has this qualified negative, possessed by the President, been found, that, in the experience of more than half a century, the exercise of this power has not been overruled by a constitutional vote by Congress.

The Constitution of the United States is very explicit with regard to the mode in which the vote of re-consideration shall be taken, and that the votes shall be taken by ayes and noes, and recorded in the journals.

When the provisions of the Constitution were debated in the convention, it was proposed to vest the qualified negative in the President and some other department of the Government, but this was strenuously opposed and overruled, and was finally rejected by a vote of eight States against three.

There is another qualification of this negative of the President, which is, that an entire new house of Representatives are elected by the people during his term of office, which, if this exercise of the qualified negative is not satisfactory to the people, they have the opportunity of thus overruling it, and also the term of office for which the Executive himself shall have been elected, will have an end every four years. Thus the frequency of the elections gives additional qualifications to this already qualified negative.

In the amended charter of the city of New York, although (as Mr. Samuel Stevens remarks in an article under the signature of "Third Ward," published in the New York American in 1829, when the city convention were sitting) they were only framing a bill for the State Legislature to pass into a law, that body took the United States Constitution for a model whereby to form a municipal charter; and in vesting the mayor with a qualified negative upon the acts of the Common Council, they made some alterations in that provision, which were, to require the objections of the executive to be published in the newspapers, and that the vote should be that of a majority of the members *elected* to each board, and also of requiring that *at least ten days* should elapse before the board to which the act should have been returned should proceed to re-consider the same. This change of the qualified negative of the Mayor makes his veto at the present moment a nullity. The City Charter, as the act of the Legislature is called, omits to state any thing in relation to acts passed by a Common Council, the members of which whose term of office may expire during the ten days which the Mayor is allowed to consider a proceeding, and decide whether or not he will give his assent. This was an oversight, and there can be no doubt but an act remaining in the hands of the Mayor unsigned when his term of office expires, would be inoperative.

The distribution of power is one of the great principles on which all free governments are based, and we propose to discuss this subject in a future number under that head.

SACREDNESS OF PRIVATE PROPERTY.

That distinguished citizen and eminent jurist, JUDGE STORY, one of the Justices of the Supreme Court of the United States, in his admirable Commentary upon the Constitution of the United States, thus remarks:—

"The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and rulers."

Mr. Justice Story cites Blackstone, Kent, Rawle, and also several cases which had been adjudicated.

The practice of the last few years in the city of New York to enforce the collection of sham-assessments for fictitious improvements, by a sale of the property pretended to be benefitted for terms of thousands of years, equal to, and in effect, selling the fee simple absolute, is taking private property for public use without just compensation, and in truth is absolute *confiscation*. It matters not to the owner whether his land is taken or his money, both are alike private property; for if he pays the assessment, in most cases he pays the value of the land in paying the assessment, and thus, in fact, re-purchases the land by redeeming it. Vast quantities of lands on the island of New York, have been assessed to such an extent that the interest of the assessment exceeds the value of the land, and also large quantities of other lands are assessed for the pretended opening of streets, avenues, and public squares, (which are not open or needed,) in greater sums than the land could be sold for.

The abuses have been so enormous, so flagrant, so high-handed, that the real estate has lost its value by the insecurity thus produced.

In the case of the streets and avenues, up to and including Forty-second street, referred to in the report of the committee from the Senate of this State, twenty-seven setts of Commissioners (in all eighty-one) were appointed to make an assessment for opening the streets and avenues in that district; whereas the committee of the common council reported in favor of but one sett, (three commissioners,) and did not, in fact, pass any resolution for an application to the Supreme Court for the appointment of even this one set.

It is time such proceedings had an end.

Anecdote of the reigning king of Prussia. —The following anecdote we cut from the columns of the Albany Daily Advertiser. It belongs to go along side of assessment matters, showing a contrast in the judicial proceedings of the courts of our State, compared with that of a kingly government.

"We have much pleasure in laying before our readers an interesting anecdote, which has been communicated to us by a gentleman recently from Berlin. Some time since an effort was made to get rid of a windmill, the close approximation of which to the royal palace rendered it in some degree a nuisance, and certainly an eye-sore. Overtures were accordingly made to the sturdy yeoman for the purchase of the obnoxious property; but whether it was that the man was possessed of a strong spirit of obstinacy, or was really deeply attached to his old family habitation, the result was that the offers, tho' tempting, were again and again refused. There are very generally some individuals attached to a court who are ready to suggest remedies, direct or indirect, for inconveniences or annoyances offered to royalty. Accordingly, upon a hint from some minion, a lawsuit was commenced against the obstinate miller for the recovery of certain sums alledged to be due for arrears of an impost on that portion of crown land which it was suggested was occupied by the mill in question. The sturdy holder of the "toll dish" was not altogether without friends or funds, and he prepared vigorously to take his stand in defence of his rights. The question came in due time before the courts of law, and the plaintiff having completely failed to establish any right on behalf of the crown, the miller obtained a verdict in his favor, with a declaration for payment of his costs in suit. This was certainly no small triumph, and merrily went round the unfurled sails of the old mill, and well pleased no doubt, was the owner with the sound, as they went whirling and whizzing under the influence of the gale, which certainly seemed to blow strongly in his favor. But he was not the first who has found that when drawn into a lawsuit, particularly with so formidable an opponent, a man is more likely to "gain a loss" than escape scot free. What with extra expenses, interruption of business, and rejoicings after the victory, the miller found himself pressed by considerable difficulties, and after in vain struggling a few months against the pressure, he at length formed a manly resolution, gained access to the monarch, and, after roughly apologizing for his having thwarted his majesty's wishes, frankly admitted that his wants alone had rendered him complient, but that he was prepared to accept the sum originally offered for the property. The king, after conversing with the miller a few minutes, hand d him a draught for a considerable amount, saying, "I think, my honest friend, you will find that sufficient to meet the emergency; if not, come and talk to me again on the subject. As to the mill, I assure you that I will have none of it. The sight of it now gives me more pleasure than it ever occasioned pain; for I see in it an object that assures me of *a guaranty for the safety of my people, and a pledge for my own happiness by its demonstration of the existence of a power and a principle higher than the authority of the crown, and more valuable than all the privileges of royalty.*"—[London Paper.]

COMMISSIONERS OR A JURY.

Taking land for Public Avenues, Streets and Squares.

The position of the Assessment question, and the highly important opinions of Chief Justice NELSON, Justice BRONSON and Justice COWEN *of the Supreme Court.*

The Constitution of 1777 contains this provision;—

"That trial by Jury in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever, and further, that the Legislature of this State shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law."

The act of the General Assembly of the Colony of New York, passed Oct. 1st, 1691, and confirmed by William III, May 11th, 1697, contains this provision:

"And for other ground, the Mayor, Aldermen and Common Council shall and may treat and agree with the owner and others interested therein; and if there shall be any person that shall refuse to treat in the manner aforesaid, in such case the *Mayor and Aldermen, in their Court*, are hereby authorized by virtue of this act, to issue out a warrant or warrants to the Sheriff of the said city, who is hereby required to empannel and return a jury before the *said Court of Mayor and Aldermen*, which Jury, upon the oath to be administered by the said court, are to enquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same, as by the said Mayor, Aldermen and Common Council, shall be adjudged fit to be converted for the purposes aforesaid, and such *verdict of the Jury, and judgment of the said Court of Mayor and Aldermen thereupon*, and the payment of the said sum or sums of money so awarded and adjudged to the owner or others having estates or interest or tender or refusal thereof, shall be binding" &c. *This Colonial act was in force when the Constitution of* 1777 *was adopted.*

The trial by jury extends to property, as well as persons, and therefore the act of 1807 and 1813, authorizing the appointment of three commissioners to take land instead of a jury, is unconstitutional and void.

The Constitution of 1821 *contains these provisions:*—

"The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever, and no new court shall be instituted, but such as shall proceed according to the course of the common law." Art. 7, § 12.

"The Governor shall nominate by message in writing, and with the consent of the Senate, shall appoint all *Judicial officers* except Justices of the peace." Art. 4, § 7.

In the decision of the Supreme Court in January, 1841, in the matter of the application of Elmendorf and others for a Certiorari to be directed to the mayor, aldermen and commonalty of the city of New York,

point skilful and competent persons Assessors to make estimates and assessments for building sewers, regulating streets, &c., and the Assessors so appointed are directed to assess the expense of the work, &c., on the owners and occupants of houses and lots deemed to be benefitted thereby, and to certify their assessments in writing to the mayor, aldermen and commonalty, in common council convened; and such assessment, when ratified or confirmed by the said Common council, shall be a lien upon the houses and lots so assessed, and in case of neglect or refusal to pay such assessment, the mayor, recorder and aldermen, or any five of them, are authorized to issue a warrant of distress under their hands and seals, which may be levied upon the goods and chattels, &c. The act of April 16th, 1816, provides further, that in case the owner or occupant, on being twice called upon, refuses or neglects to pay the assessment, his lands may be sold therefor.

Now we insist that in this, the Common council and the assessors are both acting in a *judicial capacity*, and are as much a court as the Commissioners of sewers; and the assessment, when confirmed, is in the nature of a Judgment, being made a lien upon the land, and the warrant being in substance an execution.

We think we have stated enough here to show that Commissioners of Estimate and Assessment cannot take lands for public use from any individual, without his consent, nor can they impose any assessment on adjoining owners: that whenever lands are required in the city of New York, for public use, *a jury* is the only mode of proceeding. And besides, if it should be held that commissioners could take land, such commissioners *can only be appointed by the Governor.* Thus the proceedings of commissioners *are void.*

As to Assessors, these too are *judicial* officers, and the members of the Common council also act or assume to act in a *judicial* capacity, in confirming assessments, issuing warrants, &c. These officers are *none of them appointed by the Governor*, and the Constitution is explicit on this head; it excepts Justices of the Peace, Special Justices, &c.

It is of no use to have a written Constitution, if officers who are sworn to support it will disregard its great principles and requirements.

We think that the learned Judges of the Supreme court were right in *quashing* the writs they had allowed, and in refusing those which were applied for, and that the assessments are absolutely VOID. We are aware that we differ from the learned counsel on both sides in the views now put forth, but it is our deliberate opinion, after examining the question very extensively.

We also think that it was the duty of the court to settle the question of the legality of these assessments, instead of enacting a statute of "PUBLIC INCONVENIENCE"—which enactment most assuredly is not authorized by the Constitution of the State, nor is it sanctioned by public opinion. Neither public or private inconvenience have any place in such cases. Let justice be done—let the law be strictly complied with.

Judicial powers of the Board of Aldermen and Board of Assistants, composing the Common Council of the City of New York.

The following sections of the act, Entitled "*An ACT to reduce several Laws relating particularly to the City of New York into one Act*"—passed April 9th, 1813—constitute all the provisions of the Statute authorizing the imposition of assessments on the owners or occupants of houses and lots for the class of improvements therein specified, and there is no other provisions of law which authorize any assessment to be imposed by the mayor, aldermen and commonalty for this class of improvements.

§ 175.—*And be it further enacted*, That it shall be lawful for the said mayor, aldermen and commonalty, to cause common sewers, drains and vaults, to be made in any part of the said city, and to order and direct the pitching and paving the streets thereof, and cutting into any drain or sewer, and the altering, amending, cleansing and scouring of any street, vault, sink or common sewer, within the said city; and the raising, reducing, levelling or fencing in, any vacant or adjoining lots in the said city; and to cause estimates of the expense of conforming to such regulations to be made, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire; and the said mayor, aldermen and commonalty shall appoint such skilful and competent disinterested persons as they shall or may think proper to make every such estimate and assessment, who before they enter upon the execution of their trust, shall severally take an oath before the mayor or recorder of the said city, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and the said persons, after having made such estimate and assessment, shall certify the same in writing to the said mayor, aldermen and commonalty, in common council convened, and being ratified by the said council, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively, and shall be a lien or charge on such lots as aforesaid; and such owners or occupants shall also respectively be liable upon demand, to pay the sum at which such houses or lots respectively shall be assessed, to such person as the said common council shall appoint to receive the same; and in default of such payment or any part thereof, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals to levy the same by distress and sale of the goods and chattels of such owner or occupant refusing or neglecting to pay the same, rendering the overplus (if any), after deducting the charges of such distress and sale to such owner or occu-

pant, and the money, when paid or recovered, shall be applied towards making, altering, amending, pitching, paving, cleansing and scouring such streets, and making and repairing such vaults, drains and sewers as aforesaid, and raising, reducing, levelling or fencing in, such lots as aforesaid. *Provided however*, That nothing herein contained shall affect any agreement between any landlord and tenant, respecting the payment of any such charges, but they shall be answerable to each other in the same manner as if this act had never been made; and if the money so to be assessed be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, it shall then be lawful for the person paying, to sue for, and recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

§ 176. *And be it further enacted*, That if upon completing any such regulation, it shall appear to the said mayor, aldermen and commonalty, that a greater sum of money had been *bona fide* expended in making such regulation than the sum estimated and collected aforesaid, it shall then be lawful for the said mayor, aldermen and commonalty, to cause a further assessment equal to such excess, to be made and collected in manner aforesaid; and in case the sum actually expended shall be less than the sum expressed in such estimate, and collected as aforesaid, the surplus shall forthwith be returned to the persons from whom the same were collected. or their legal representatives.—2 R. L. p. 407,

The sections above quoted contain a special power, given to a select class of persons, to make certain improvements particularly named in manner and form therein stated.

It will be noticed that this is a special power given by the Statute to a select class of persons. The mayor, aldermen and commonalty, as then known and entitled, were the mayor, recorder, aldermen and assistant aldermen of the city of New York. These public officers composed the city council, and assembled in one body in the same council chamber.

The mayor, and also the recorder of the city, were appointed by the State council of appointment—the aldermen and assistants were elected by the freeholders of the respective city wards.

In 1821 the Constitution of the State was remodelled, or rather, a new Constitution was formed, one of the provisions of which was that the mayors of cities should be appointed by the respective common councils of each. This provision, as to the city of New York, was altered in 1833 by an amendment of the State Constitution in that particular; and now it is provided that the mayor of the city of New York shall be elected annually by the People.

The recorder, by the Constitution of 1821, shall be appointed by the Governor and Senate.

By the Amended Charter of the city of New York [Session Laws of 1830, ch. 122] the legislative power of the corporation is vested in a board of aldermen and board of assistants who, together, shall form the Common council of the city.—§ 1.

By the fifteenth section, of the same act, neither the mayor nor recorder shall be members of the Common council after the second Tuesday of May, 1831.

By the 7th section, of the act as above, the boards are required to keep a journal of their proceedings and to meet in separate chambers; and, by section twelve, all acts, before they shall take effect, shall be first approved by the mayor, &c. &c.

The apportionment of judicial officers under the Constitution of 1821.

By the 7th section of Article IV. of the Constitution, the Governor shall, by message in writing, nominate, and, with the consent of the Senate, appoint all judicial officers except justices of the peace; by section 14 special justices and assistant justices of the city of the city of New York are excepted, and by sec. 1 of Art. V. the members of the court for the Correction of Errors are excepted.

We here raise two Questions, viz:—

1. *Are Assessors, who are appointed by the board of Aldermen and board of Assistants, with the Mayor's approval, Judicial officers?*

2. *Do the boards of Aldermen and Assistants, sitting in separate chambers, in ratifying Assessments made by Assessors appointed by themselves, and the Mayor also in approving such acts, act judicially?*

To the first question, we answer that the 175th section above quoted authorizes an estimate of the expense of the work, as a preliminary measure, previous to making the assessment of the expense upon the owners and occupants intended to be benefitted thereby, by skilful, competent, disinterested persons, to be appointed by the mayor, ald. and com.; and this assessment is to be made in such proportion as they deem the advantage acquired by such owner or occupant. Their estimate and assessment shall be certified in writing to the mayor, aldermen and commonalty, in Common council convened, but has no binding force until ratified by said Common council. This ratification is, therefore, to all intents and purposes, a judgment, which is by the same section made a lien upon the houses and lots of such owners and occupants, &c., and upon this ratification or judgment, a warrant of distress is authorized to issue under the hands and seals of the mayor, recorder and aldermen, or any five of them, of which the mayor or recorder are to be one; and by the act of April 12th, 1816, the mayor, aldermen and commonalty, in default of payment of such assessment, are authorized to sell or lease the houses or lots so assessed for an unlimited number of years, even to the end of time. The Constitution adopted in 1777, and which was in force when these two acts above referred to were passed, contained no limitation as to the appointment of judicial officers, or at least we have found no such provision in that instrument. At the time of the passage of these two acts the mayor and recorder were both appointed by the council of appointment, and after the adoption of the new Constitution in 1821 the recorder was appointed by the Governor and Senate as a judicial officer, and continued to be a member of the Common council; but the amended charter of April 7th, 1830, *excluded* that officer after the second Tuesday of May from a seat in the Common council, and he is now no longer a member of that body; nor does any Judicial officer hold a seat in either board composing the Common council: therefore, there is no authority under the Constitution for the Common council to act in a judicial capacity, the law of 1813 and 1816 being both abrogated by the Constitution of 1821.

The Assessors, therefore, as standing alone, are not judicial officers; but their acts, taken in connection with the proceedings of the mayor, aldermen and assistants, constitute proceedings which are, in their operation and effects or consequences, the highest exercise of judicial authority in matters pertaining to the rights of property.

The Answer to the second question has been mainly anticipated in the reply to the first question.—The Amended Charter was the result of measures growing out of complaints in the assessment made for building Canal street sewer, which was an assessment of near one hundred thousand dollars by assessors appointed under the 175th section before quoted which had been confirmed by the Common council composed of the mayor, recorder, aldermen and assistant aldermen. The dissatisfaction which this assessment produced caused applications to be made to the Common council for an amendment of the City Charter, and accordingly an application was made by that body (under the corporation seal) to the Legislature of the State. This application was accompanied by a bill, which was passed by the Legislature, conditioned to become a law if the majority of the electors of the city of New York by their vote by ballot signified their acceptance of it. This they did not do—less than 700 votes, of the whole number of voters in the city, were cast in its favor. This was in 1824.

In 1828 the Legislature, on the application of the Common council, re-enacted the same bill, with the same conditions, and it was again submitted to the electors of the city of New York, and by them again rejected.

This bill provided for the exercise of all the powers which had ever been conferred by charter or by law on the mayor, aldermen and commonalty, or the mayor, aldermen and commonalty in Common council convened, or the mayor, recorder, aldermen and assistant aldermen, thereafter to compose two boards meeting in separate chambers, with concurrent jurisdiction.

The next proceeding was the Convention which met in June, 1829, to frame a bill for the Legislature to pass into a law amending the City Charter, and here a great mistake was made in taking the Constitution of the United States for a model to frame a bill for the Legislature to pass into a law, unless we assume it to be conceded that the business of the Common council was to be confined to the affairs of the corporation as a corporation

ment. The motion was argued before Chief Justice NELSON, at the March Special Term, and he refused to interfere, on the ground of lapse of time, notwithstanding the application was made within six months of the confirmation of a report, which was presented and confirmed without notice. The Chief Justice also assumed to exercise what he termed the discretion of the Court, in the case. The discretion of the Court is not the will of the Judge. We have noticed this point on page 196 of this number.

The most powerful monarch in Europe never claimed as much authority over the private property of a subject, as has been exercised by the Supreme Court for years over the private property of the citizens of this City in street assessments.

We discussed some branches of this question, in the Municipal Gazettee of December, 1842.

The Court in this opinion, are so explicit with regard to the prohibitory clause of the Constitution, "that he who runs may read."

We are glad to see the doctrine of strict construction under way, and when once broached in political matters there is no difficulty in applying the principle to the piratical assessments in the City of New-York.

Re-Argument.

Mr. Emmett has served Mr. Mott with a notice of re-argument of his five street motions. His notice is entitled before the Supreme Court. What nonsense under the views here expressed by the Court. We will publish his affidavit on which he founds his notice of motion.

Another Assessment Cruelty.

The Assessment for setting curb and gutter in the 8th Avenue, amounts to $43.922-25. The assessors appointed by the Common Council to make the assessment, are the Street Commissioner, his Assistant and Clerk. The contract was made by the Street Commissioner, and the prices unreasonable.

When the Senate Committee were in session at Clinton Hall, this proceeding was brought before them, as one of the Assessment outragss. Mr. Perrine, a former Clerk in the Street Commissioner's office, was examined as a witness, he stated that: "there are no names of Assessors in any part of it, nor is it signed by any Assessors." The assessment was passed by the Board of Aldermen, Dec. 17th, 1838; by the Board of Assistants, Dec. 24th, 1838, and approved by the Mayor, Dec. 28th, 1838, although not signed by the Assessors. This is the way the public business is done. The Assessors are the same as those of Chapel street, and yet the two assessments are made upon entirely different principles; both cannot be right.

By a decision of the Supreme Court, all the Assessors must be present to make the assessment, but a majority may decide.

This is the assessment, for which the Street Commissioner sold the house and two lots belonging to Mary Stewart and her children, all their property. One of the children is sickly. The husband of Mary Stewart was a shoe-black, and he earned his money by hard labor, with which he purchased this property, and when he died he left it to his family.

The purchaser at the assessment sale of this property, on getting his lease, took possession, and put the furniture of the occupants out of doors, but he was prosecuted for forcible entry and detainer, and at once surrendered the premises, and has since brought an ejectment suit on his lease. A case has been made, and will be argued next month before a full Bench. Some charitable individual has volunteered a Counsel fee to defend the little home of the colored woman and her helpless children.

The owner of the premises had no notice of the assessment, or the sale.

The regulating the third avenue was paid out of the City Treasury, and so ought that of the eighth avenue.

Alderman NASH,

OF THE SEVENTH WARD.

On Monday evening, Alderman NASH tendered his resignation as Chairman of the Committee of Public Offices, Repairs, &c., assigning very satisfactory and substantial reasons therefor.

We have watched the movements of this member of the Common Council, with a great deal of interest; he is a plain spoken man, and when he discovers a wrong, he sets his face at once against it. He deserves the thanks of the public. We were pleased to see that he was sustained by Alderman SCOLES.

Alderman BREEVOORT,

OF THE TWELFTH WARD.

This gentleman, who is a man independent in mind as well as in property, took a bold stand in the Board of Aldermen, some time since, against the Street Commissioner. The Alderman deserves credit for acting independent of that officer, and having a mind and opinion of his own.

NOTE.—Several of the pages of this volume have been destroyed by fire. The present and last preceeding seven pages, are substitutes for those destroyed. Some of the other pages of the volume are being re-published in the same way.

The copies of the petition to the Legislature of 1843, which were on pages 241 to 244, and the re-print also, were destroyed by the torch of the incendiary, in 1843. We have re-printed these on page 254.

SUPREME COURT DECISIONS IN 1841.

At the January term of the Supreme Court the matter of the assessment for constructing a sewer in Twentieth street, on the Hudson river side of the island, was argued upon the return made to the certiorari issued in this cause, by Lewis H. Sandford, Esq., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. The Court held the case under advisement until the October term, near the close of the year, when they *quashed the certiorari.*

At this term of the court Chief Justice Nelson delivered an opinion on denying the motion, made at the December term of 1840, for a certiorari in the matter of re-paving and re-grading Chapel and adjoining streets. This opinion, and the material facts set forth in the affidavits and papers on which the motion was founded, will be found in its order in this number.

At the April special term, Mr. Justice Cowen presiding, motions were made for writs of certiorari in the matter of the proceedings in the assessment for opening Mount Morris square and Second avenue from Twenty-eighth to Eighty-sixth street. L. H. Sandford, Esq., for the Relators, submitted very full points to the Court, which were replied to by Peter A. Cowdrey, for the Mayor, &c. The Court held these two motions under advisement until November, 1841, when he gave a very full opinion, denying the material part of the motions.

At the May term of the Court, held by the full Bench, the cause in which the People ex rel. E. Meriam and others, were relators, and also that in which James Agnew and others were relators, involving the proceedings in the assessments for repaving and regrading Chapel and adjoining streets, and of building a sewer in Chapel and Thomas streets, came on for argument on the respective returns made to the certioraris issued in these causes. Lewis H. Sandford and Wm. M. Holland, Esqs., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. These causes were fully argued. Mr. Justice Bronson took the papers, and at the October term of 1841 delivered a brief opinion of one of the causes. The Court *quashed the certioraris.*

The motions in the matter of Art street, Seventh avenue, Ninth avenue, and Twenty-eighth street assessments for certioraris, are understood to have been disposed of by the Court in the same way as those of Mount Morris and Second avenue.

We shall review the opinions delivered by the Supreme Court in our own plain way, and we shall feel gratified if we succeed in convincing these high judicial officers that they have greatly erred in quashing the certioraris in the particular cases, and denying the writ of certioraris in others.

IN CHANCERY.

Before the Chancellor.

Timothy Wiggin, Banker, of London, in the kingdom of Great Britain, *vs.* the Mayor, &c., of New York.

THE CHANCELLOR.— The language of the bill in this case, leaves it doubtful whether the complainant at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law. The bill instead of alleging in the usual manner, that the complainant was at a particular date and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the 1st of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they do not sustain, does not appear to be one which in any manner concerns the complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the use of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. The Mayor, &c. of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure the complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think that the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widening of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Messerole vs. The Mayor, &c. of Brooklyn, (In Chan. April 7, 1840,) referred to in the argument, the commissioners had not erred in judgment as to what property was to be benefitted by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend 618.) There the court held that if the proceedings had been regular and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to the other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed would actually be benefitted by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alleg-

cond Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the common council of the city; which boards are to meet in separate chambers, &c. And the complainant's council therefore insists that the mayor, alderman and commonalty can no longer convene in common counsel, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in common council according to the provisions of its charter, and not to the particular officers who at that time represented the common council. And the act of 1830 having excluded the mayor and recorder from the common council, and directed the aldermen and assistants to convene as a common council in two separate boards, the mayor, aldermen and commonalty of the city, that is the Corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorising the opening of a new street, or the alteration of an old one, under the 177th section of the act of 1813, was strictly a legislative power given to the Corporation represented in its common council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing Commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the Corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law. And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot would not even create a cloud upon his title. For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a cloud upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should express my opinion at this time upon the question, whether the seventh section of the act of April, 1830, requiring the ayes and noes to be taken and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property benefitted by the proposed improvement are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication, did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefitted by the improvement rather than by a general tax upon the city at large. A court of equity at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefitted thereby and upon those who have not.

It is true the complainant alleges in his bill that his property has not benefitted by the improvement. But that allegation is not sworn to by any one, and it is of course contradicted by the report under oath of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

Copy.

JOHN M. DAVISON, Register.

From the Journal of Commerce of February 9, 1842.

VICE CHANCELLOR'S COURT.

HON. W. T. Mc COON, VICE CHANCELLOR.

First Circuit.

DECISION.

Edmund Frost et al. vs. The Trustees of the Village of Williamsburgh.—This was a motion for an injunction to restrain the defendants from selling certain property for non-payment of assessments. The Court said that the recent decision of the Court of Errors, in the case of Meserole vs. The Corporation of Brooklyn, reversing the order of the Chancellor and Vice Chancellor, which restrained by

injunction the defendants from selling the property of the complainants for the non-payment of assessments, for the opening of Bedford Avenue, has definitely settled the question, *that however illegal may be the proceedings of the Corporation*, the Court of Chancery has no jurisdiction or right to interfere except where the wrongful proceedings lead to the commission of irreparable injury to the freehold, or where it would involve a multiplicity of suits at law, amounting to excessive and vexatious litigation, against which the party seeking relief under the ordinary head of equity jurisdiction, is entitled to be protected.—And whenever these grounds of equitable cognizance exist, they must be particularly stated. No such ground is stated or shown to exist in the present bill, and since the decision of Meserole case vs. the Corporation of Brooklyn, the Chancellor has been obliged to dissolve injunctions and dismiss bills on demurrer in about *five and twenty cases* against the Corporation of the City of New York, in which they were proceeding to sell for the non-payment of assessments in the matter of opening and regulating streets, under circumstances *quite as strong if not stronger*, in favor of the complainants than the present. The injunction is therefore dissolved with costs.

EQUITY COURT.

IN CHANCERY.

CHANCELLOR'S OPINIONS DELIVERED JANUARY 24th, 1842.

Garret Van Doren and others vs. the Mayor, &c. of New York.

Garret H. Striker vs. the same.

Elizabeth Pearson and others vs. the same and Walter Stevenson.—These cases came before the Chancellor upon the demurrers of the defendants, the Corporation of New York, to the bills of the complainants respectively.

The object of the bill, in each case, was to restrain the Corporation from collecting certain assessments upon property claimed by the complainants in the city of New York, or in which they were supposed to have some interest either vested or contingent; such assessments having been imposed for the purpose of laying out streets and avenues, or opening sewers, &c.; or from selling the lands assessed, or advertising the same for sale, or giving any certificate or lease to the purchaser upon the sale thereof; and for a decree declaring the assessments, and all proceedings had in relation thereto, void, &c.

R. Mott and *W. M. Holland*, for complainants in two first causes.

L. H. Sandford, for complainants in last cause.

P. A. Cowdrey, for Corporation of New-York.

THE CHANCELLOR. The objection to the assessments that the Corporation, as at present organized, under the act of April, 1830, has no power to open streets, confirm assessments, &c., was decided against the complainant, in the case of *Wiggin vs. the Mayor, Aldermen and Commonalty of the city of New York*, in March last. And I have seen no reason to change the opinion there expressed, although that case was not in a situation to enable the complainant to review the decision upon that point, by appeal; as several technical objections existed to his right to the premises, as stated in the bill. But if this objection to the right of the Common Council was well taken, it would only show that this court had no jurisdiction in these cases. For a valid legal objection, appearing upon the face of the proceedings through which the adverse party can alone claim any right to the complainant's land, is not in law a cloud upon the complainant's title which can authorize a court of equity to stay or set aside such proceedings.

That can never be considered a legal cloud which cannot for a moment obstruct the unaided rays of legal science, when they are brought to bear upon the supposed obscurity. But when the claim of the adverse party is valid upon the face of the instrument or proceeding sought to be set aside, as where the defendant has procured and put upon record a deed obtained from the complainant by fraud, or upon an usurious consideration, which requires the establishment of extrinsic facts to show the supposed conveyance to be inoperative and void, a court of equity may interfere and set it aside as a cloud upon the real title to the land. (*Simpson v. Lord Howden*, 3 My. & Craig's Rep. 97.) *It was the overlooking of that distinction, in the hurry of business*, though I had recognized and acted upon it in other cases, which led me to affirm the decision of the Vice Chancellor, in the case of *Meserole v. the Mayor and Common Council of Brooklyn*, (8 Paige's Rep. 199.) But my decision in that case was properly reversed by the Court for the Correction of Errors, at its last term in December, 1841, *although the Chief Justice who delivered the opinion concurred with me in the conclusion that the proceedings of the Corporation of Brooklyn were illegal and void.*

The same difficulty exists in relation to the objections that the ayes and noes were not called and published upon the resolutions to make the improvements and to confirm the assessments which were confirmed by the Common Council, and that the resolutions and ordinances were not duly signed by the Mayor; and to various other objections which are made to the legal validity of the assessments. All of which objections appear upon the face of the proceedings through which the Corporation must justify the enforcement of the tax by execution, *and through which the purchasers at sales of the lands of these complainants for the assessments must necessarily make title.* If the complainants are right, therefore, in supposing the proceedings void on all or any of those grounds, upon which I express no opinion, there is ***no cloud*** upon their titles.—And as their remedy at law is perfect by an action of trespass if their personal property is seized upon a distress warrant for the assessments, *and they have a perfect defence at law to any suit brought against them by purchasers at the sales which have been made, or which may hereafter be made;* if the proceedings are void, this Court has no jurisdiction to interfere for their relief. On the other hand, if the proceedings are not void, but merely irregular, the remedy of the complainants clearly is not in this Court, which has no superintending jurisdiction over the regularity of the proceedings of the Corporation of New York in these assessment cases. Indeed, as I understand the prevailing opinion in the Court for the Correction of Errors, in the case of Meserole vs. the Mayor and Common Council of Brooklyn, that Court repudiated the idea that the Court of Chancery has any power or right to interfere in such cases, in relation to any supposed error or irregularity in the assessment, or in the proceedings of the Corporation, or of the commissioners of estimate and assessment. And this Court will not subject itself to the rebuke of that tribunal by interfering in any cases of this kind, except where it is absolutely necessary for the preservation of the complainant's rights.

The demurrers are well taken, and the complainant's bill must be dismissed WITH COSTS. And the injunctions, if any have been granted in these cases, must be dissolved.

Peter G. Stuyvesant and others vs. the Mayor &c. of New York, and John Ewen, street commissioner. (And 21 other causes involving same questions.)

W. M. Holland, for the complainants.

P. A. Cowdrey, for the defendants.

The CHANCELLOR.—These cases came before me on applications for injunction to restrain the Corporation of the city of New York from proceeding to sell the lands of the respective complainants for the payment of assessments imposed upon them for various improvements in that city. Indeed, taken together, they embrace nearly every improvement in the city of New York for the last six years, either in opening, widening, or grading streets, or in constructing sewers, &c. The number of complainants whose rights are in controversy, exceeds *one hundred and seventy*, and the aggregate amount of the assessments the validity of which is contested is immense. I have therefore been obliged to look into each case to see if there was any thing contained therein to give this Court jurisdiction, and justify it in interfering by a preliminary injunction to restrain the corporation and its street surveyor, who has been made a defendant in most of the cases, from proceeding to collect the assessments by a sale of the property assessed in the usual way.

As the complainants have by law two years to redeem their property after it shall have been sold, there does not appear to be any good reason for granting preliminary injunctions at this time, even if the cases, as made by the bills, would, if unexplained, entitle them to perpetual injunctions at the final hearing. The object, therefore, of applying for injunctions at this time, must probably be to save the complainants from the payment of the extra interest, allowed by the statute from the time of the sale, in case it turns out that they are wrong in supposing that this court can interfere for their relief against the final payment of these assessments. This of itself would be a sufficient answer to these applications at this time. And for that reason I refused to continue the temporary injunctions allowed by the Vice Chancellor upon granting the orders to show cause; so that the sales might be made by the Corporation, subject to the equitable rights of the complainants, if

are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law."—9. *Wheaton*, 806.

That distinguished Jurist, MR. JUSTICE STORY, quotes the above, and says of it that it was finely remarked by MR. CHIEF JUSTICE MARSHALL, and appends to it, a reference to the Commentaries of the venerable EX CHANCELLOR KENT.

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LEGISLATIVE POWER.

Mr. Justice Story quotes from the Federalist, No. 78, among others, a paragraph in the following words:—

"There is no position which depends upon clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do, not only what their powers do not authorize, but what they forbid."

—

JUDICIAL LEGISLATION.

"But the answer to these and similar objections, is, that such considerations should have weight with those whose business it is to make laws; but they should not control the opinions of those whose business it is to expound the laws."

The above is the closing sentence of a paragraph in the manuscript opinion written by JOHN SAVAGE, *late Chief Justice of the Supreme Court of the State of New York.*

It is an opinion worthy of the man.

The following is also from another manuscript opinion of this truly great man.

"Much of our difficulty arises from judicial legislation: if other laws are necessary, let the legislature pass them."

—

JUDICIARY.

"The Courts must declare the sense of the law; and if they should be disposed to exercise *Will* instead of *Judgment*, the consequence would equally be the substitution of their pleasure for that of the legislative body."—Federalist of No. 78, quoted by Mr. Justice Story with approbation.

CHANCELLOR'S DECISIONS.

We have given all the opinions delivered by His Honor Chancellor Walworth, in assessment cases for the last five years, in full.

It will be seen by a careful reading of these several opinions, that the decisions of the Chancellor, have fluctuated. The opinion given in the suit of Meserole and others vs. the Mayor and Common Council of Brooklyn contrasted with that given a short time afterwards, in that of Timothy Wiggin vs. the Mayor &c. of New York, are difficult to reconcile as respects the assessment being a cloud upon the title.

We do not undertake to say that the Chancellor was wrong in refusing to entertain the bill filed in the latter case, and also in the several subsequent cases disposed of by him, but we feel it our duty to say, that he erred in requiring the complainants to pay costs; inasmuch as he himself remarks, in the opinion he gave in the Van Doren case, that in deciding the Brooklyn case, in the hurry of business, he overlooked a decision. We have occasion to know that in the case of Wiggin vs. the Mayor &c., the Solicitor of Mr. Wiggin obtained from the clerk of the Chancellor at Saratoga a manuscript copy of the opinion of His Honor in the Meserole case, and it was in consequence of the tenor of that opinion that this bill was filed.

It will be borne in mind that the decision made by the Chancellor in Wiggin's case was nearly a year previous to the decision of the appeal in Meserole's case in the Court for the Correction of Errors.

The cases in which the Chancellor sustained the demurrers against the complainants, were many of them of a very aggravated character. The bills filed in these cases were full, and in several cases the complainants set forth that the applications for the appointment of commissioners were not authorized by the Common Council.

The Chancellor may have taken a correct view of these questions in the last decision, and not in the first; but the change of opinion was a difficulty, and quite a serious one, to the complainants.

These matters have passed from the courts to a Committee appointed from the Honorable the Senate of this State to investigate assessment abuses in the city of New York, and that committee have made their report. The members of that committee are distinguished members of the Court for the Correction of Errors: their report will be found in this volume.

We desire to speak of the worthy Chancellor of this State with great respect; he is a most estimable citizen, and, notwithstanding the constant toil and labor in his Court, finds time to attend the benevolent and charitable institutions, and the religious societies of the day—of the most of which he is a conspicuous and valuable member.

It is a wonder how CHANCELLOR WALWORTH accomplishes such an amount of labor. Should his labors increase with his years, when he shall have reached the constitutional barrier of this State, as to the term beyond which judicial officers of a certain grade shall be deemed incompetent, he will have worn himself out with labor.

The salary of the Chancellor of this great State is two th usand, five hundred dollars per annum, a mere pittance for such services.

When we take into view the labor imposed upon the Chancellor, the limited duration of his office, and the compensation attached to it, the wonder is that any person can be found willing to accept of the appointment.

The salary of the Chancellor should be increased to $4,500, at least, and that of the Judges of the Supreme Court to $4000.

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LEGISLATIVE POWER.

The Constitution of the United States contains this provision :—

"ARTICLE 1, § 1.—All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Constitution of the State of New York contains these provisions.

"§ 1. *The Legislative power of this State shall be vested in a Senate and an Assembly.*"

Can the Senate and Assembly of the State of New York delegate the right or power to pass penal laws to any other body of men ?

By *Article* 1, *Sec.* 12. "Every Bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it had originated," &c. The Constitution then proceeds to say, that the objections of the Governor shall be entered "at large on their Journal, and they shall proceed to reconsider it. If after such reconsideration two thirds of the members present shall agree to pass the Bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two thirds the members present, it shall become a law. But in all such cases, the votes in both houses shall be determined by *yeas and nays*, and the names of the persons voting for, and against the Bill, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return, in which case it *shall not become a law.*"

The Governor is thus vested by the Constitution with a negative upon the acts of the Legislature, but this negative is greatly qualified, inasmuch as the vote of two thirds of a bare quorum can pass a Bill after his refusal to sign in it, notwithstanding such refusal.

The Constitution provides that the members of the Senate and Assembly shall respectively be elected on a certain day, at a certain place, by persons possessing certain qualifications, and that they shall convene, &c. on a certain day, &c.

Thus the Constitution provides in what manner laws shall be enacted, and details with great precision the form and time. No Bill whatever can become a law of this State, unless enacted in the manner and form prescribed in the power thus given in the Constitution by the People, who are the Grantors of the Power.

The Constitution contains no power of substitution, no authority, or permission to the Senate and Assembly to delegate the power of making laws to any other body of men. The power is special, limited and restricted in every respect.

The Act of the Legislature of the State, passed April 7th, 1830, which is called the Amended Charter of the City of New York, contains this provision :—

"§ 1.—The Legislative power of the Corporation of the City of New York shall be vested in a Board of Aldermen and Board of Assistants, who, together, shall form the Common Council of the City."

The question then arises, can the Common Council of the City of New York pass laws? Can the Legislature of the State grant to the Common Council, or vest in that body the power to pass laws?

To the first query, we answer in the negative, and add, that the City of New York is a part of the State of New York, and is governed by the laws of the State.

The reply to the second enquiry here propounded, is, that the Legislature of the State cannot in any manner or form, either direct or indirect, delegate the Legislative power vested in that body, that no power of substitution whatever is contained in the Constitution.

A citizen who executes a written power to another citizen to act for him, and in his name, if he intends the power thus given to be exercised by another, inserts a special clause authorizing his said agent and attorney, to substitute another, or others in his place and stead, &c.; but in the Constitution, the grantors of the power make no such provision in that instrument which contains the grant, and none can be presumed, or implied.

If the Common Council desire an ordinance to have the force of a law within the bounds of the City, that ordinance should be made into the shape of a Bill, and be acted on by the Legislature of the State, and approved by the Governor, in the manner and form prescribed by the Constitution.

The Common Council might with as much propriety pass an ordinance to regulate the rate of interest on money, as to pass an ordinance to regulate other matters than those which pertain to the management of the corporate property. The Common Council have no more right to pass an ordinance imposing a penalty on a citizen for a violation of their so-called laws, than a government of an incorporated bank has, and the passage of such ordinances are a violation of the Constitution of this State, and will be so held when taken to the high courts for adjudication, and this objection raised.

No one will for a moment doubt that there should be special laws relative to the City, but all such laws should be passed by the Legislature of the State, and not by the Common Council of the City.

The Common Council of the City of New York is not the Corporation of the City, but the powers of the Corporation are vested in the Common Council, to be exercised by that body in a certain manner, &c. And what, or who is the Corporation of New York? It is the citizens and inhabitants of New York, in whom is vested certain property which has been granted to them by the name and style of the Mayor, Aldermen and Commonalty of the City of New York, and the management of this Corporate property is committed to the Common Council and other particular officers.

The Common Council have the management of this Corporate property for the citizens and inhabitants, the same as the President and Directors of a Bank have of the capital stock which is the property of the Stockholders.

If this Corporate property consists of Market-houses, they have the right and power to say at what rate the stalls shall be leased and what hours the Market shall be opened, but they have no right to say that the citizen who owns a store shall not sell Pork, Beef, or Poultry in that store, nor can they pass any valid ordinance, making it a penalty for a citizen to sell meat on his own premises. We know that such ordinances have been passed by the Common Council, and that some of the Courts have held such ordinances valid, but such a decision would not be held valid by the Supreme Court of the United States.

There is a vast difference between the powers which may be vested by a Charter in a Political Corporation granted by an absolute government possessing unlimited power, and these which are possessed by our free Government exercising the limited and restricted powers conferred by the Constitution.

No one conversant with the provisions of our Constitution, will for one moment pretend to deny that even the Legislature of the State, is greatly restricted and limited in its power; and yet there are others, and some of them members of the common council, who pretend to say that the Common Council, a mere creature of the Legislature, can do that which the Legislatue of the State dare not attempt to do—this is, in effect, making the creature greater than the creator.

Hume, *De Lolme*, Sidney, Tucker and others, who have written much upon Legislative power, speak of it only in such cases as where its exercise is unlimited and unrestricted.

In our free country, this power is possessed by the people, and they are the grantors of power in all cases—the people are sovereign. The legislatures are mere grantees.

less, they shall not receive any salary or consideration, under any pretence whatever. And that all bills which shall have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision or consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto, in writing, to the Senate or House of Assembly, in which soever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if, after such re-consideration, two thirds of the said Senate or House of Assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections be sent to the other branch of the Legislature, where it shall also be reconsidered, and, if approved of by two thirds the members present, shall become a law."

"And in order to prevent unnecessary delays—

"*Be it further ordained*, That if any bill shall not be returned by the Council within ten days after it shall have been presented, the same shall become a law, unless the Legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the Legislature after the said ten days."

"The Governor to convene the Senate and Assembly on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year."

Thus the former Constitution of this State made the Governor, Chancellor and Judges of the Supreme Court, a council of revision, and gave to the Governor the power to prorogue the Legislature that the members might return to and consult their constituents. This negative power, thus vested, was not considered objectionable, but on the contrary, when the new Constitution was adopted, in 1821, it was changed and vested solely in the Governor, but the power to prorogue the Legislature was taken away.

The vote required to pass the bill, notwithstanding the objections, under the present constitution is the same as under the former, except that it is required that the vote shall be taken by ayes and noes, and the names of the members voting for or against the bill shall be recorded. The vote required is only two thirds of the members present, which may perhaps be but a minority of each house, or a bare majority form a quorum, and it is only two thirds of this bare majority which is required.

The exercise of the Veto power by the Governor of this State is therefore only that of a qualified negative.

The Veto power of the President of the United States is also a qualified negative. The Constitution of the United States is, however, silent as to the requirement of the Veto taken on the re-consideration of a bill returned by the Executive being by a vote of two thirds the members present or two thirds the members elected.

It would seem that the safer construction would be two thirds the members elected, but we understand that the more liberal and extended construction has been adopted by Congress.

So salutary has this qualified negative, possessed by the President, been found, that, in the experience of more than half a century, the exercise of this power has not been overruled by a constitutional vote by Congress.

The Constitution of the United States is very explicit with regard to the mode in which the vote of re-consideration shall be taken, and that the votes shall be taken by ayes and noes, and recorded in the journals.

When the provisions of the Constitution were debated in the convention, it was proposed to vest the qualified negative in the President and some other department of the Government, but this was strenuously opposed and overruled, and was finally rejected by a vote of eight States against three.

There is another qualification of this negative of the President, which is, that an entire new house of Representatives are elected by the people during his term of office, which, if this exercise of the qualified negative is not satisfactory to the people, they have the opportunity of thus overruling it, and also the term of office for which the Executive himself shall have been elected, will have an end every four years. Thus the frequency of the elections gives additional qualifications to this already qualified negative.

In the amended charter of the city of New York, although (as Mr. Samuel Stevens remarks in an article under the signature of "Third Ward," published in the New York American in 1829, when the city convention were sitting) they were only framing a bill for the State Legislature to pass into a law, that body took the United States Constitution for a model whereby to form a municipal charter; and in vesting the mayor with a qualified negative upon the acts of the Common Council, they made some alterations in that provision, which were, to require the objections of the executive to be published in the newspapers, and that the vote should be that of a majority of the members *elected* to each board, and also of requiring that *at least ten days* should elapse before the board to which the act should have been returned should proceed to re-consider the same. This change of the qualified negative of the Mayor makes his veto at the present moment a nullity. The City Charter, as the act of the Legislature is called, omits to state any thing in relation to acts passed by a Common Council, the members of which whose term of office may expire during the ten days which the Mayor is allowed to consider a proceeding, and decide whether or not he will give his assent. This was an oversight, and there can be no doubt but an act remaining in the hands of the Mayor unsigned when his term of office expires, would be inoperative.

The distribution of power is one of the great principles on which all free governments are based, and we propose to discuss this subject in a future number under that head.

SACREDNESS OF PRIVATE PROPERTY.

That distinguished citizen and eminent jurist, JUDGE STORY, one of the Justices of the Supreme Court of the United States, in his admirable Commentary upon the Constitution of the United States, thus remarks:—

"The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and rulers."

Mr. Justice Story cites Blackstone, Kent, Rawle, and also several cases which had been adjudicated.

The practice of the last few years in the city of New York to enforce the collection of sham-assessments for fictitious improvements, by a sale of the property pretended to be benefitted for terms of thousands of years, equal to, and in effect, selling the fee simple absolute, is taking private property for public use without just compensation, and in truth is absolute *confiscation.* It matters not to the owner whether his land is taken or his money, both are alike private property; for if he pays the assessment, in most cases he pays the value of the land in paying the assessment, and thus, in fact, re-purchases the land by redeeming it. Vast quantities of lands on the island of New York, have been assessed to such an extent that the interest of the assessment exceeds the value of the land, and also large quantities of other lands are assessed for the pretended opening of streets, avenues, and public squares, (which are not open or needed,) in greater sums than the land could be sold for.

The abuses have been so enormous, so flagrant, so high-handed, that the real estate has lost its value by the insecurity thus produced.

In the case of the streets and avenues, up to and including Forty-second street, referred to in the report of the committee from the Senate of this State, twenty-seven setts of Commissioners (in all eighty-one) were appointed to make an assessment for opening the streets and avenues in that district; whereas the committee of the common council reported in favor of but one sett, (three commissioners,) and did not, in fact, pass any resolution for an application to the Supreme Court for the appointment of even this one set.

It is time such proceedings had an end.

Anecdote of the reigning king of Prussia. **—The following anecdote we cut from the columns of the Albany Daily Advertiser. It belongs to go along side of assessment matters, showing a contrast in the judicial proceedings of the courts of our State, compared with that of a kingly government.**

"We have much pleasure in laying before our readers an interesting anecdote, which has been communicated to us by a gentleman recently from Berlin. Some time since an effort was made to get rid of a windmill, the close approximation of which to the royal palace rendered it in some degree a nuisance, and certainly an eye-sore. Overtures were accordingly made to the sturdy yeoman for the purchase of the obnoxious property; but whether it was that the man was possessed of a strong spirit of obstinacy, or was really deeply attached to his old family habitation, the result was that the offers, tho' tempting, were again and again refused. There are very generally some individuals attached to a court who are ready to suggest remedies, direct or indirect, for inconveniences or annoyances offered to royalty. Accordingly, upon a hint from some minion, a lawsuit was commenced against the obstinate miller for the recovery of certain sums alledged to be due for arrears of an impost on that portion of crown land which it was suggested was occupied by the mill in question. The sturdy holder of the "toll dish" was not altogether without friends or funds, and he prepared vigorously to take his stand in defence of his rights. The question came in due time before the courts of law, and the plaintiff having completely failed to establish any right on behalf of the crown, the miller obtained a verdict in his favor, with a declaration for payment of his costs in suit. This was certainly no small triumph, and merrily went round the unfurled sails of the old mill, and well pleased no doubt, was the owner with the sound, as they went whirling and whizzing under the influence of the gale, which certainly seemed to blow strongly in his favor. But he was not the first who has found that when drawn into a lawsuit, particularly with so formidable an opponent, a man is more likely to "gain a loss" than escape scot free. What with extra expenses, interruption of business, and rejoicings after the victory, the miller found himself pressed by considerable difficulties, and after in vain struggling a few months against the pressure, he at length formed a manly resolution, gained access to the monarch, and, after roughly apologizing for his having thwarted his majesty's wishes, frankly admitted that his wants alone had rendered him complient, but that he was prepared to accept the sum originally offered for the property. The king, after conversing with the miller a few minutes, hand d him a draught for a considerable amount, saying, "I think, my honest friend, you will find that sufficient to meet the emergency; if not, come and talk to me again on the subject. As to the mill, I assure you that I will have none of it. The sight of it now gives me more pleasure than it ever occasioned pain; for I see in it an object that assures me of ***a guaranty for the safety of my people, and a pledge for my own happiness by its demonstration of the existence of a power and a principle higher than the authority of the crown, and more valuable than all the privileges of royalty.***"—[London Paper.]

COMMISSIONERS OR A JURY.

Taking land for Public Avenues, Streets and Squares.

The position of the Assessment question, and the highly important opinions of Chief Justice NELSON, Justice BRONSON and Justice COWEN *of the Supreme Court.*

The Constitution of 1777 contains this provision;—

"That trial by Jury in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever, and further, that the Legislature of this State shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law."

The act of the General Assembly of the Colony of New York, passed Oct. 1st, 1691, and confirmed by William III, May 11th, 1697, contains this provision:

"And for other ground, the Mayor, Aldermen and Common Council shall and may treat and agree with the owner and others interested therein; and if there shall be any person that shall refuse to treat in the manner aforesaid, in such case the *Mayor and Aldermen, in their Court,* are hereby authorized by virtue of this act, to issue out a warrant or warrants to the Sheriff of the said city, who is hereby required to empannel and return a jury before the *said Court of Mayor and Aldermen,* which Jury, upon the oath to be administered by the said court, are to enquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same, as by the said Mayor, Aldermen and Common Council, shall be adjudged fit to be converted for the purposes aforesaid, and such *verdict of the Jury, and judgment of the said Court of Mayor and Aldermen thereupon,* and the payment of the said sum or sums of money so awarded and adjudged to the owner or others having estates or interest or tender or refusal thereof, shall be binding" &c. *This Colonial act was in force when the Constitution of* 1777 *was adopted.*

The trial by jury extends to property, as well as persons, and therefore the act of 1807 and 1813, authorizing the appointment of three commissioners to take land instead of a jury, is unconstitutional and void.

The Constitution of 1821 *contains these provisions:*—

"The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever, and no new court shall be instituted, but such as shall proceed according to the course of the common law." Art. 7, § 12.

"The Governor shall nominate by message in writing, and with the consent of the Senate, shall appoint all *Judicial officers* except Justices of the peace." Art. 4, § 7.

In the decision of the Supreme Court in January, 1841, in the matter of the application of Elmendorf and others for a Certiorari to be directed to the mayor, aldermen and commonalty of the city of New York,

point skilful and competent persons Assessors to make estimates and assessments for building sewers, regulating streets, &c., and the Assessors so appointed are directed to assess the expense of the work, &c., on the owners and occupants of houses and lots deemed to be benefitted thereby, and to certify their assessments in writing to the mayor, aldermen and commonalty, in common council convened; and such assessment, when ratified or confirmed by the said Common council, shall be a lien upon the houses and lots so assessed, and in case of neglect or refusal to pay such assessment, the mayor, recorder and aldermen, or any five of them, are authorized to issue a warrant of distress under their hands and seals, which may be levied upon the goods and chattels, &c. The act of April 16th, 1816, provides further, that in case the owner or occupant, on being twice called upon, refuses or neglects to pay the assessment, his lands may be sold therefor.

Now we insist that in this, the Common council and the assessors are both acting in a *judicial capacity*, and are as much a court as the Commissioners of sewers; and the assessment, when confirmed, is in the nature of a Judgment, being made a lien upon the land, and the warrant being in substance an execution.

We think we have stated enough here to show that Commissioners of Estimate and Assessment cannot take lands for public use from any individual, without his consent, nor can they impose any assessment on adjoining owners: that whenever lands are required in the city of New York, for public use, *a jury* is the only mode of proceeding. And besides, if it should be held that commissioners could take land, such commissioners *can only be appointed by the Governor.* Thus the proceedings of commissioners *are void.*

As to Assessors, these too are *judicial* officers, and the members of the Common council also act or assume to act in a *judicial* capacity, in confirming assessments, issuing warrants, &c. These officers are *none of them appointed by the Governor*, and the Constitution is explicit on this head; it excepts Justices of the Peace, Special Justices, &c.

It is of no use to have a written Constitution, if officers who are sworn to support it will disregard its great principles and requirements.

We think that the learned Judges of the Supreme court were right in *quashing* the writs they had allowed, and in refusing those which were applied for, and that the assessments are absolutely VOID. We are aware that we differ from the learned counsel on both sides in the views now put forth, but it is our deliberate opinion, after examining the question very extensively.

We also think that it was the duty of the court to settle the question of the legality of these assessments, instead of enacting a statute of "PUBLIC INCONVENIENCE"—which enactment most assuredly is not authorized by the Constitution of the State, nor is it sanctioned by public opinion. Neither public or private inconvenience have any place in such cases. Let justice be done—let the law be strictly complied with.

Judicial powers of the Board of Aldermen and Board of Assistants, composing the Common Council of the City of New York.

The following sections of the act, Entitled "*An ACT to reduce several Laws relating particularly to the City of New York into one Act*"—passed April 9th, 1813—constitute all the provisions of the Statute authorizing the imposition of assessments on the owners or occupants of houses and lots for the class of improvements therein specified, and there is no other provisions of law which authorize any assessment to be imposed by the mayor, aldermen and commonalty for this class of improvements.

§ 175.—*And be it further enacted*, That it shall be lawful for the said mayor, aldermen and commonalty, to cause common sewers, drains and vaults, to be made in any part of the said city, and to order and direct the pitching and paving the streets thereof, and cutting into any drain or sewer, and the altering, amending, cleansing and scouring of any street, vault, sink or common sewer, within the said city; and the raising, reducing, levelling or fencing in, any vacant or adjoining lots in the said city; and to cause estimates of the expense of conforming to such regulations to be made, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire; and the said mayor, aldermen and commonalty shall appoint such skilful and competent disinterested persons as they shall or may think proper to make every such estimate and assessment, who before they enter upon the execution of their trust, shall severally take an oath before the mayor or recorder of the said city, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and the said persons, after having made such estimate and assessment, shall certify the same in writing to the said mayor, aldermen and commonalty, in common council convened, and being ratified by the said council, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively, and shall be a lien or charge on such lots as aforesaid; and such owners or occupants shall also respectively be liable upon demand, to pay the sum at which such houses or lots respectively shall be assessed, to such person as the said common council shall appoint to receive the same; and in default of such payment or any part thereof, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals to levy the same by distress and sale of the goods and chattels of such owner or occupant refusing or neglecting to pay the same, rendering the overplus (if any), after deducting the charges of such distress and sale to such owner or occu-

pant, and the money, when paid or recovered, shall be applied towards making, altering, amending, pitching, paving, cleansing and scouring such streets, and making and repairing such vaults, drains and sewers as aforesaid, and raising, reducing, levelling or fencing in, such lots as aforesaid. *Provided however*, That nothing herein contained shall affect any agreement between any landlord and tenant, respecting the payment of any such charges, but they shall be answerable to each other in the same manner as if this act had never been made; and if the money so to be assessed be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, it shall then be lawful for the person paying, to sue for, and recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

§ 176. *And be it further enacted*, That if upon completing any such regulation, it shall appear to the said mayor, aldermen and commonalty, that a greater sum of money had been *bona fide* expended in making such regulation than the sum estimated and collected aforesaid, it shall then be lawful for the said mayor, aldermen and commonalty, to cause a further assessment equal to such excess, to be made and collected in manner aforesaid; and in case the sum actually expended shall be less than the sum expressed in such estimate, and collected as aforesaid, the surplus shall forthwith be returned to the persons from whom the same were collected. or their legal representatives.—2 R. L. p. 407,

The sections above quoted contain a special power, given to a select class of persons, to make certain improvements particularly named in manner and form therein stated.

It will be noticed that this is a special power given by the Statute to a select class of persons. The mayor, aldermen and commonalty, as then known and entitled, were the mayor, recorder, aldermen and assistant aldermen of the city of New York. These public officers composed the city council, and assembled in one body in the same council chamber.

The mayor, and also the recorder of the city, were appointed by the State council of appointment—the aldermen and assistants were elected by the freeholders of the respective city wards.

In 1821 the Constitution of the State was remodelled, or rather, a new Constitution was formed, one of the provisions of which was that the mayors of cities should be appointed by the respective common councils of each. This provision, as to the city of New York, was altered in 1833 by an amendment of the State Constitution in that particular; and now it is provided that the mayor of the city of New York shall be elected annually by the People.

The recorder, by the Constitution of 1821, shall be appointed by the Governor and Senate.

By the Amended Charter of the city of New York [Session Laws of 1830, ch. 122] the legislative power of the corporation is vested in a board of aldermen and board of assistants who, together, shall form the Common council of the city.—§ 1.

By the fifteenth section, of the same act, neither the mayor nor recorder shall be members of the Common council after the second Tuesday of May, 1831.

By the 7th section, of the act as above, the boards are required to keep a journal of their proceedings and to meet in separate chambers; and, by section twelve, all acts, before they shall take effect, shall be first approved by the mayor, &c. &c.

The apportionment of judicial officers under the Constitution of 1821.

By the 7th section of Article IV. of the Constitution, the Governor shall, by message in writing, nominate, and, with the consent of the Senate, appoint all judicial officers except justices of the peace; by section 14 special justices and assistant justices of the city of the city of New York are excepted, and by sec. 1 of Art. V. the members of the court for the Correction of Errors are excepted.

We here raise two Questions, viz:—

1. *Are Assessors, who are appointed by the board of Aldermen and board of Assistants, with the Mayor's approval, Judicial officers?*

2. *Do the boards of Aldermen and Assistants, sitting in separate chambers, in ratifying Assessments made by Assessors appointed by themselves, and the Mayor also in approving such acts, act judicially?*

To the first question, we answer that the 175th section above quoted authorizes an estimate of the expense of the work, as a preliminary measure, previous to making the assessment of the expense upon the owners and occupants intended to be benefitted thereby, by skilful, competent, disinterested persons, to be appointed by the mayor, ald. and com.; and this assessment is to be made in such proportion as they deem the advantage acquired by such owner or occupant. Their estimate and assessment shall be certified in writing to the mayor, aldermen and commonalty, in Common council convened, but has no binding force until ratified by said Common council. This ratification is, therefore, to all intents and purposes, a judgment, which is by the same section made a lien upon the houses and lots of such owners and occupants, &c., and upon this ratification or judgment, a warrant of distress is authorized to issue under the hands and seals of the mayor, recorder and aldermen, or any five of them, of which the mayor or recorder are to be one; and by the act of April 12th, 1816, the mayor, aldermen and commonalty, in default of payment of such assessment, are authorized to sell or lease the houses or lots so assessed for an unlimited number of years, even to the end of time. The Constitution adopted in 1777, and which was in force when these two acts above referred to were passed, contained no limitation as to the appointment of judicial officers, or at least we have found no such provision in that instrument. At the time of the passage of these two acts the mayor and recorder were both appointed by the council of appointment, and after the adoption of the new Constitution in 1821 the recorder was appointed by the Governor and Senate as a judicial officer, and continued to be a member of the Common council; but the amended charter of April 7th, 1830, *excluded* that officer after the second Tuesday of May from a seat in the Common council, and he is now no longer a member of that body; nor does any Judicial officer hold a seat in either board composing the Common council: therefore, there is no authority under the Constitution for the Common council to act in a judicial capacity, the law of 1813 and 1816 being both abrogated by the Constitution of 1821.

The Assessors, therefore, as standing alone, are not judicial officers; but their acts, taken in connection with the proceedings of the mayor, aldermen and assistants, constitute proceedings which are, in their operation and effects or consequences, the highest exercise of judicial authority in matters pertaining to the rights of property.

The Answer to the second question has been mainly anticipated in the reply to the first question.—The Amended Charter was the result of measures growing out of complaints in the assessment made for building Canal street sewer, which was an assessment of near one hundred thousand dollars by assessors appointed under the 175th section before quoted which had been confirmed by the Common council composed of the mayor, recorder, aldermen and assistant aldermen. The dissatisfaction which this assessment produced caused applications to be made to the Common council for an amendment of the City Charter, and accordingly an application was made by that body (under the corporation seal) to the Legislature of the State. This application was accompanied by a bill, which was passed by the Legislature, conditioned to become a law if the majority of the electors of the city of New York by their vote by ballot signified their acceptance of it. This they did not do—less than 700 votes, of the whole number of voters in the city, were cast in its favor. This was in 1824.

In 1828 the Legislature, on the application of the Common council, re-enacted the same bill, with the same conditions, and it was again submitted to the electors of the city of New York, and by them again rejected.

This bill provided for the exercise of all the powers which had ever been conferred by charter or by law on the mayor, aldermen and commonalty, or the mayor, aldermen and commonalty in Common council convened, or the mayor, recorder, aldermen and assistant aldermen, thereafter to compose two boards meeting in separate chambers, with concurrent jurisdiction.

The next proceeding was the Convention which met in June, 1829, to frame a bill for the Legislature to pass into a law amending the City Charter, and here a great mistake was made in taking the Constitution of the United States for a model to frame a bill for the Legislature to pass into a law, unless we assume it to be conceded that the business of the Common council was to be confined to the affairs of the corporation as a corporation

Had the complainants in these cases derived benefits equal to the assessments, and then complained of the exercise of a power unknown to our laws, there would have been some little apology for withholding relief; but in these cases the extreme of the reverse is the case. The complainants are injured, and, notwithstanding, are called upon to pay such immense sums of money in the shape of assessments on their lands as to amount to a repurchase of their own lands for cash.

The Common council, by their solemn act, deliberately considered and unanimously adopted, admit that property has been assessed beyond its value, and they resolved that the Counsel be directed to take measures under the direction of the finance committees to obtain a review of the assessment in 1841.

This is an acknowledgment of improper proceedings by the very body who confirmed or ratified the assessments made by their own officers whom they had appointed Assessors.

In the enlightened governments of Europe we hear of no such doctrine being set up, to deprive citizens or subjects of their estates, as that of "public inconvenience," or even of public necessity. Private property, by the governments of Europe, is held sacred and inviolate, and in no case can private property be taken for public use unless the most ample compensation is first made to the owners; and such is the great and fundamental doctrine in our own land—such is the law of the Constitution—such is the will of the People!

It has been said that the owners and occupants of houses and lands which are assessed for this class of miscalled improvements receive compensation in the advantages which the property derives by its increased value. Where is the increased value in cases where the assessment imposed exceeds the value of the land deemed to be benefitted? And where, we again ask, is the compensation in other cases in which the bare interest of the assessment exceeds the value of the property assessed?

When property is offered to be leased by the Corporation for a period extending throughout all time to any person who will pay the assessment, and none can be found willing, as it were, to accept the land as a gift on such conditions,—is it not evidence of the most convincing and conclusive character that the assessment has been most shameful and unjust—that it is nothing short of an act of confiscation? Is either the letter or the spirit of the law complied with in the making of the assessment? Certainly not. The assessment is a mere arbitrary apportionment of the contract price of certain work upon a selected piece of ground by mere mathematical calculation. The assessors are required to be skilful, competent, disinterested. Why these qualifications if the assessment is a mere apportionment, a mere distribution by figures without regard to damage or benefit? Most preposterous! and yet we are told that it will be a "public inconvenience" to set aside such assessments, or to compel the Corporation to review their proceedings.

When our Government made a claim upon Mexico to make restitution and satisfaction to our citizens for the spoilations committed by her officers upon their private property, there was no such doctrine set up by the Mexican government, or its constituted authorities, as "public inconvenience"; and if it had been pleaded, it would have only aggravated the injury.

Private property is sacred in all civilized countries, and also in some of the most barbarous; and no government can long exist which does not respect, and so hold it. It is the very foundation of government, and as Mr. Justice Story very justly remarks in his admirable Commentary on the Constitution—"Indeed, in a free government, almost all other rights would become utterly worthless if the government possessed an uncontrollable power over the private fortune of every citizen."

In principle, there is no difference between taking land from a citizen and converting it to public use without compensation and taking money. Both are alike private property, and both are alike protected by the Constitution. It makes no difference to the citizen which is taken, his money or his land.

During the last war, when the American army found it necessary to destroy the dwellings and other property of our citizens, to prevent it from falling into the hands of the enemy, in all cases full and complete compensation was by our Government made to the owners. These sufferers were not told that they are compensated for the loss of property thus destroyed by the protection which is afforded by the Government to their persons and their other property.

These assessments upon private property, which have been ordered by the common council and ratified by that body, are large in amount. In some cases, a single individual has been assessed the sum of thirty thousand dollars; others ten and fifteen thousand dollars each.

Lands of citizens have thus been invaded. The soil, which before had been productive, has been covered several feet deep with gravel and sand, and a charge made for this kind of covering by the load, at a rate that actually makes it a complete confiscation. We have now before us a paper containing an advertisement by the street commissioner of a piece of land to be sold for the non-payment of an assessment which is stated to contain 165 lots, equal to about ten and a half acres. This land is situate between 115th and 124th streets and the Fifth and Eighth avenues, being near seven miles from the City Hall. The assessment is stated at sixteen thousand and sixty-three dollars, which is about one hundred dollars per lot, or sixteen hundred dollars per acre. The advertisement states that the assessment was confirmed on the 31st of May, 1837, since which time it has been on interest, at the rate of 7 per cent. per annum. This then, is on interest five years and three months, which amounts to the sum of five thousand nine hundred and three dollars and fifteen cents, which is near six hundred dollars per acre. This property was advertised to be sold for this assessment in June, 1840, and was offered for sale without getting a bid. Although this property is on one piece of

ground, it was advertised for sale as 165 lots. The charge for the advertisement alone was two dollars per lot, which was equal, for the piece of land, to three hundred and thirty dollars for the advertising alone!

The same land was again advertised for sale, for the same assessment, in October 1841, but could not be sold for the want of bidders.

This land belongs to the estate of a person some years since deceased.

This assessment is one of those referred to in the following proceedings of the common council.

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From Senate Doc. No. 100, *page* 277.

Preamble and Resolutions for paying Contractors and applying to the Legislature for act to buy under sales for assessments.

Whereas, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule, prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the common council, and which were to be paid for by assessments on the property benefitted, and as soon as the amounts of said assessments were collected.

And whereas, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same, only in part made, and most of them returned as unpaid and uncollectable, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state, advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; but the amount due on said assessments could not be realized, by reason of their being no bids at such sale for said property, *the amount of said assessments being more than the present market value of said property so liable*, in consequence whereof the said contractors are still unpaid; the common council, in order to relieve them, and anticipating the collection of said assessment, and which may hereafter be made, and trusting that they may be authorized by the Legislature, to raise by tax the amount which they may so advance, and to secure themselves and city treasury, from any loss, by being authorized to purchase in at any sale, such property, for which there may be no bids; do adopt the following resolutions:

1. *Resolved*, that the counsel prepare a law, under the direction of the law committee, to be applied for, to the Legislature, authorizing the corporation to become purchasers of property which may hereafter be offered for sale, for payment of assessments agreeable to law; to refund them for any advances which may have been made by them, to contractors or others, for the improvement for which such assessments were imposed. Such law to contain all needful provisions to secure the rights of parties interested therein, and that such property be held as a trust fund to repay such advances.

2. *Resolved*, that the comptroller be authorized to pay the several contractors the amounts respectively due them, for the several improvements made in pursuance of the ordinances of the common council, in all cases where the property assessed therefor, was benefitted by such improvement, has been offered for sale, and could not be sold by reason for the want of any bid, at the recent sale of property for assessments, or in cases, in which the sale of such property has been enjoined by the Court of Chancery, such payment to be made on the first day of October next.

3. *Resolved*, that the comptroller include the estimated amount required for the above payment, in the amount of the next annual tax bill, to be applied for to the next Legislature.

4. *Resolved*, that the counsel to the corporation, under the direction of the law committee, *take measures to obtain a revision of assessments, mentioned in the annexed schedule as may be judged expedient, and agreeable to law.*

Adopted by the board of assistants, February 25, 1841.

Adopted by the board of aldermen, February 22, 1841.

Adopted by the acting mayor, February 25, 1841.

Volume 8, of the printed proceedings of the common council, printed by authority of the common council, page 121 and 122.

December 24, 1841, compared with the printed Document in vol. 8, of proceedings of common council, page 121 and 122, and correct. G. FURMAN, *Chairman.*

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We find in the street commissioner's advertisement for the sale of lots in June, 1840, a lot 24 feet 6 inches front, by about 100 feet deep, advertised for sale for an unpaid assessment for filling in Fifth street. The assessment is one thousand eight hundred and forty-five dollars and sixteen cents—confirmed June 28th, 1830—interest to June 28, 1840, being ten years, at 7 per cent. per annum, $1291.62, which makes the amount, in all, $3136.78. This lot is on the corner of avenue B, and is hardly worth one quarter of the amount.

We notice in another case for the regulating and repaving of Chapel street, that Mr. Andrew Lockwood, who owns 14 houses of a block fronting on that street, was assessed the sum of $1480.90. Instead of being benefitted that amount, his property was actually injured more than ten thousand dollars.

Mr. Riley, in the same street, was assessed for the same proceeding $732.71, by which, instead of being benefitted that sum, his property was injured more than five thousand dollars. In fact, ten thousand dollars would not make him good for the injuries he has suffered by the proceeding.

Other citizens in the same street have also suffered largely by the same proceeding. In this case, the contract price for the repaving of the street was five times that which had been paid for repaving the same street previously, and the work of the first repaving was much better than the last.

We notice another case in the Eighth avenue. Mr. Scott was assessed on a piece of ground —— feet front, $——— for regulating this avenue. Some years since, this very property was taxed to pay for working the Third avenue, which was such a proceeding in every respect as the Eighth avenue. In this case of Mr. Scott's, the lot was sold for the assessments, and he redeemed it by paying over seven hundred dollars. In the case in which this property was sold the assessment was never signed, or certified by the assessors, and still the common council ratified it, without any examination; and the street commissioner, who was one of the assessors named in the ordinance for making the estimate and assessment, actually sold the land under these proceedings.

The assessment for building a sewer in 122d street.—This sewer is, part of it, built on piles, over a salt meadow, and above the ground which is assessed for draining. Even the bottom of the sewer is higher than the ground which is assessed, and the water cannot be got into the sewer from the surface unless it is pumped into it by hand or machinery. In this case, the sewer was actually in a state of dilapidation before the assessment was confirmed. Some of the lands assessed for the sewer are actually separated from it by an immense ledge of rocks, and the waters which fall on this ground have a contrary course from the sewer.

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MEMORIALS TO THE LEGISLATURE.

The following is a copy of Six Memorials presented to the Legislature at the last session by the Hon. Gabriel Furman. The Anti-Assessment Committee deem it necessary to state, for the information of Honorable Members of the Legislature who may not be familiar with the names of the signers, that four of them are distinguished Ex-Mayors of the city of N. York, another Ex-Recorder, and another the present Recorder. Nineteen have been Members of the Board of Aldermen, twelve have been members of the Board of Assistant Aldermen and of the Corporation; ten are Presidents of Banks, twenty-eight Presidents of Insurance Offices, the Assistant Register of the Court of Chancery, the Postmaster of the city, and Collector of the Port, thirty-six of the most respectable commercial and mercantile firms in the city, and a great number of the most highly respectable citizens; — showing most clearly the state of public opinion on this most highly important question.

Robert Smith, *Chairman.*

ORABLE, THE LEGISLATURE OF THE STATE OF NEW YORK:

City of New York, most respectfully represent to your Honorable Body, that the extraordinary and ercised by the Corporation of the City of New York, in assessing private property for what are called strained by Legislative enactments.

d in various public officers in Assessment matters have been greatly abused, and the consequences the value of real estate, and render titles doubtful and insecure.

very full exhibits of the disastrous consequences of the abuses complained of will be made to your subject may be taken into the serious consideration of the Legislature, and that the Legislature may ne owners of real estate, and such as in their wisdom may seem meet. And in duty bound, &c.

y,	James Boorman,	Robert C. Cornell,	Brown, Brothers & Co.
hompson,	Jonathan Goodhue,	Wm. B. Crosby,	John Haggerty & Co.
vbould,	Peter Schermerhorn,	James J. Jones,	C. & L. Dennison & Co.
mer,	John Haggerty,	Wm. C. Rhinlander,	Robert Buloid & Co.
Veed,	John H. Tallman,	Duncan P. Campbell,	Andrew Foster & Sons,
Knapp,	John D. Wolfe,	Peter G. Stuyvesant,	Joseph Foulke & Sons,
evens,	Saul Alley,	Stephen Whitney,	Hendricks & Brothers,
,	A. D. Cushman,	James Roosevelt,	Peter Harmony & Co.
itt,	Christopher Wolfe,	Peter Lorillard,	John H. Howland, Sons & Co.
and,	Gardner G. Howland,	James Brown,	Ogden Waddington & Co.
awrence,	John B. Lawrence,	James G. King,	Masters Markoe & Co.
sborough,	Robert B. Minturn,	Wm. F. Mott,	Austin, Wilmerding & Co.
ogers,	Moses Taylor,	Wm. W. Fox,	Wolfe, Spies & Gillespie,
Mercein,	Samuel S. Howland,	Benjamin L. Swan,	Platt & Brothers,
,	Stewart Browne,	Edmund H. Pendleton,	Tonnelle & Hall,
e,	Henry Andrew,	Peter Lorillard, jun.	Centre & Co.
gden,	Henry Grinnell,	Henry Breevort,	Leonard and Valentine Kirby,
ns,	James Fellows,	Jonathan Hunt,	William and John James,
rne,	Daniel Parish,	W. W. Todd,	Charles Wardell & Co.
ok, jun.	Richard Kingsland,	James Boyd,	Underhill & Ferris,
es,	William Adee,	John Rathbone, jun.	Nevins, Townsend & Co.
Schieffelin,	David Hadden,	John R. Murray,	Seymour & Co.
tt,	James W. Otis,	Samuel Thomson,	Davis, Brooks & Co.
iley,	Daniel S. Miller,	David L. Haight,	Babcock & Co.
ht,	Peteliah Perrit,	Maturin Livingston,	Woolsey & Woolsey,
rand,	Adam Treadwell,	E. Morewood,	R. Hoe & Co.
	Francis Olmsted,	Peter Embury,	Mott & Brother,
R. Winthrop,	Robert Hyslop,	A. A. Alvord,	R. L. & A. Stuart,
wn,	Horace Waldo,	Burtis Skidmore,	D. C. & W. Pell,
	William H. Russell,	Geo. C. Thorburn,	S. B. Reeves & Co.
er,	Henry Parish,	Eben Meriam,	Phelps, Dodge & Co.
Tisdale,	Thatcher Tucker,	Alex. T. Stewart,	John Johnson's Son,
,	Calvin W. How,	Stuart Mollan,	R. & D. S. Dyson,
onds,	Anson G. Phelps,	Richard Mortimer,	Wood, Johnson & Burrit,
rnell,	Joseph Sampson,	James Gillispie,	Young, Smith & Co.
onald,	Thomas S. Cargill,	Henry W. Dalson,	Charles A. Talbot,
	Martin Hoffman,	Samuel M. Thompson,	Roe Lockwood,
yster,	F. Marquand,	Robert C. Skidmore,	Cyrus W. Field,
iaut,	John Wadsworth,	James A. Burtis,	G. O. Kinney,
ng,	William Scott,	John Tonnelle,	Alex. Lawrence,
iman,	Edward Minturn,	Morris Ketchum,	John P. Atkinson,
leaf,	Edgar H. Laing,	James K. Hamilton,	Jacob B. Elmendorf,
rwaite,	Peter Morton,	John Ridley,	Adoniram Chandler,
	John Milhau,	John L. Norton,	Valentine Mott,
nes,	Joseph Kernochan,	Richard F. Carman,	T. Anthony,
,	Wm. H. Aspinwall,	Smith W. Anderson,	John Morton,
ver,	George M. Woolsey,	Nathaniel Paulding,	William Leggett,
Hope,	William Colgate,	Herman Bruen,	F. S. Fellows,
cock,	Samuel Marsh,	Jasper Grosvenor,	John O. Fay,
,	Moses Tucker,	Thos. L. Clark,	John M. Bruce,
ittimore,	John R. Suydam,	George Sutton,	P. M. Suydam,
,	James Harriot,	John Allan,	C. V. S. Roosevelt,
ite,	John M. Dodd,	Andrew Lockwood,	Charles A. Clinton,
gar,	Uriah R. Scribner,	Richard Wight,	John S. Voorhes,
ore,	Caleb Bartlett,	O. Halsted,	Edgar Harriot,
y,	E. P. Davis,	C. H. Marshall,	Matthias Bruen,
sley,	D. H. Haight,	James P. Griffing,	Stanton Bebee,
es,	John Halsey, jun.	Smith Harriot,	J. J. Stewart,
kerman,	S. S. Ward,	C. N. Keiwsted,	Daniel A. Webster,
ol,	Wm. S. Browning,	N. W. West,	Charles M. Holmes,
	Wm. C. Hickock,	John Johnson,	Richard Ten Eyck,
,	G. Van Doren,	Charles de Bevoise,	Walter Legget,
i,	Charles H. Russell,	Richard Mott,	Garret H. Striker.

N. Y. MUNICIPAL GAZETTE...Extra.

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ASSESSMENTS.

REPORT

Of the Select Committee from the Senate of this State, appointed to investigate Assessment Abuses in the City of New York,

COMPOSED OF THE

HON. GABRIEL FURMAN,
HON. GULIAN C. VERPLANCK,
HON. JOHN B. SCOTT.

In order to present the material portions of this important Report, we have classified the subject matter of the report, and accompanied each portion with remarks and references, that the reader may be able to obtain some knowledge of this all-important subject.

The COMMITTEE say:—

"In the investigation of the matters thus committed to their charge, the Committee were occupied during almost the whole of the last autumn in the city of New York, and also in the month of December, and to the period of the meeting of the present Legislature."

Again, the Committee remark:

"On the 18th September last the Committee received a Communication from the Memorialists, on whose application the investigation was ordered, tendering to their use the commodious Lecture-room in Clinton Hall, New York, free of expense or charge to the State, which was accepted."

The Committee, after detailing certain matters as to the public officers, say that—

"In the course of their examination, the most prominent matters complained of appeared to be,

"*First*, In the manner of opening streets, avenues and public squares in the city; in the appointment of the commissioners of estimate and assessment; in the expenses of those commissioners, and the time spent in the discharge of their duties.

"*Secondly*, The imposition of heavy and oppressive assessments for improvements never actually made, except upon paper; and which assessments were frequently ruinous, being more than the value of the property assessed; and the great difficulty which owners of real estate in that city, and particularly in the upper and unimproved portions of it, experienced, from the fact of using arbitrary map numbers instead of street numbers and farm numbers.

"And, *Thirdly*, The great difficulty which the citizens had encountered in obtaining a review and correction of any errors committed by the commissioners and assessors in making any of such awards or assessments for the opening of said streets, avenues or public squares, from the fact that, although the Court of Chancery at first assumed jurisdiction of such cases on the ground that such assessments being made by a statute, a lien upon real estate was a cloud upon the title, and might, if unjust and unequitable, be removed in equity, it has since denied having cognizance of such matters; and the Supreme Court have in some instances denied a certiorari, to remove such proceedings, and others where the writ had been granted, had afterwards quashed the same and refused the parties any relief, referring them to an action at law for trespass against the individual members of the common council, or against the officers of the corporation personally, who should attempt the collection of such assessment.

"The committee will examine these several propositions which contain the substance of the long and tedious investigation through which they have progressed, and will submit to the consideration of the Legislature the conclusions to which they have arrived upon these several heads.

"*First.* The manner of opening streets, avenues and public squares, in that city, in the appointment of the commissioners of estimate and assessment, in the expenses of those commissioners, and the time spent in the discharge of their duties.

"That there have been great and serious abuses in the mode of opening streets and avenues in the city of New York, and in the expenses attending the same, cannot be doubted by any person who has examined the subject; and these evils have mainly arisen from the loose and unguarded manner in which that important branch of authority has been exercised.

"For while in England, in the city of London, in Birmingham and other places, whose proper municipal regulations would seem to require as liberal extension of power to their local corporate governments as that of New York, streets cannot be opened or widened without an act of Parliament specially passed for that purpose, upon a due examination of all the circumstances of the case; yet, in the city of New York, they are opened or widened, and that in large numbers together, by a single resolution adopted by the two boards of the common council, without any control, as was the case in opening all the streets and parts of streets not previously opened up to and including 42d street, by a resolution of April 6, 1835; and subsequently, September 12, 1836, another resolution was adopted to open all the streets from 42d street to 57th street. The reservoir on Murray's Hill, in the city of New York, is on 42d street.

"This loose practice has grown up in modern times, for the more guarded one of an application to the supreme legislative authority was in existence in that city, subsequent to 1792, when to authorize the first widening of John street an application was made to the Legislature, then in session in that city, and before either house would act upon the petition, they sent a committee to examine the ground; upon the report of which committee, they enacted that the damages to the owners whose lands were taken, should be appraised by a jury who should be composed of merchants, showing how careful they were in former legislation on this important subject.

"This appraisement is now made by three commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the counsel of the corporation, although there have been instances where one of those commissioners has been selected by the court from names proposed by the corporation council, and by the opponents to the application, and another has been named by those opponents.

"It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so VERY GREAT as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the commissioners for the same exhibited before the committee.

"In the opening of the Seventh avenue, from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was **$21,141 .41,** while the *FEES* and expenses amounted to the large sum of **$12,435 .70,** and if to that is added the collector's Fees for *collecting* the assessments, **$1,115.00,** it will show a total of expenses *paid* by the Owners of Land on that portion of the Seventh avenue for its *formal* opening, amounting to **$13,550.70!**

"The amount paid to the commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen months'* services for each commissioner, in making the estimate of the land taken for opening that avenue, and assessing that value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, THE COMMISSIONERS WERE *EACH ENGAGED* **THREE TIMES THE WHOLE PERIOD** THAT THE LEGISLATURE *IS EMPLOYED IN LEGISLATING FOR THE STATE,*

ment. The motion was argued before Chief Justice NELSON, at the March Special Term, and he refused to interfere, on the ground of lapse of time, notwithstanding the application was made within six months of the confirmation of a report, which was presented and confirmed without notice. The Chief Justice also assumed to exercise what he termed the discretion of the Court, in the case. The discretion of the Court is not the will of the Judge. We have noticed this point on page 196 of this number.

The most powerful monarch in Europe never claimed as much authority over the private property of a subject, as has been exercised by the Supreme Court for years over the private property of the citizens of this City in street assessments.

We discussed some branches of this question, in the Municipal Gazettee of December, 1842.

The Court in this opinion, are so explicit with regard to the prohibitory clause of the Constitution, "that he who runs may read."

We are glad to see the doctrine of strict construction under way, and when once broached in political matters there is no difficulty in applying the principle to the piratical assessments in the City of New-York.

Re-Argument.

Mr. Emmett has served Mr. Mott with a notice of re-argument of his five street motions. His notice is entitled before the Supreme Court. What nonsense under the views here expressed by the Court. We will publish his affidavit on which he founds his notice of motion.

Another Assessment Cruelty.

The Assessment for setting curb and gutter in the 8th Avenue, amounts to $43.922-25. The assessors appointed by the Common Council to make the assessment, are the Street Commissioner, his Assistant and Clerk. The contract was made by the Street Commissioner, and the prices unreasonable.

When the Senate Committee were in session at Clinton Hall, this proceeding was brought before them, as one of the Assessment outragss. Mr. Perrine, a former Clerk in the Street Commissioner's office, was examined as a witness, he stated that: "there are no names of Assessors in any part of it, nor is it signed by any Assessors." The assessment was passed by the Board of Aldermen, Dec. 17th, 1838; by the Board of Assistants, Dec. 24th, 1838, and approved by the Mayor, Dec. 28th, 1838, although not signed by the Assessors. This is the way the public business is done. The Assessors are the same as those of Chapel street, and yet the two assessments are made upon entirely different principles; both cannot be right.

By a decision of the Supreme Court, all the Assessors must be present to make the assessment, but a majority may decide.

This is the assessment, for which the Street Commissioner sold the house and two lots belonging to Mary Stewart and her children, all their property. One of the children is sickly. The husband of Mary Stewart was a shoe-black, and he earned his money by hard labor, with which he purchased this property, and when he died he left it to his family.

The purchaser at the assessment sale of this property, on getting his lease, took possession, and put the furniture of the occupants out of doors, but he was prosecuted for forcible entry and detainer, and at once surrendered the premises, and has since brought an ejectment suit on his lease. A case has been made, and will be argued next month before a full Bench. Some charitable individual has volunteered a Counsel fee to defend the little home of the colored woman and her helpless children.

The owner of the premises had no notice of the assessment, or the sale.

The regulating the third avenue was paid out of the City Treasury, and so ought that of the eighth avenue.

Alderman NASH,

OF THE SEVENTH WARD.

On Monday evening, Alderman NASH tendered his resignation as Chairman of the Committee of Public Offices, Repairs, &c., assigning very satisfactory and substantial reasons therefor.

We have watched the movements of this member of the Common Council, with a great deal of interest; he is a plain spoken man, and when he discovers a wrong, he sets his face at once against it. He deserves the thanks of the public. We were pleased to see that he was sustained by Alderman SCOLES.

Alderman BREEVOORT,

OF THE TWELFTH WARD.

This gentleman, who is a man independent in mind as well as in property, took a bold stand in the Board of Aldermen, some time since, against the Street Commissioner. The Alderman deserves credit for acting independent of that officer, and having a mind and opinion of his own.

NOTE.—Several of the pages of this volume have been destroyed by fire. The present and last preceeding seven pages, are substitutes for those destroyed. Some of the other pages of the volume are being re-published in the same way.

The copies of the petition to the Legislature of 1843, which were on pages 241 to 244, and the re-print also, were destroyed by the torch of the incendiary, in 1843. We have re-printed these on page 254.

SUPREME COURT DECISIONS IN 1841.

At the January term of the Supreme Court the matter of the assessment for constructing a sewer in Twentieth street, on the Hudson river side of the island, was argued upon the return made to the certiorari issued in this cause, by Lewis H. Saudford, Esq., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. The Court held the case under advisement until the October term, near the close of the year, when they *quashed the certiorari.*

At this term of the court Chief Justice Nelson delivered an opinion on denying the motion, made at the December term of 1840, for a certiorari in the matter of re-paving and regrading Chapel and adjoining streets. This opinion, and the material facts set forth in the affidavits and papers on which the motion was founded, will be found in its order in this number.

At the April special term, Mr. Justice Cowen presiding, motions were made for writs of certiorari in the matter of the proceedings in the assessment for opening Mount Morris square and Second avenue from Twenty-eighth to Eighty-sixth street. L. H. Sandford, Esq., for the Relators, submitted very full points to the Court, which were replied to by Peter A. Cowdrey, for the Mayor, &c. The Court held these two motions under advisement until November, 1841, when he gave a very full opinion, denying the material part of the motions.

At the May term of the Court, held by the full Bench, the cause in which the People ex rel. E. Meriam and others, were relators, and also that in which James Agnew and others were relators, involving the proceedings in the assessments for repaving and regrading Chapel and adjoining streets, and of building a sewer in Chapel and Thomas streets, came on for argument on the respective returns made to the certioraris issued in these causes. Lewis H. Sandford and Wm. M. Holland, Esqs., for the Relators, and Peter A. Cowdrey, Esq., for the Mayor and Common Council. These causes were fully argued. Mr. Justice Bronson took the papers, and at the October term of 1841 delivered a brief opinion of one of the causes. The Court *quashed the certioraris.*

The motions in the matter of Art street, Seventh avenue, Ninth avenue, and Twenty-eighth street assessments for certioraris, are understood to have been disposed of by the Court in the same way as those of Mount Morris and Second avenue.

We shall review the opinions delivered by the Supreme Court in our own plain way, and we shall feel gratified if we succeed in convincing these high judicial officers that they have greatly erred in quashing the certioraris in the particular cases, and denying the writ of certioraris in others.

IN CHANCERY.

Before the Chancellor.

Timothy Wiggin, Banker, of London, in the kingdom of Great Britain, *vs.* the Mayor, &c., of New York.

THE CHANCELLOR.— The language of the bill in this case, leaves it doubtful whether the complainant at this time, is the owner of, or has any interest in any of the lots mentioned in the bill as having been assessed for this improvement; and so far as his personal liability is concerned, this court does not interfere to prevent a mere trespass upon personal rights, on personal estate, where the complainant has a perfect remedy at law. The bill instead of alleging in the usual manner, that the complainant was at a particular date and still is the owner of the lots upon which the assessment for benefit was imposed, merely states as to the first twelve lots, that he was the owner and possessor thereof, on or before the first of September, 1836, and as to the other lots, he states that he was the owner and possessor of them subsequent to the 1st of May, 1839. Neither does the verification of the bill by the complainant's agent show that the agent has any information on the subject; or that he even believes the complainant is now the owner of those lots. As this defect in the bill can probably be cured by an amendment, I shall proceed to examine the objections made to the legality and equity of the assessment, and the question whether the bill in other respects presents a proper case for the interference of this court by a preliminary injunction.

The objection that the delay of the corporation in bringing the proceedings to a close until the spring of 1840, produced injustice, by giving to the tenants of property which was to be taken for the improvement, and who had short leases thereof, compensation for a loss which they do not sustain, does not appear to be one which in any manner concerns the complainant. That appears to be a question entirely between the landlord and tenant of the property taken for the improvement. If the tenant has a beneficial lease, that is, if he has rented the property for a term of years at less than the use of the property was actually worth, he sustains damages in being deprived of the occupancy at this low rent during the remainder of his term. But that damage must necessarily go to diminish the amount which the landlord would have been entitled to receive if the property had not been under a lease; or if the rent reserved upon the lease had been the full value of the use of the lot. The proper way of assessing the damages, where two or more persons have distinct interests or estates in property taken for the improvement, is to ascertain the damage to the whole lot in the same manner as if one person alone had the entire interest therein; and then to apportion that damage among the persons interested in the lot, as landlord and tenant or otherwise, according as the interest of the one or the other will be affected by the taking of the property for the improvement. In such a case, if a tenant had a lease of the property for four or five years at a nominal rent, he would be entitled to damage for taking such interest in the property if it was taken immediately. But in that case the commissioners would not allow any thing to the landlord on account of the loss of rent for the same time. And where, in a case of that kind, the appointment had been made upon an estimate that the proceedings would probably be completed at the expiration of a year, and that the tenant would be dispossessed at that time, if by any unforseen occurrence the completion of the proceedings were procrastinated till the expiration of the lease, the landlord would sustain the whole damage by the taking of the property and the tenant nothing. But the amount of the assessment for benefit upon the property of other persons would not thereby be increased, for the benefit to their property from the making of the improvement would commence as soon as they were compelled to pay the assessment imposed therefor. In the case of *Gillespy vs. The Mayor, &c. of New York*, in the Court for the Correction of Errors, in December, 1839, I had occasion to examine the whole of the statutory provision on the subject of the apportionment of rent and damages as between landlord and tenant, where a part of the property is taken for an improvement during the continuance of the lease. And from that examination, I am satisfied that if the commissioners of estimate and assessment made their assessment in this case upon correct principles in relation to the rights of the lessees and owners of the leasehold property taken for the street, the delay in completing the proceedings could not injure the complainant so as to give him any equitable rights even as against the tenants themselves, whatever equitable claim their landlords may have against them on that account.

I am inclined to think that the commissioners erred in not assessing the property at the corner of William street in the same manner as if the contemplated widening of that street, which was subsequently abandoned, had never been thought of; as that improvement had not been directed when these commissioners were appointed to assess the damages and benefits with reference to the widening of John street merely. But if there was any error in this respect, it was a proper ground for opposing the confirmation of the report before the Supreme Court, and cannot be reviewed in this collateral manner. In the case of Messerole vs. The Mayor, &c. of Brooklyn, (In Chan. April 7, 1840,) referred to in the argument, the commissioners had not erred in judgment as to what property was to be benefitted by the contemplated improvement, and neglected to assess it on that ground; but they had by mistake left out the greatest portion of the lands which were to be taken from the complainants for the contemplated avenue—and the report showed upon its face that the court had no jurisdiction or authority to confirm the assessment—according to the decision of the Supreme Court in the case of Anthony street, (20 Wend 618.) There the court held that if the proceedings had been regular and the commissioners had only erred in judgment in fixing the amount of the damage for the lands taken, or the benefit to the other lands of the complainant, upon erroneous principles, the Court of Chancery could not interfere after the report had been properly confirmed. In this case, if the front of the lots on William street, which were not assessed would actually be benefitted by this improvement, the commissioners erred in judgment in not assessing for the benefit to the front, as well as to the rear of the lots; and the confirmation of the report should have been opposed on that ground. But, as that was not done, the confirmation of the report stopped the owners of other property which was assessed, from alleg-

cond Tuesday of May, 1831. It also vests the legislative power of the corporation in a board of aldermen and a board of assistants, who together shall thereafter form the common council of the city; which boards are to meet in separate chambers, &c. And the complainant's council therefore insists that the mayor, alderman and commonalty can no longer convene in common counsel, to direct the laying out a new street or the altering of an old one, as they were previously authorized to do under the act of 1813.

The conclusive answer to this objection is, that the act of 1813, gives the power to the corporation of the city, when convened in common council according to the provisions of its charter, and not to the particular officers who at that time represented the common council. And the act of 1830 having excluded the mayor and recorder from the common council, and directed the aldermen and assistants to convene as a common council in two separate boards, the mayor, aldermen and commonalty of the city, that is the Corporation under its corporate name, is convened in Common Council for all legislative purposes when the two boards convene in different chambers, and pass a resolution or ordinance, subject to the qualified veto of the Mayor. The power to pass an ordinance authorising the opening of a new street, or the alteration of an old one, under the 177th section of the act of 1813, was strictly a legislative power given to the Corporation represented in its common council duly convened under its charter; as much as the passage of a statute by the State Legislature, for the opening of a State road, or the alteration or enlargement of a canal, and appointing Commissioners to appraise damages, &c., would be the exercise of a legislative power by the people of the State represented in their Senate and Assembly. And this legislative power, which still belongs to the Mayor, Aldermen and Commonalty of the city of New York, under the act of 1813, which is in full force, was properly exercised by the Corporation, convened in Common Council in the manner prescribed by the act of 1830.

Again: if the complainant was right in supposing that the Common Council, as at present organized, had no authority to pass an ordinance for the widening of John street, he is neither entitled to preliminary injunction nor to any relief whatever in this court, as his defence is perfect at law. And if the whole proceedings in relation to the opening of the street were absolutely void in law, and that fact appears upon the face of the ordinance itself, a sale for the assessment upon the complainant's lot would not even create a cloud upon his title. For as every person must be presumed to know the law, a proceeding which is upon its face void, does not constitute a cloud upon the title to real estate against which a court of equity will relieve.

This is also a sufficient answer to the objection that the ordinance was void, because it appears from the record that it was passed without calling for the ayes and noes upon the question of its adoption by the respective boards; if that neglect was, in point of law, sufficient to invalidate such an ordinance. It is not necessary, therefore, that I should express my opinion at this time upon the question, whether the seventh section of the act of April, 1830, requiring the ayes and noes to be taken and published in certain cases, applies to this case; or whether the last clause of that section applies merely to improvements which are to be paid for out of the funds of the corporation generally, or by a tax or assessment upon the citizens at large, and not to cases where the owners of property benefitted by the proposed improvement are to bear the whole expense thereof.

As that question was not argued before me, I have not examined it. But if the provision is applicable to a case of this kind, I think it is merely directory, as to the publication of the report, and of the ayes and noes upon the question of the adoption of the ordinance for the proposed improvement. The neglect to make such publication, did not, therefore, of itself, render the proceeding void, if the ordinance was not void upon the face of the records of its adoption.

There is another substantial reason why this court should not interfere in this case by injunction to prevent the corporation from collecting the assessment, but should leave the complainant to his remedy, if he has any at law. The proceedings for the making of the improvement were commenced nearly five years since, and the complainant had waited until the improvement had actually been completed several months before he or his agent attempted to interfere. This property has received the full benefit that it would receive from the improvement; which benefit the commissioners have estimated at several thousand dollars. And as property of other persons to a very large amount has been destroyed for that purpose, justice requires that it should be paid for by those who have been benefitted by the improvement rather than by a general tax upon the city at large. A court of equity at this late day will not interfere with its strong arm to cast the burthen of the improvement from those who have been benefitted thereby and upon those who have not.

It is true the complainant alleges in his bill that his property has not benefitted by the improvement. But that allegation is not sworn to by any one, and it is of course contradicted by the report under oath of the three very respectable and intelligent commissioners by whom the assessment was made.

The application for an injunction is, therefore, denied with costs.

Copy.

JOHN M. DAVISON, Register.

From the Journal of Commerce of February 9, 1842.

VICE CHANCELLOR'S COURT.

HON. W. T. Mc COON, VICE CHANCELLOR.

First Circuit.

DECISION.

Edmund Frost et al. vs. The Trustees of the Village of Williamsburgh.—This was a motion for an injunction to restrain the defendants from selling certain property for non-payment of assessments. The Court said that the recent decision of the Court of Errors, in the case of Meserole vs. The Corporation of Brooklyn, reversing the order of the Chancellor and Vice Chancellor, which restrained by

injunction the defendants from selling the property of the complainants for the non-payment of assessments, for the opening of Bedford Avenue, has definitely settled the question, *that however illegal may be the proceedings of the Corporation*, the Court of Chancery has no jurisdiction or right to interfere except where the wrongful proceedings lead to the commission of irreparable injury to the freehold, or where it would involve a multiplicity of suits at law, amounting to excessive and vexatious litigation, against which the party seeking relief under the ordinary head of equity jurisdiction, is entitled to be protected.—And whenever these grounds of equitable cognizance exist, they must be particularly stated. No such ground is stated or shown to exist in the present bill, and since the decision of Meserole case vs. the Corporation of Brooklyn, the Chancellor has been obliged to dissolve injunctions and dismiss bills on demurrer in about *fire and twenty cases* against the Corporation of the City of New York, in which they were proceeding to sell for the non-payment of assessments in the matter of opening and regulating streets, under circumstances *quite as strong if not stronger*, in favor of the complainants than the present. The injunction is therefore dissolved with costs.

EQUITY COURT.

IN CHANCERY.

CHANCELLOR'S OPINIONS DELIVERED JANUARY 24th, 1842.

Garret Van Doren and others vs. the Mayor, &c. of New York.

Garret H. Striker vs. the same.

Elizabeth Pearson and others vs. the same and Walter Stevenson.—These cases came before the Chancellor upon the demurrers of the defendants, the Corporation of New York, to the bills of the complainants respectively.

The object of the bill, in each case, was to restrain the Corporation from collecting certain assessments upon property claimed by the complainants in the city of New York, or in which they were supposed to have some interest either vested or contingent; such assessments having been imposed for the purpose of laying out streets and avenues, or opening sewers, &c.; or from selling the lands assessed, or advertising the same for sale, or giving any certificate or lease to the purchaser upon the sale thereof; and for a decree declaring the assessments, and all proceedings had in relation thereto, void, &c.

R. Mott and *W. M. Holland*, for complainants in two first causes.

L. H. Sandford, for complainants in last cause.

P. A. Cowdrey, for Corporation of New-York.

THE CHANCELLOR. The objection to the assessments that the Corporation, as at present organized, under the act of April, 1830, has no power to open streets, confirm assessments, &c., was decided against the complainant, in the case of *Wiggin vs. the Mayor, Aldermen and Commonalty of the city of New York*, in March last. And I have seen no reason to change the opinion there expressed, although that case was not in a situation to enable the complainant to review the decision upon that point, by appeal; as several technical objections existed to his right to the premises, as stated in the bill. But if this objection to the right of the Common Council was well taken, it would only show that this court had no jurisdiction in these cases. For a valid legal objection, appearing upon the face of the proceedings through which the adverse party can alone claim any right to the complainant's land, is not in law a cloud upon the complainant's title which can authorize a court of equity to stay or set aside such proceedings.

That can never be considered a legal cloud which cannot for a moment obstruct the unaided rays of legal science, when they are brought to bear upon the supposed obscurity. But when the claim of the adverse party is valid upon the face of the instrument or proceeding sought to be set aside, as where the defendant has procured and put upon record a deed obtained from the complainant by fraud, or upon an usurious consideration, which requires the establishment of extrinsic facts to show the supposed conveyance to be inoperative and void, a court of equity may interfere and set it aside as a cloud upon the real title to the land. (*Simpson v. Lord Howden*, 3 My. & Craig's Rep. 97.) *It was the overlooking of that distinction, in the hurry of business*, though I had recognized and acted upon it in other cases, which led me to affirm the decision of the Vice Chancellor, in the case of *Meserole v. the Mayor and Common Council of Brooklyn*, (8 Paige's Rep. 199.) But my decision in that case was properly reversed by the Court for the Correction of Errors, at its last term in December, 1841, *although the Chief Justice who delivered the opinion concurred with me in the conclusion that the proceedings of the Corporation of Brooklyn were illegal and void.*

The same difficulty exists in relation to the objections that the ayes and noes were not called and published upon the resolutions to make the improvements and to confirm the assessments which were confirmed by the Common Council, and that the resolutions and ordinances were not duly signed by the Mayor; and to various other objections which are made to the legal validity of the assessments. All of which objections appear upon the face of the proceedings through which the Corporation must justify the enforcement of the tax by execution, *and through which the purchasers at sales of the lands of these complainants for the assessments must necessarily make title.* If the complainants are right, therefore, in supposing the proceedings void on all or any of those grounds, upon which I express no opinion, there is ***no cloud*** upon their titles.—And as their remedy at law is perfect by an action of trespass if their personal property is seized upon a distress warrant for the assessments, *and they have a perfect defence at law to any suit brought against them by purchasers at the sales which have been made, or which may hereafter be made;* if the proceedings are void, this Court has no jurisdiction to interfere for their relief. On the other hand, if the proceedings are not void, but merely irregular, the remedy of the complainants clearly is not in this Court, which has no superintending jurisdiction over the regularity of the proceedings of the Corporation of New York in these assessment cases. Indeed, as I understand the prevailing opinion in the Court for the Correction of Errors, in the case of Meserole vs. the Mayor and Common Council of Brooklyn, that Court repudiated the idea that the Court of Chancery has any power or right to interfere in such cases, in relation to any supposed error or irregularity in the assessment, or in the proceedings of the Corporation, or of the commissioners of estimate and assessment. And this Court will not subject itself to the rebuke of that tribunal by interfering in any cases of this kind, except where it is absolutely necessary for the preservation of the complainant's rights.

The demurrers are well taken, and the complainant's bill must be dismissed WITH COSTS. And the injunctions, if any have been granted in these cases, must be dissolved.

Peter G. Stuyvesant and others vs. the Mayor &c. of New York, and John Ewen, street commissioner. (And 21 other causes involving same questions.)

W. M. Holland, for the complainants.

P. A. Cowdrey, for the defendants.

The CHANCELLOR.—These cases came before me on applications for injunction to restrain the Corporation of the city of New York from proceeding to sell the lands of the respective complainants for the payment of assessments imposed upon them for various improvements in that city. Indeed, taken together, they embrace nearly every improvement in the city of New York for the last six years, either in opening, widening, or grading streets, or in constructing sewers, &c. The number of complainants whose rights are in controversy, exceeds *one hundred and seventy*, and the aggregate amount of the assessments the validity of which is contested is immense. I have therefore been obliged to look into each case to see if there was any thing contained therein to give this Court jurisdiction, and justify it in interfering by a preliminary injunction to restrain the corporation and its street surveyor, who has been made a defendant in most of the cases, from proceeding to collect the assessments by a sale of the property assessed in the usual way.

As the complainants have by law two years to redeem their property after it shall have been sold, there does not appear to be any good reason for granting preliminary injunctions at this time, even if the cases, as made by the bills, would, if unexplained, entitle them to perpetual injunctions at the final hearing. The object, therefore, of applying for injunctions at this time, must probably be to save the complainants from the payment of the extra interest, allowed by the statute from the time of the sale, in case it turns out that they are wrong in supposing that this court can interfere for their relief against the final payment of these assessments. This of itself would be a sufficient answer to these applications at this time. And for that reason I refused to continue the temporary injunctions allowed by the Vice Chancellor upon granting the orders to show cause; so that the sales might be made by the Corporation, subject to the equitable rights of the complainants, if

are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law."—9. *Wheaton*, 806.

That distinguished Jurist, MR. JUSTICE STORY, quotes the above, and says of it that it was finely remarked by MR. CHIEF JUSTICE MARSHALL, and appends to it, a reference to the Commentaries of the venerable EX CHANCELLOR KENT.

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LEGISLATIVE POWER.

Mr. Justice Story quotes from the Federalist, No. 78, among others, a paragraph in the following words:—

"There is no position which depends upon clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do, not only what their powers do not authorize, but what they forbid."

—

JUDICIAL LEGISLATION.

"But the answer to these and similar objections, is, that such considerations should have weight with those whose business it is to make laws; but they should not control the opinions of those whose business it is to expound the laws."

The above is the closing sentence of a paragraph in the manuscript opinion written by JOHN SAVAGE, *late Chief Justice of the Supreme Court of the State of New York.*

It is an opinion worthy of the man.

The following is also from another manuscript opinion of this truly great man.

"Much of our difficulty arises from judicial legislation: if other laws are necessary, let the legislature pass them."

—

JUDICIARY.

"The Courts must declare the sense of the law; and if they should be disposed to exercise *Will* instead of *Judgment*, the consequence would equally be the substitution of their pleasure for that of the legislative body."—Federalist of No. 78, quoted by Mr. Justice Story with approbation.

CHANCELLOR'S DECISIONS.

We have given all the opinions delivered by His Honor Chancellor Walworth, in assessment cases for the last five years, in full.

It will be seen by a careful reading of these several opinions, that the decisions of the Chancellor, have fluctuated. The opinion given in the suit of Meserole and others vs. the Mayor and Common Council of Brooklyn contrasted with that given a short time afterwards, in that of Timothy Wiggin vs. the Mayor &c. of New York, are difficult to reconcile as respects the assessment being a cloud upon the title.

We do not undertake to say that the Chancellor was wrong in refusing to entertain the bill filed in the latter case, and also in the several subsequent cases disposed of by him, but we feel it our duty to say, that he erred in requiring the complainants to pay costs; inasmuch as he himself remarks, in the opinion he gave in the Van Doren case, that in deciding the Brooklyn case, in the hurry of business, he overlooked a decision. We have occasion to know that in the case of Wiggin vs. the Mayor &c., the Solicitor of Mr. Wiggin obtained from the clerk of the Chancellor at Saratoga a manuscript copy of the opinion of His Honor in the Meserole case, and it was in consequence of the tenor of that opinion that *this* bill was filed.

It will be borne in mind that the decision made by the Chancellor in Wiggin's case was nearly a year previous to the decision of the appeal in Meserole's case in the Court for the Correction of Errors.

The cases in which the Chancellor sustained the demurrers against the complainants, were many of them of a very aggravated character. The bills filed in these cases were full, and in several cases the complainants set forth that the applications for the appointment of commissioners were not authorized by the Common Council.

The Chancellor may have taken a correct view of these questions in the last decision, and not in the first; but the change of opinion was a difficulty, and quite a serious one, to the complainants.

These matters have passed from the courts to a Committee appointed from the Honorable the Senate of this State to investigate assessment abuses in the city of New York, and that committee have made their report. The members of that committee are distinguished members of the Court for the Correction of Errors: their report will be found in this volume.

We desire to speak of the worthy Chancellor of this State with great respect; he is a most estimable citizen, and, notwithstanding the constant toil and labor in his Court, finds time to attend the benevolent and charitable institutions, and the religious societies of the day—of the most of which he is a conspicuous and valuable member.

It is a wonder how CHANCELLOR WALWORTH accomplishes such an amount of labor. Should his labors increase with his years, when he shall have reached the constitutional barrier of this State, as to the term beyond which judicial officers of a certain grade shall be deemed incompetent, he will have worn himself out with labor.

The salary of the Chancellor of this great State is two th usand, five hundred dollars per annum, a mere pittance for such services.

When we take into view the labor imposed upon the Chancellor, the limited duration of his office, and the compensation attached to it, the wonder is that any person can be found willing to accept of the appointment.

The salary of the Chancellor should be increased to $4,500, at least, and that of the Judges of the Supreme Court to $4000.

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LEGISLATIVE POWER.

The Constitution of the United States contains this provision :—

"ARTICLE 1, § 1.—All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Constitution of the State of New York contains these provisions.

"§ 1. *The Legislative power of this State shall be vested in a Senate and an Assembly.*"

Can the Senate and Assembly of the State of New York delegate the right or power to pass penal laws to any other body of men ?

By *Article* 1, *Sec.* 12. "Every Bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it had originated," &c. The Constitution then proceeds to say, that the objections of the Governor shall be entered "at large on their Journal, and they shall proceed to reconsider it. If after such reconsideration two thirds of the members present shall agree to pass the Bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two thirds the members present, it shall become a law. But in all such cases, the votes in both houses shall be determined by *yeas and nays*, and the names of the persons voting for, and against the Bill, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return, in which case it *shall not become a law.*"

The Governor is thus vested by the Constitution with a negative upon the acts of the Legislature, but this negative is greatly qualified, inasmuch as the vote of two thirds of a bare quorum can pass a Bill after his refusal to sign in it, notwithstanding such refusal.

The Constitution provides that the members of the Senate and Assembly shall respectively be elected on a certain day, at a certain place, by persons possessing certain qualifications, and that they shall convene, &c. on a certain day, &c.

Thus the Constitution provides in what manner laws shall be enacted, and details with great precision the form and time. No Bill whatever can become a law of this State, unless enacted in the manner and form prescribed in the power thus given in the Constitution by the People, who are the Grantors of the Power.

The Constitution contains no power of substitution, no authority, or permission to the Senate and Assembly to delegate the power of making laws to any other body of men. The power is special, limited and restricted in every respect.

The Act of the Legislature of the State, passed April 7th, 1830, which is called the Amended Charter of the City of New York, contains this provision :—

"§ 1.—The Legislative power of the Corporation of the City of New York shall be vested in a Board of Aldermen and Board of Assistants, who, together, shall form the Common Council of the City."

The question then arises, can the Common Council of the City of New York pass laws? Can the Legislature of the State grant to the Common Council, or vest in that body the power to pass laws ?

To the first query, we answer in the negative, and add, that the City of New York is a part of the State of New York, and is governed by the laws of the State.

The reply to the second enquiry here propounded, is, that the Legislature of the State cannot in any manner or form, either direct or indirect, delegate the Legislative power vested in that body, that no power of substitution whatever is contained in the Constitution.

A citizen who executes a written power to another citizen to act for him, and in his name, if he intends the power thus given to be exercised by another, inserts a special clause authorizing his said agent and attorney, to substitute another, or others in his place and stead, &c.; but in the Constitution, the grantors of the power make no such provision in that instrument which contains the grant, and none can be presumed, or implied.

If the Common Council desire an ordinance to have the force of a law within the bounds of the City, that ordinance should be made into the shape of a Bill, and be acted on by the Legislature of the State, and approved by the Governor, in the manner and form prescribed by the Constitution.

The Common Council might with as much propriety pass an ordinance to regulate the rate of interest on money, as to pass an ordinance to regulate other matters than those which pertain to the management of the corporate property. The Common Council have no more right to pass an ordinance imposing a penalty on a citizen for a violation of their so-called laws, than a government of an incorporated bank has, and the passage of such ordinances are a violation of the Constitution of this State, and will be so held when taken to the high courts for adjudication, and this objection raised.

No one will for a moment doubt that there should be special laws relative to the City, but all such laws should be passed by the Legislature of the State, and not by the Common Council of the City.

The Common Council of the City of New York is not the Corporation of the City, but the powers of the Corporation are vested in the Common Council, to be exercised by that body in a certain manner, &c. And what, or who is the Corporation of New York ? It is the citizens and inhabitants of New York, in whom is vested certain property which has been granted to them by the name and style of the Mayor, Aldermen and Commonalty of the City of New York, and the management of this Corporate property is committed to the Common Council and other particular officers.

The Common Council have the management of this Corporate property for the citizens and inhabitants, the same as the President and Directors of a Bank have of the capital stock which is the property of the Stockholders.

If this Corporate property consists of Market-houses, they have the right and power to say at what rate the stalls shall be leased and what hours the Market shall be opened, but they have no right to say that the citizen who owns a store shall not sell Pork, Beef, or Poultry in that store, nor can they pass any valid ordinance, making it a penalty for a citizen to sell meat on his own premises. We know that such ordinances have been passed by the Common Council, and that some of the Courts have held such ordinances valid, but such a decision would not be held valid by the Supreme Court of the United States.

There is a vast difference between the powers which may be vested by a Charter in a Political Corporation granted by an absolute government possessing unlimited power, and these which are possessed by our free Government exercising the limited and restricted powers conferred by the Constitution.

No one conversant with the provisions of our Constitution, will for one moment pretend to deny that even the Legislature of the State, is greatly restricted and limited in its power; and yet there are others, and some of them members of the common council, who pretend to say that the Common Council, a mere creature of the Legislature, can do that which the Legislatue of the State dare not attempt to do—this is, in effect, making the creature greater than the creator.

Hume, *De Lolme*, Sidney, Tucker and others, who have written much upon Legislative power, speak of it only in such cases as where its exercise is unlimited and unrestricted.

In our free country, this power is possessed by the people, and they are the grantors of power in all cases—the people are sovereign. The legislatures are mere grantees.

less, they shall not receive any salary or consideration, under any pretence whatever. And that all bills which shall have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision or consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto, in writing, to the Senate or House of Assembly, in which soever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if, after such re-consideration, two thirds of the said Senate or House of Assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections be sent to the other branch of the Legislature, where it shall also be reconsidered, and, if approved of by two thirds the members present, shall become a law."

"And in order to prevent unnecessary delays—

"*Be it further ordained*, That if any bill shall not be returned by the Council within ten days after it shall have been presented, the same shall become a law, unless the Legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the Legislature after the said ten days."

"The Governor to convene the Senate and Assembly on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year."

Thus the former Constitution of this State made the Governor, Chancellor and Judges of the Supreme Court, a council of revision, and gave to the Governor the power to prorogue the Legislature that the members might return to and consult their constituents. This negative power, thus vested, was not considered objectionable, but on the contrary, when the new Constitution was adopted, in 1821, it was changed and vested solely in the Governor, but the power to prorogue the Legislature was taken away.

The vote required to pass the bill, notwithstanding the objections, under the present constitution is the same as under the former, except that it is required that the vote shall be taken by ayes and noes, and the names of the members voting for or against the bill shall be recorded. The vote required is only two thirds of the members present, which may perhaps be but a minority of each house, or a bare majority form a quorum, and it is only two thirds of this bare majority which is required.

The exercise of the Veto power by the Governor of this State is therefore only that of a qualified negative.

The Veto power of the President of the United States is also a qualified negative. The Constitution of the United States is, however, silent as to the requirement of the Veto taken on the re-consideration of a bill returned by the Executive being by a vote of two thirds the members present or two thirds the members elected.

It would seem that the safer construction would be two thirds the members elected, but we understand that the more liberal and extended construction has been adopted by Congress.

So salutary has this qualified negative, possessed by the President, been found, that, in the experience of more than half a century, the exercise of this power has not been overruled by a constitutional vote by Congress.

The Constitution of the United States is very explicit with regard to the mode in which the vote of re-consideration shall be taken, and that the votes shall be taken by ayes and noes, and recorded in the journals.

When the provisions of the Constitution were debated in the convention, it was proposed to vest the qualified negative in the President and some other department of the Government, but this was strenuously opposed and overruled, and was finally rejected by a vote of eight States against three.

There is another qualification of this negative of the President, which is, that an entire new house of Representatives are elected by the people during his term of office, which, if this exercise of the qualified negative is not satisfactory to the people, they have the opportunity of thus overruling it, and also the term of office for which the Executive himself shall have been elected, will have an end every four years. Thus the frequency of the elections gives additional qualifications to this already qualified negative.

In the amended charter of the city of New York, although (as Mr. Samuel Stevens remarks in an article under the signature of "Third Ward," published in the New York American in 1829, when the city convention were sitting) they were only framing a bill for the State Legislature to pass into a law, that body took the United States Constitution for a model whereby to form a municipal charter; and in vesting the mayor with a qualified negative upon the acts of the Common Council, they made some alterations in that provision, which were, to require the objections of the executive to be published in the newspapers, and that the vote should be that of a majority of the members *elected* to each board, and also of requiring that *at least ten days* should elapse before the board to which the act should have been returned should proceed to re-consider the same. This change of the qualified negative of the Mayor makes his veto at the present moment a nullity. The City Charter, as the act of the Legislature is called, omits to state any thing in relation to acts passed by a Common Council, the members of which whose term of office may expire during the ten days which the Mayor is allowed to consider a proceeding, and decide whether or not he will give his assent. This was an oversight, and there can be no doubt but an act remaining in the hands of the Mayor unsigned when his term of office expires, would be inoperative.

The distribution of power is one of the great principles on which all free governments are based, and we propose to discuss this subject in a future number under that head.

SACREDNESS OF PRIVATE PROPERTY.

That distinguished citizen and eminent jurist, JUDGE STORY, one of the Justices of the Supreme Court of the United States, in his admirable Commentary upon the Constitution of the United States, thus remarks:—

"The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and rulers."

Mr. Justice Story cites Blackstone, Kent, Rawle, and also several cases which had been adjudicated.

The practice of the last few years in the city of New York to enforce the collection of sham-assessments for fictitious improvements, by a sale of the property pretended to be benefitted for terms of thousands of years, equal to, and in effect, selling the fee simple absolute, is taking private property for public use without just compensation, and in truth is absolute *confiscation*. It matters not to the owner whether his land is taken or his money, both are alike private property; for if he pays the assessment, in most cases he pays the value of the land in paying the assessment, and thus, in fact, re-purchases the land by redeeming it. Vast quantities of lands on the island of New York, have been assessed to such an extent that the interest of the assessment exceeds the value of the land, and also large quantities of other lands are assessed for the pretended opening of streets, avenues, and public squares, (which are not open or needed,) in greater sums than the land could be sold for.

The abuses have been so enormous, so flagrant, so high-handed, that the real estate has lost its value by the insecurity thus produced.

In the case of the streets and avenues, up to and including Forty-second street, referred to in the report of the committee from the Senate of this State, twenty-seven setts of Commissioners (in all eighty-one) were appointed to make an assessment for opening the streets and avenues in that district; whereas the committee of the common council reported in favor of but one sett, (three commissioners,) and did not, in fact, pass any resolution for an application to the Supreme Court for the appointment of even this one set.

It is time such proceedings had an end.

Anecdote of the reigning king of Prussia. —The following anecdote we cut from the columns of the Albany Daily Advertiser. It belongs to go along side of assessment matters, showing a contrast in the judicial proceedings of the courts of our State, compared with that of a kingly government.

"We have much pleasure in laying before our readers an interesting anecdote, which has been communicated to us by a gentleman recently from Berlin. Some time since an effort was made to get rid of a windmill, the close approximation of which to the royal palace rendered it in some degree a nuisance, and certainly an eye-sore. Overtures were accordingly made to the sturdy yeoman for the purchase of the obnoxious property; but whether it was that the man was possessed of a strong spirit of obstinacy, or was really deeply attached to his old family habitation, the result was that the offers, tho' tempting, were again and again refused. There are very generally some individuals attached to a court who are ready to suggest remedies, direct or indirect, for inconveniences or annoyances offered to royalty. Accordingly, upon a hint from some minion, a lawsuit was commenced against the obstinate miller for the recovery of certain sums alledged to be due for arrears of an impost on that portion of crown land which it was suggested was occupied by the mill in question. The sturdy holder of the "toll dish" was not altogether without friends or funds, and he prepared vigorously to take his stand in defence of his rights. The question came in due time before the courts of law, and the plaintiff having completely failed to establish any right on behalf of the crown, the miller obtained a verdict in his favor, with a declaration for payment of his costs in suit. This was certainly no small triumph, and merrily went round the unfurled sails of the old mill, and well pleased no doubt, was the owner with the sound, as they went whirling and whizzing under the influence of the gale, which certainly seemed to blow strongly in his favor. But he was not the first who has found that when drawn into a lawsuit, particularly with so formidable an opponent, a man is more likely to "gain a loss" than escape scot free. What with extra expenses, interruption of business, and rejoicings after the victory, the miller found himself pressed by considerable difficulties, and after in vain struggling a few months against the pressure, he at length formed a manly resolution, gained access to the monarch, and, after roughly apologizing for his having thwarted his majesty's wishes, frankly admitted that his wants alone had rendered him complient, but that he was prepared to accept the sum originally offered for the property. The king, after conversing with the miller a few minutes, hand d him a draught for a considerable amount, saying, "I think, my honest friend, you will find that sufficient to meet the emergency; if not, come and talk to me again on the subject. As to the mill, I assure you that I will have none of it. The sight of it now gives me more pleasure than it ever occasioned pain; for I see in it an object that assures me of *a guaranty for the safety of my people, and a pledge for my own happiness by its demonstration of the existence of a power and a principle higher than the authority of the crown, and more valuable than all the privileges of royalty.*"—[London Paper.]

COMMISSIONERS OR A JURY.

Taking land for Public Avenues, Streets and Squares.

The position of the Assessment question, and the highly important opinions of Chief Justice NELSON, Justice BRONSON and Justice COWEN *of the Supreme Court.*

The Constitution of 1777 contains this provision;—

"That trial by Jury in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever, and further, that the Legislature of this State shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law."

The act of the General Assembly of the Colony of New York, passed Oct. 1st, 1691, and confirmed by William III, May 11th, 1697, contains this provision:

"And for other ground, the Mayor, Aldermen and Common Council shall and may treat and agree with the owner and others interested therein; and if there shall be any person that shall refuse to treat in the manner aforesaid, in such case the *Mayor and Aldermen, in their Court*, are hereby authorized by virtue of this act, to issue out a warrant or warrants to the Sheriff of the said city, who is hereby required to empannel and return a jury before the *said Court of Mayor and Aldermen*, which Jury, upon the oath to be administered by the said court, are to enquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same, as by the said Mayor, Aldermen and Common Council, shall be adjudged fit to be converted for the purposes aforesaid, and such *verdict of the Jury, and judgment of the said Court of Mayor and Aldermen thereupon*, and the payment of the said sum or sums of money so awarded and adjudged to the owner or others having estates or interest or tender or refusal thereof, shall be binding" &c. *This Colonial act was in force when the Constitution of* 1777 *was adopted.*

The trial by jury extends to property, as well as persons, and therefore the act of 1807 and 1813, authorizing the appointment of three commissioners to take land instead of a jury, is unconstitutional and void.

The Constitution of 1821 *contains these provisions:*—

"The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever, and no new court shall be instituted, but such as shall proceed according to the course of the common law." Art. 7, § 12.

"The Governor shall nominate by message in writing, and with the consent of the Senate, shall appoint all *Judicial officers* except Justices of the peace." Art. 4, § 7.

In the decision of the Supreme Court in January, 1841, in the matter of the application of Elmendorf and others for a Certiorari to be directed to the mayor, aldermen and commonalty of the city of New York,

point skilful and competent persons Assessors to make estimates and assessments for building sewers, regulating streets, &c., and the Assessors so appointed are directed to assess the expense of the work, &c., on the owners and occupants of houses and lots deemed to be benefitted thereby, and to certify their assessments in writing to the mayor, aldermen and commonalty, in common council convened; and such assessment, when ratified or confirmed by the said Common council, shall be a lien upon the houses and lots so assessed, and in case of neglect or refusal to pay such assessment, the mayor, recorder and aldermen, or any five of them, are authorized to issue a warrant of distress under their hands and seals, which may be levied upon the goods and chattels, &c. The act of April 16th, 1816, provides further, that in case the owner or occupant, on being twice called upon, refuses or negiects to pay the assessment, his lands may be sold therefor.

Now we insist that in this, the Common council and the assessors are both acting in a *judicial capacity*, and are as much a court as the Commissioners of sewers; and the assessment, when confirmed, is in the nature of a Judgment, being made a lien upon the land, and the warrant being in substance an execution.

We think we have stated enough here to show that Commissioners of Estimate and Assessment cannot take lands for public use from any individual, without his consent, nor can they impose any assessment on adjoining owners: that whenever lands are required in the city of New York, for public use, *a jury* is the only mode of proceeding. And besides, if it should be held that commissioners could take land, such commissioners *can only be appointed by the Governor*. Thus the proceedings of commissioners *are void*.

As to Assessors, these too are *judicial* officers, and the members of the Common council also act or assume to act in a *judicial* capacity, in confirming assessments, issuing warrants, &c. These officers are *none of them appointed by the Governor*, and the Constitution is explicit on this head; it excepts Justices of the Peace, Special Justices, &c.

It is of no use to have a written Constitution, if officers who are sworn to support it will disregard its great principles and requirements.

We think that the learned Judges of the Supreme court were right in *quashing* the writs they had allowed, and in refusing those which were applied for, and that the assessments are absolutely VOID. We are aware that we differ from the learned counsel on both sides in the views now put forth, but it is our deliberate opinion, after examining the question very extensively.

We also think that it was the duty of the court to settle the question of the legality of these assessments, instead of enacting a statute of "PUBLIC INCONVENIENCE"—which enactment most assuredly is not authorized by the Constitution of the State, nor is it sanctioned by public opinion. Neither public or private inconvenience have any place in such cases. Let justice be done—let the law be strictly complied with.

Judicial powers of the Board of Aldermen and Board of Assistants, composing the Common Council of the City of New York.

The following sections of the act, Entitled "*An ACT to reduce several Laws relating particularly to the City of New York into one Act*"—passed April 9th, 1813—constitute all the provisions of the Statute authorizing the imposition of assessments on the owners or occupants of houses and lots for the class of improvements therein specified, and there is no other provisions of law which authorize any assessment to be imposed by the mayor, aldermen and commonalty for this class of improvements.

§ 175.—*And be it further enacted*, That it shall be lawful for the said mayor, aldermen and commonalty, to cause common sewers, drains and vaults, to be made in any part of the said city, and to order and direct the pitching and paving the streets thereof, and cutting into any drain or sewer, and the altering, amending, cleansing and scouring of any street, vault, sink or common sewer, within the said city; and the raising, reducing, levelling or fencing in, any vacant or adjoining lots in the said city; and to cause estimates of the expense of conforming to such regulations to be made, and a just and equitable assessment thereof among the owners or occupants of all the houses and lots intended to be benefitted thereby, in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire; and the said mayor, aldermen and commonalty shall appoint such skilful and competent disinterested persons as they shall or may think proper to make every such estimate and assessment, who before they enter upon the execution of their trust, shall severally take an oath before the mayor or recorder of the said city, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment; and the said persons, after having made such estimate and assessment, shall certify the same in writing to the said mayor, aldermen and commonalty, in common council convened, and being ratified by the said council, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively, and shall be a lien or charge on such lots as aforesaid; and such owners or occupants shall also respectively be liable upon demand, to pay the sum at which such houses or lots respectively shall be assessed, to such person as the said common council shall appoint to receive the same; and in default of such payment or any part thereof, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals to levy the same by distress and sale of the goods and chattels of such owner or occupant refusing or neglecting to pay the same, rendering the overplus (if any), after deducting the charges of such distress and sale to such owner or occu-

pant, and the money, when paid or recovered, shall be applied towards making, altering, amending, pitching, paving, cleansing and scouring such streets, and making and repairing such vaults, drains and sewers as aforesaid, and raising, reducing, levelling or fencing in, such lots as aforesaid. *Provided however*, That nothing herein contained shall affect any agreement between any landlord and tenant, respecting the payment of any such charges, but they shall be answerable to each other in the same manner as if this act had never been made; and if the money so to be assessed be paid by any person, when by agreement or by law the same ought to have been borne and paid by some other person, it shall then be lawful for the person paying, to sue for, and recover the money so paid, with interest and costs, as so much money paid for the use of the person who ought to have paid the same; and the assessment aforesaid, with proof of payment, shall be conclusive evidence in such suit.

§ 176. *And be it further enacted*, That if upon completing any such regulation, it shall appear to the said mayor, aldermen and commonalty, that a greater sum of money had been *bona fide* expended in making such regulation than the sum estimated and collected aforesaid, it shall then be lawful for the said mayor, aldermen and commonalty, to cause a further assessment equal to such excess, to be made and collected in manner aforesaid; and in case the sum actually expended shall be less than the sum expressed in such estimate, and collected as aforesaid, the surplus shall forthwith be returned to the persons from whom the same were collected. or their legal representatives.—2 R. L. p. 407,

The sections above quoted contain a special power, given to a select class of persons, to make certain improvements particularly named in manner and form therein stated.

It will be noticed that this is a special power given by the Statute to a select class of persons. The mayor, aldermen and commonalty, as then known and entitled, were the mayor, recorder, aldermen and assistant aldermen of the city of New York. These public officers composed the city council, and assembled in one body in the same council chamber.

The mayor, and also the recorder of the city, were appointed by the State council of appointment—the aldermen and assistants were elected by the freeholders of the respective city wards.

In 1821 the Constitution of the State was remodelled, or rather, a new Constitution was formed, one of the provisions of which was that the mayors of cities should be appointed by the respective common councils of each. This provision, as to the city of New York, was altered in 1833 by an amendment of the State Constitution in that particular; and now it is provided that the mayor of the city of New York shall be elected annually by the People.

The recorder, by the Constitution of 1821, shall be appointed by the Governor and Senate.

By the Amended Charter of the city of New York [Session Laws of 1830, ch. 122] the legislative power of the corporation is vested in a board of aldermen and board of assistants who, together, shall form the Common council of the city.—§ 1.

By the fifteenth section, of the same act, neither the mayor nor recorder shall be members of the Common council after the second Tuesday of May, 1831.

By the 7th section, of the act as above, the boards are required to keep a journal of their proceedings and to meet in separate chambers; and, by section twelve, all acts, before they shall take effect, shall be first approved by the mayor, &c. &c.

The apportionment of judicial officers under the Constitution of 1821.

By the 7th section of Article IV. of the Constitution, the Governor shall, by message in writing, nominate, and, with the consent of the Senate, appoint all judicial officers except justices of the peace; by section 14 special justices and assistant justices of the city of the city of New York are excepted, and by sec. 1 of Art. V. the members of the court for the Correction of Errors are excepted.

We here raise two Questions, viz:—

1. *Are Assessors, who are appointed by the board of Aldermen and board of Assistants, with the Mayor's approval, Judicial officers?*

2. *Do the boards of Aldermen and Assistants, sitting in separate chambers, in ratifying Assessments made by Assessors appointed by themselves, and the Mayor also in approving such acts, act judicially?*

To the first question, we answer that the 175th section above quoted authorizes an estimate of the expense of the work, as a preliminary measure, previous to making the assessment of the expense upon the owners and occupants intended to be benefitted thereby, by skilful, competent, disinterested persons, to be appointed by the mayor, ald. and com.; and this assessment is to be made in such proportion as they deem the advantage acquired by such owner or occupant. Their estimate and assessment shall be certified in writing to the mayor, aldermen and commonalty, in Common council convened, but has no binding force until ratified by said Common council. This ratification is, therefore, to all intents and purposes, a judgment, which is by the same section made a lien upon the houses and lots of such owners and occupants, &c., and upon this ratification or judgment, a warrant of distress is authorized to issue under the hands and seals of the mayor, recorder and aldermen, or any five of them, of which the mayor or recorder are to be one; and by the act of April 12th, 1816, the mayor, aldermen and commonalty, in default of payment of such assessment, are authorized to sell or lease the houses or lots so assessed for an unlimited number of years, even to the end of time. The Constitution adopted in 1777, and which was in force when these two acts above referred to were passed, contained no limitation as to the appointment of judicial officers, or at least we have found no such provision in that instrument. At the time of the passage of these two acts the mayor and recorder were both appointed by the council of appointment, and after the adoption of the new Constitution in 1821 the recorder was appointed by the Governor and Senate as a judicial officer, and continued to be a member of the Common council; but the amended charter of April 7th, 1830, *excluded* that officer after the second Tuesday of May from a seat in the Commou council, and he is now no longer a member of that body; nor does any Judicial officer hold a seat in either board composing the Common council: therefore, there is no authority under the Constitution for the Common council to act in a judicial capacity, the law of 1813 and 1816 being both abrogated by the Constitution of 1821.

The Assessors, therefore, as standing alone, are not judicial officers; but their acts, taken in connection with the proceedings of the mayor, aldermen and assistants, constitute proceedings which are, in their operation and effects or consequences, the highest exercise of judicial authority in matters pertaining to the rights of property.

The Answer to the second question has been mainly anticipated in the reply to the first question.—The Amended Charter was the result of measures growing out of complaints in the assessment made for building Canal street sewer, which was an assessment of near one hundred thousand dollars by assessors appointed under the 175th section before quoted which had been confirmed by the Common council composed of the mayor, recorder, aldermen and assistant aldermen. The dissatisfaction which this assessment produced caused applications to be made to the Common council for an amendment of the City Charter, and accordingly an application was made by that body (under the corporation seal) to the Legislature of the State. This application was accompanied by a bill, which was passed by the Legislature, conditioned to become a law if the majority of the electors of the city of New York by their vote by ballot signified their acceptance of it. This they did not do—less than 700 votes, of the whole number of voters in the city, were cast in its favor. This was in 1824.

In 1828 the Legislature, on the application of the Common council, re-enacted the same bill, with the same conditions, and it was again submitted to the electors of the city of New York, and by them again rejected.

This bill provided for the exercise of all the powers which had ever been conferred by charter or by law on the mayor, aldermen and commonalty, or the mayor, aldermen and commonalty in Common council convened, or the mayor, recorder, aldermen and assistant aldermen, thereafter to compose two boards meeting in separate chambers, with concurrent jurisdiction.

The next proceeding was the Convention which met in June, 1829, to frame a bill for the Legislature to pass into a law amending the City Charter, and here a great mistake was made in taking the Constitution of the United States for a model to frame a bill for the Legislature to pass into a law, unless we assume it to be conceded that the business of the Common council was to be confined to the affairs of the corporation as a corporation

solely and exclusively, and in that case, part of the bill is superfluous.

The great error, however, has been in the enactment of the laws of 1807, 1813 and 1816, giving powers to the mayor, aldermen and commonalty in a loose and misshapen form never authorized by the Constitution.

Mr. Justice Bronson says, in the Opinion which he gave in the Chapel st. Sewer case, that he had searched in vain in the land of the common law for a precedent of a Common law certiorari to a corporation, and he might have added that no such extraordinary exercise and abuse of power, place or office was ever known in the land of the Common law in imposing assessments upon private property.

By the 26th section of the Amended Charter it is provided that no part of the charter and of the several acts of the Legislature amending the same as are not inconsistent with the provisions of this law shall be construed as repealed, &c. These Assessment laws are all inconsistent with the provisions of this Act and with the provisions of the Constitution, and are thereby and therefore repealed.

The property affected by the assessments imposed by the common council since the amended charter of 1830, and since the year 1836, is of immense amount. The assessments have been of a most extraordinary character, and the whole proceedings, from beginning to end, have been in very many cases of the most reprehensible description.

Much of the property thus assessed has been actually confiscated, the assessments having been greater than the value of the land declared to be benefitted, and in some cases the interest of the assessment actually now amounts to more than the land will sell for.

These proceedings were not called for by the owners of the property thus depredated upon, but have been got up by public officers for the purpose of giving contracts to favorites, and for the purpose of giving fees to friends.

It is said that it will be a great "public inconvenience" to set aside these assessments, but such a doctrine should never find favor in such proceedings as these assessments, which have been so justly, so loudly, and so long complained of.

"*Public inconvenience*" is the name given by certain legal functionaries to denote an outrage upon private property by the corporation, the proceeds of which the corporation or its officers may have squandered or otherwise misapplied, in any case where the victim of such aggression legally seeks indemnification for injury sustained. The plea of public inconvenience is then put in.

Strict and full justice should be done to the innocent sufferers without regard to the consequences which might press upon the city.

If the arbitrary exercise of usurped power is to be favored, and downright violation of the laws of the State, and the rights of its citizens, are to be tolerated, where is the safety to private property?

Had the complainants in these cases derived benefits equal to the assessments, and then complained of the exercise of a power unknown to our laws, there would have been some little apology for withholding relief; but in these cases the extreme of the reverse is the case. The complainants are injured, and, notwithstanding, are called upon to pay such immense sums of money in the shape of assessments on their lands as to amount to a repurchase of their own lands for cash.

The Common council, by their solemn act, deliberately considered and unanimously adopted, admit that property has been assessed beyond its value, and they resolved that the Counsel be directed to take measures under the direction of the finance committees to obtain a review of the assessment in 1841.

This is an acknowledgment of improper proceedings by the very body who confirmed or ratified the assessments made by their own officers whom they had appointed Assessors.

In the enlightened governments of Europe we hear of no such doctrine being set up, to deprive citizens or subjects of their estates, as that of "public inconvenience," or even of public necessity. Private property, by the governments of Europe, is held sacred and inviolate, and in no case can private property be taken for public use unless the most ample compensation is first made to the owners; and such is the great and fundamental doctrine in our own land—such is the law of the Constitution—such is the will of the People!

It has been said that the owners and occupants of houses and lands which are assessed for this class of miscalled improvements receive compensation in the advantages which the property derives by its increased value. Where is the increased value in cases where the assessment imposed exceeds the value of the land deemed to be benefitted? And where, we again ask, is the compensation in other cases in which the bare interest of the assessment exceeds the value of the property assessed?

When property is offered to be leased by the Corporation for a period extending throughout all time to any person who will pay the assessment, and none can be found willing, as it were, to accept the land as a gift on such conditions,—is it not evidence of the most convincing and conclusive character that the assessment has been most shameful and unjust—that it is nothing short of an act of confiscation? Is either the letter or the spirit of the law complied with in the making of the assessment? Certainly not. The assessment is a mere arbitrary apportionment of the contract price of certain work upon a selected piece of ground by mere mathematical calculation. The assessors are required to be skilful, competent, disinterested. Why these qualifications if the assessment is a mere apportionment, a mere distribution by figures without regard to damage or benefit? Most preposterous! and yet we are told that it will be a "public inconvenience" to set aside such assessments, or to compel the Corporation to review their proceedings.

When our Government made a claim upon Mexico to make restitution and satisfaction to our citizens for the spoilations committed by her officers upon their private property, there was no such doctrine set up by the Mexican government, or its constituted authorities, as "public inconvenience"; and if it had been pleaded, it would have only aggravated the injury.

Private property is sacred in all civilized countries, and also in some of the most barbarous; and no government can long exist which does not respect, and so hold it. It is the very foundation of government, and as Mr. Justice Story very justly remarks in his admirable Commentary on the Constitution—"Indeed, in a free government, almost all other rights would become utterly worthless if the government possessed an uncontrollable power over the private fortune of every citizen."

In principle, there is no difference between taking land from a citizen and converting it to public use without compensation and taking money. Both are alike private property, and both are alike protected by the Constitution. It makes no difference to the citizen which is taken, his money or his land.

During the last war, when the American army found it necessary to destroy the dwellings and other property of our citizens, to prevent it from falling into the hands of the enemy, in all cases full and complete compensation was by our Government made to the owners. These sufferers were not told that they are compensated for the loss of property thus destroyed by the protection which is afforded by the Government to their persons and their other property.

These assessments upon private property, which have been ordered by the common council and ratified by that body, are large in amount. In some cases, a single individual has been assessed the sum of thirty thousand dollars; others ten and fifteen thousand dollars each.

Lands of citizens have thus been invaded. The soil, which before had been productive, has been covered several feet deep with gravel and sand, and a charge made for this kind of covering by the load, at a rate that actually makes it a complete confiscation. We have now before us a paper containing an advertisement by the street commissioner of a piece of land to be sold for the non-payment of an assessment which is stated to contain 165 lots, equal to about ten and a half acres. This land is situate between 115th and 124th streets and the Fifth and Eighth avenues, being near seven miles from the City Hall. The assessment is stated at sixteen thousand and sixty-three dollars, which is about one hundred dollars per lot, or sixteen hundred dollars per acre. The advertisement states that the assessment was confirmed on the 31st of May, 1837, since which time it has been on interest, at the rate of 7 per cent. per annum. This then, is on interest five years and three months, which amounts to the sum of five thousand nine hundred and three dollars and fifteen cents, which is near six hundred dollars per acre. This property was advertised to be sold for this assessment in June, 1840, and was offered for sale without getting a bid. Although this property is on one piece of

ground, it was advertised for sale as 165 lots. The charge for the advertisement alone was two dollars per lot, which was equal, for the piece of land, to three hundred and thirty dollars for the advertising alone!

The same land was again advertised for sale, for the same assessment, in October 1841, but could not be sold for the want of bidders.

This land belongs to the estate of a person some years since deceased.

This assessment is one of those referred to in the following proceedings of the common council.

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From Senate Doc. No. 100, *page* 277.

Preamble and Resolutions for paying Contractors and applying to the Legislature for act to buy under sales for assessments.

Whereas, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule, prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the common council, and which were to be paid for by assessments on the property benefitted, and as soon as the amounts of said assessments were collected.

And whereas, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same, only in part made, and most of them returned as unpaid and uncollectable, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state, advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; but the amount due on said assessments could not be realized, by reason of their being no bids at such sale for said property, *the amount of said assessments being more than the present market value of said property so liable*, in consequence whereof the said contractors are still unpaid; the common council, in order to relieve them, and anticipating the collection of said assessment, and which may hereafter be made, and trusting that they may be authorized by the Legislature, to raise by tax the amount which they may so advance, and to secure themselves and city treasury, from any loss, by being authorized to purchase in at any sale, such property, for which there may be no bids; do adopt the following resolutions:

1. *Resolved*, that the counsel prepare a law, under the direction of the law committee, to be applied for, to the Legislature, authorizing the corporation to become purchasers of property which may hereafter be offered for sale, for payment of assessments agreeable to law; to refund them for any advances which may have been made by them, to contractors or others, for the improvement for which such assessments were imposed. Such law to contain all needful provisions to secure the rights of parties interested therein, and that such property be held as a trust fund to repay such advances.

2. *Resolved*, that the comptroller be authorized to pay the several contractors the amounts respectively due them, for the several improvements made in pursuance of the ordinances of the common council, in all cases where the property assessed therefor, was benefitted by such improvement, has been offered for sale, and could not be sold by reason for the want of any bid, at the recent sale of property for assessments, or in cases, in which the sale of such property has been enjoined by the Court of Chancery, such payment to be made on the first day of October next.

3. *Resolved*, that the comptroller include the estimated amount required for the above payment, in the amount of the next annual tax bill, to be applied for to the next Legislature.

4. *Resolved*, that the counsel to the corporation, under the direction of the law committee, *take measures to obtain a revision of assessments, mentioned in the annexed schedule as may be judged expedient, and agreeable to law.*

Adopted by the board of assistants, February 25, 1841.

Adopted by the board of aldermen, February 22, 1841.

Adopted by the acting mayor, February 25, 1841.

Volume 8, of the printed proceedings of the common council, printed by authority of the common council, page 121 and 122.

December 24, 1841, compared with the printed Document in vol. 8, of proceedings of common council, page 121 and 122, and correct. G. FURMAN, *Chairman.*

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We find in the street commissioner's advertisement for the sale of lots in June, 1840, a lot 24 feet 6 inches front, by about 100 feet deep, advertised for sale for an unpaid assessment for filling in Fifth street. The assessment is one thousand eight hundred and forty-five dollars and sixteen cents—confirmed June 28th, 1830—interest to June 28, 1840, being ten years, at 7 per cent. per annum, $1291.62, which makes the amount, in all, $3136.78. This lot is on the corner of avenue B, and is hardly worth one quarter of the amount.

We notice in another case for the regulating and repaving of Chapel street, that Mr. Andrew Lockwood, who owns 14 houses of a block fronting on that street, was assessed the sum of $1480.90. Instead of being benefitted that amount, his property was actually injured more than ten thousand dollars.

Mr. Riley, in the same street, was assessed for the same proceeding $732.71, by which, instead of being benefitted that sum, his property was injured more than five thousand dollars. In fact, ten thousand dollars would not make him good for the injuries he has suffered by the proceeding.

Other citizens in the same street have also suffered largely by the same proceeding. In this case, the contract price for the repaving of the street was five times that which had been paid for repaving the same street previously, and the work of the first repaving was much better than the last.

We notice another case in the Eighth avenue. Mr. Scott was assessed on a piece of ground —— feet front, $——— for regulating this avenue. Some years since, this very property was taxed to pay for working the Third avenue, which was such a proceeding in every respect as the Eighth avenue. In this case of Mr. Scott's, the lot was sold for the assessments, and he redeemed it by paying over seven hundred dollars. In the case in which this property was sold the assessment was never signed, or certified by the assessors, and still the common council ratified it, without any examination; and the street commissioner, who was one of the assessors named in the ordinance for making the estimate and assessment, actually sold the land under these proceedings.

The assessment for building a sewer in 122d street.—This sewer is, part of it, built on piles, over a salt meadow, and above the ground which is assessed for draining. Even the bottom of the sewer is higher than the ground which is assessed, and the water cannot be got into the sewer from the surface unless it is pumped into it by hand or machinery. In this case, the sewer was actually in a state of dilapidation before the assessment was confirmed. Some of the lands assessed for the sewer are actually separated from it by an immense ledge of rocks, and the waters which fall on this ground have a contrary course from the sewer.

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MEMORIALS TO THE LEGISLATURE.

The following is a copy of Six Memorials presented to the Legislature at the last session by the Hon. Gabriel Furman. The Anti-Assessment Committee deem it necessary to state, for the information of Honorable Members of the Legislature who may not be familiar with the names of the signers, that four of them are distinguished Ex-Mayors of the city of N. York, another Ex-Recorder, and another the present Recorder. Nineteen have been Members of the Board of Aldermen, twelve have been members of the Board of Assistant Aldermen and of the Corporation; ten are Presidents of Banks, twenty-eight Presidents of Insurance Offices, the Assistant Register of the Court of Chancery, the Postmaster of the city, and Collector of the Port, thirty-six of the most respectable commercial and mercantile firms in the city, and a great number of the most highly respectable citizens; — showing most clearly the state of public opinion on this most highly important question.

Robert Smith, *Chairman.*

TO THE HONORABLE, THE LEGISLATURE OF THE STATE OF NEW YORK:

THE Undersigned, Citizens of the City of New York, most respectfully represent to your Honorable Body, that the extraordinary and arbitrary power now and heretofore exercised by the Corporation of the City of New York, in assessing private property for what are called public improvements, requires to be restrained by Legislative enactments.

The powers which have been vested in various public officers in Assessment matters have been greatly abused, and the consequences are serious to the Citizens, depreciate the value of real estate, and render titles doubtful and insecure.

The undersigned are informed that very full exhibits of the disastrous consequences of the abuses complained of will be made to your Honorable Body, and they ask that the subject may be taken into the serious consideration of the Legislature, and that the Legislature may make such provisions as will protect the owners of real estate, and such as in their wisdom may seem meet. And in duty bound, &c.

Stephen Allen,
Philip Hone,
Walter Bowne,
Aaron Clark,
Robert Smith,
J. P. Phœnix,
Robert Jones,
Peter Cooper,
Peter J. Nevius,
John M. Bradhurst,
Thomas Lawrence,
John A. Underwood,
Wm. D. Murphy,
Abel T. Anderson,
David Graham, jun.
John Morse,
Thomas T. Woodruff,
Anthony Lamb,
Gideon Tucker,
Frederick A. Tallmadge,
Wm. Sam'l Johnson,
Horace Holden,
Edward Curtis,
Myndert Van Schaick,
Benjamin Townsend,
Joseph N. Barnes,
John de la Mater,
Dow D. Williamson,
John Newhouse,
John R. Peters,
Stephen Connover,
Peter Sharpe,
John Sheppard, jun.
Hiram Walworth,
John J. Codington,
John Anthon,
Gerardus Clark,
Thatcher T. Payne,
Isaac A. Johnson,
David Codwise,
Samuel G. Raymond,
Lewis H. Sanford,
Leonard W. Kip,
John L. Mason,
Cornelius Bogert,
James Maurice, jun.
Wm. Paxson Hallet,
Isaac Young,
Wm. V. Remsen,
Hamilton Fish,
Richard L. Schieffelin,
Orasmus Bushnell,
Stephen Storm,
A. V. Winans,
Edward A. Cook,
John P. Austin,
John Craig,
R. V. R. Schuyler,
Hamilton Murray,
William Torrey,
Isaac M. Wooley,
Zenas Hyde,
Joseph Meeks,

Peter A. Jay,
Jonathan Thompson,
George Newbould,
John J. Palmer,
Nathaniel Weed,
Shepherd Knapp,
John A. Stevens,
Isaac Jones,
David Leavitt,
George Ireland,
Jonathan Lawrence,
Robert Chesborough,
J. Smyth Rogers,
Thomas R. Mercein,
John Wurts,
J. L. Bowne,
Abraham Ogden,
Ren'r Havens,
T. W. Thorne,
Zebedee Cook, jun.
John Q. Jones,
Effingham Schieffelin,
James Lovett,
Richard Whiley,
E. W. Leight,
J. Van Nostrand,
J. R. Hurd,
Benjamin R. Winthrop,
Charles Town,
S. Baldwin,
John Brouwer,
Samuel T. Tisdale,
A. B. Hays,
F. W. Edmonds,
John H. Cornell,
A. B. McDonald,
Henry Lott,
A. S. de Peyster,
A. M. Merchant,
R. A. Reading,
Gold S. Silliman,
H. S. Greenleaf,
T. B. Sattherwaite,
Alfred Pell,
Oliver H. Jones,
Lewis Curtis,
Jacob Brouwer,
George F. Hope,
Cyrus Hitchcock,
G. A. Worth,
Timothy Whittimore,
F. del Hoyo,
John T. White,
William Hagar,
Sampson Moore,
Thomas Riley,
Hudson Kinsley,
Daniel Sickles,
Lawrence Ackerman,
John Horspool,
Samuel Bell,
John Harlow,
James Gulick,

James Boorman,
Jonathan Goodhue,
Peter Schermerhorn,
John Haggerty,
John H. Tallman,
John D. Wolfe,
Saul Alley,
A. D. Cushman,
Christopher Wolfe,
Gardner G. Howland,
John B. Lawrence,
Robert B. Minturn,
Moses Taylor,
Samuel S. Howland,
Stewart Browne,
Henry Andrew,
Henry Grinnell,
James Fellows,
Daniel Parish,
Richard Kingsland,
William Adee,
David Hadden,
James W. Otis,
Daniel S. Miller,
Peteliah Perrit,
Adam Treadwell,
Francis Olmsted,
Robert Hyslop,
Horace Waldo,
William H. Russell,
Henry Parish,
Thatcher Tucker,
Calvin W. How,
Anson G. Phelps,
Joseph Sampson,
Thomas S. Cargill,
Martin Hoffman,
F. Marquand,
John Wadsworth,
William Scott,
Edward Minturn,
Edgar H. Laing,
Peter Morton,
John Milhau,
Joseph Kernochan,
Wm. H. Aspinwall,
George M. Woolsey,
William Colgate,
Samuel Marsh,
Moses Tucker,
John R. Suydam,
James Harriot,
John M. Dodd,
Uriah R. Scribner,
Caleb Bartlett,
E. P. Davis,
D. H. Haight,
John Halsey, jun.
S. S. Ward,
Wm. S. Browning,
Wm. C. Hickock,
G. Van Doren,
Charles H. Russell,

Robert C. Cornell,
Wm. B. Crosby,
James J. Jones,
Wm. C. Rhinlander,
Duncan P. Campbell,
Peter G. Stuyvesant,
Stephen Whitney,
James Roosevelt,
Peter Lorillard,
James Brown,
James G. King,
Wm. F. Mott,
Wm. W. Fox,
Benjamin L. Swan,
Edmund H. Pendleton,
Peter Lorillard, jun.
Henry Breevort,
Jonathan Hunt,
W. W. Todd,
James Boyd,
John Rathbone, jun.
John R. Murray,
Samuel Thomson,
David L. Haight,
Maturin Livingston,
E. Morewood,
Peter Embury,
A. A. Alvord,
Burtis Skidmore,
Geo. C. Thorburn,
Eben Meriam,
Alex. T. Stewart,
Stuart Mollan,
Richard Mortimer,
James Gillispie,
Henry W. Dalson,
Samuel M. Thompson,
Robert C. Skidmore,
James A. Burtis,
John Tonnelle,
Morris Ketchum,
James K. Hamilton,
John Ridley,
John L. Norton,
Richard F. Carman,
Smith W. Anderson,
Nathaniel Paulding,
Herman Bruen,
Jasper Grosvenor,
Thos. L. Clark,
George Sutton,
John Allan,
Andrew Lockwood,
Richard Wight,
O. Halsted,
C. H. Marshall,
James P. Griffing,
Smith Harriot,
C. N. Keirsted,
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John Johnson,
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Brown, Brothers & Co.
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Alex. Lawrence,
John P. Atkinson,
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Valentine Mott,
T. Anthony,
John Morton,
William Leggett,
F. S. Fellows,
John O. Fay,
John M. Bruce,
P. M. Suydam,
C. V. S. Roosevelt,
Charles A. Clinton,
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Edgar Harriot,
Matthias Bruen,
Stanton Bebee,
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Charles M. Holmes,
Richard Ten Eyck,
Walter Legget,
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ASSESSMENTS.

REPORT

Of the Select Committee from the Senate of this State, appointed to investigate Assessment Abuses in the City of New York,

COMPOSED OF THE

HON. GABRIEL FURMAN,
HON. GULIAN C. VERPLANCK,
HON. JOHN B. SCOTT.

In order to present the material portions of this important Report, we have classified the subject matter of the report, and accompanied each portion with remarks and references, that the reader may be able to obtain some knowledge of this all-important subject.

The COMMITTEE say:—

"In the investigation of the matters thus committed to their charge, the Committee were occupied during almost the whole of the last autumn in the city of New York, and also in the month of December, and to the period of the meeting of the present Legislature."

Again, the Committee remark:

"On the 18th September last the Committee received a Communication from the Memorialists, on whose application the investigation was ordered, tendering to their use the commodious Lecture-room in Clinton Hall, New York, free of expense or charge to the State, which was accepted."

The Committee, after detailing certain matters as to the public officers, say that—

"In the course of their examination, the most prominent matters complained of appeared to be,

"*First*, In the manner of opening streets, avenues and public squares in the city; in the appointment of the commissioners of estimate and assessment; in the expenses of those commissioners, and the time spent in the discharge of their duties.

"*Secondly*, The imposition of heavy and oppressive assessments for improvements never actually made, except upon paper; and which assessments were frequently ruinous, being more than the value of the property assessed; and the great difficulty which owners of real estate in that city, and particularly in the upper and unimproved portions of it, experienced, from the fact of using arbitrary map numbers instead of street numbers and farm numbers.

"And, *Thirdly*, The great difficulty which the citizens had encountered in obtaining a review and correction of any errors committed by the commissioners and assessors in making any of such awards or assessments for the opening of said streets, avenues or public squares, from the fact that, although the Court of Chancery at first assumed jurisdiction of such cases on the ground that such assessments being made by a statute, a lien upon real estate was a cloud upon the title, and might, if unjust and unequitable, be removed in equity, it has since denied having cognizance of such matters; and the Supreme Court have in some instances denied a certiorari, to remove such proceedings, and others where the writ had been granted, had afterwards quashed the same and refused the parties any relief, referring them to an action at law for trespass against the individual members of the common council, or against the officers of the corporation personally, who should attempt the collection of such assessment.

"The committee will examine these several propositions which contain the substance of the long and tedious investigation through which they have progressed, and will submit to the consideration of the Legislature the conclusions to which they have arrived upon these several heads.

"*First.* The manner of opening streets, avenues and public squares, in that city, in the appointment of the commissioners of estimate and assessment, in the expenses of those commissioners, and the time spent in the discharge of their duties.

"That there have been great and serious abuses in the mode of opening streets and avenues in the city of New York, and in the expenses attending the same, cannot be doubted by any person who has examined the subject; and these evils have mainly arisen from the loose and unguarded manner in which that important branch of authority has been exercised.

"For while in England, in the city of London, in Birmingham and other places, whose proper municipal regulations would seem to require as liberal extension of power to their local corporate governments as that of New York, streets cannot be opened or widened without an act of Parliament specially passed for that purpose, upon a due examination of all the circumstances of the case; yet, in the city of New York, they are opened or widened, and that in large numbers together, by a single resolution adopted by the two boards of the common council, without any control, as was the case in opening all the streets and parts of streets not previously opened up to and including 42d street, by a resolution of April 6, 1835; and subsequently, September 12, 1836, another resolution was adopted to open all the streets from 42d street to 57th street. The reservoir on Murray's Hill, in the city of New York, is on 42d street.

"This loose practice has grown up in modern times, for the more guarded one of an application to the supreme legislative authority was in existence in that city, subsequent to 1792, when to authorize the first widening of John street an application was made to the Legislature, then in session in that city, and before either house would act upon the petition, they sent a committee to examine the ground; upon the report of which committee, they enacted that the damages to the owners whose lands were taken, should be appraised by a jury who should be composed of merchants, showing how careful they were in former legislation on this important subject.

"This appraisement is now made by three commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the counsel of the corporation, although there have been instances where one of those commissioners has been selected by the court from names proposed by the corporation council, and by the opponents to the application, and another has been named by those opponents.

"It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so VERY GREAT as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the commissioners for the same exhibited before the committee.

"In the opening of the Seventh avenue, from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was **$21,141.41**, while the *FEES* and expenses amounted to the large sum of **$12,435.70**, and if to that is added the collector's Fees for *collecting* the assessments, **$1,115.00**, it will show a total of expenses *paid* by the Owners of Land on that portion of the Seventh avenue for its *formal* opening, amounting to **$13,550.70!**

"The amount paid to the commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen months'* services for each commissioner, in making the estimate of the land taken for opening that avenue, and assessing that value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, THE COMMISSIONERS WERE *EACH ENGAGED* **THREE TIMES THE WHOLE PERIOD** THAT THE LEGISLATURE *IS EMPLOYED IN LEGISLATING FOR THE STATE,*

AND *EACH* OF *THEM* RECEIVED about THREE TIMES THE COMPENSATION that is PAID TO A LEGISLATOR FOR PASSING THE *WHOLE WINTER FROM HIS HOME* IN ATTENDING TO PUBLIC BUSINESS!!

"And in addition to that it was shown to the committee that commissioners were frequently engaged on several streets or avenues at the same time, taking their FOUR dollars per day on EACH of those improvements; and that *they* received and were *paid* that compensation in some instances where they *did not* attend to the duties of their appointment, and in others where they attended *but* once or twice.

"If the case of the Seventh avenue had been a solitary instance the committee might have supposed that it had taken place through some mistake; but they found the same principle of enormous expenses to extend throughout the whole system of street openings in that city, and that to such an amount that the surprise should be *not* that the inhabitants NOW complain of it, *but* that they had not done so at a much *earlier* period!

"The manner in which the opening of those streets was effected has been the subject matter of complaint to the committee.

"Assistant Alderman Townsend, who introduced the report in favor of opening all the streets up to and including 42d street, testified that it was his intention to have all of them opened in one proceeding, and thus save to the citizens an enormous expense; and for that reason his report did not conclude with the ordinary direction in such cases, that the corporation counsel should take the necessary legal measures to carry the same into effect. But through some misapprehension the ordinary proceedings were taken for opening each street separately by itself, and a set of commissioners appointed for each street, instead of one set for the whole series; and by that means the expenses to be paid by the owners of real estate upon the same was increased at least $95,000.

"Another and a most serious evil seems to have arisen from the circumstance of there being no fixed and settled principles used by those commissioners in making their awards and assessments.

"In some instances where individuals have furnished their full proportion of land for a street or avenue, and should in justice have been assessed only their proportion of the expenses attending the proceedings, and of any buildings which were to be removed from that street or avenue, they have been assessed some thousands of dollars beyond that amount.

The complaints which have arisen from this want of settled principle in the action of those commissioners have been very numerous, and have been urged upon the consideration of this committee with great earnestness.

"During the session of the committee in New York, Peter Lorrillard, Esq. submitted to them a communication on this subject, in which he stated that 'in many cases the injustice was so great that he had firmly made up his mind to sell all his property in this State and remove where his property would be protected and placed on an equality with other citizens; and was only prevented from so doing by reason that it would not bring the prices of 1830, thereby was forced to stay the sale, having made some sacrifice.'

"*If the citizens of New York are laboring under an erroneous impression in believing that they have been greatly oppressed and injured by the course pursued by those commissioners, that belief is, in the judgment of the committee, very extensive.*

"The committee reiterate their conviction that these errors on the part of those commissioners have mainly arisen from the want of settled rules or principles in making their awards and assessments, and that such want of settled rules or principle must always be experienced so long as those commissioners shall continue to be appointed for each individual case.

"These evils and abuses might have been obviated in a great degree, in the judgment of the committee, by having established a permanent board of commissioners, in place of appointing a set of commissioners for each improvement; which board would necessarily have an uniform principle in determining questions that arose before them; and from their knowledge of the subject, would be enabled to dispose of the same in half the time that ordinary commissioners would be necessarily engaged.

"The *second* prominent objection made before this committee, was, as to the imposition of heavy and OPPRESSIVE Assessments for Improvements never actually made, except upon paper; and which assessments were frequently ruinous, BEING MORE IN AMOUNT THAN THE VALUE OF THE PROPERTY ASSESSED.

"This point has been a very prolific subject of inquiry, and many witnesses were examined before the committee, detailing what they considered grievances arising from an abuse of the laws on this subject. Among the cases thus detailed, the committee will present the following as showing the nature of the complaints submitted to their consideration:—

"Mr. Stuart Mollan, a very respectable citizen of that city, resides in a house in Broadway, which he owns, and where he has resided for several years past, which was assessed for a sewer in 13th street; he paid the assessment when it became due, and supposed that he had thereby discharged his whole property, which he regarded as one house and lot, and which he purchased as such; but he afterwards was informed that the assessors had assessed his house and *a part* of his lot as *one* piece to himself, and the rear of his lot, and the stable on it, as *another* and distinct parcel of land, and to a person who was *not* the owner, which last piece was charged with an assessment of a few dollars. In 1838, his stable and the rear portion of his lot, were advertised and sold for that small assessment for the term of eight years, and the time for redemption had expired, and the purchaser had obtained his lease, before Mr. Mollan became apprised of the fact that it was thus assessed and sold, and he was obliged to buy out the right which the purchaser had obtained under that assessment sale, by paying $——. Mr. James Gillespie and Mr. Richard Mortimer made similar complaints.

"On that branch of the complaint as to the imposition of heavy and oppressive assessments for improvements never actually made, the committee ascertained that a very large portion of the streets and avenues FORMALLY opened from 1836 to 1839, were *not* actually opened; that nothing has been done beyond making awards and assessments by the commissioners and the confirmation of their reports by the Supreme court; and that although the assessments have been *collected* for such improvements in many instances, and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the *same condition* as they were before the taking of any proceedings for their opening; and in some cases such lands remain in the occupancy of their original owners notwithstanding they have been paid for the same.

"And in numerous other instances where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

"Out of a list of EIGHTY-ONE STREETS and avenues, or parts of such highways, the reports for the opening of which had been confirmed in 1837, 1838 and 1839, FIFTY-SEVEN have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others, a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation.

"This attempt to collect assessments not only by voluntary payment, but by enforced sales of the lands charged, without actually opening the streets or avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters.

"The committee therefore submit this subject to the consideration of the Legislature.

"Several instances were shown to the committee where property had been offered for

sale for the payment of assessments at two or three successive sales without being able to get a bid, the amount of the assessments being more than the estimated value of the property.

"These large assessments operate against the interests of the city, for the owner will not pay the assessment or improve the property, and no person will buy it, and the corporation cannot realize their money by a sale of the assessed premises, and the amount must be taxed upon the city; and thus the improvement of the upper part of the city which is covered with these great assessments must be stayed for many years, and now apparently for an indefinite period of time, unless the land should be in some manner relieved from the charge of those assessments.

"It did appear reasonable to the committee that in analogy with a judgment, the lien of which ceases on real estate after the termination of ten years, the lien of those assessments should be at an end after the lapse of some definite period; what that should be, the committee submit to the discretion of the Legislature.

"Now the mere fact of the confirmation of the report, makes it conclusive upon all the parties assessed; and the assessment becomes a lien on the lands assessed from the date of the confirmation.

"Such however was not always the practice; for the act of 1792, required an action of debt to be brought on the assessment, although it was declared a lien and prior encumbrance so that the party assessed could test the validity and legality of the assessment on the trial of this action of debt; and the land could not be sold until judgment was obtained in that action, and an execution issued on that judgment.

"Which course or something similar to it, would afford the most expeditious course of trying the questions in relation to those assessments, and would be more equitable and just, both to the corporation and the parties assessed than to leave each individual who considers himself aggrieved to bring an action of trespass against individual members of the corporation, or its officers or agents acting under its orders, as has been recently intimated by the Supreme court.

"The matters complained of in relation to designating the lots assessed by arbitrary map numbers, although it has undoubtedly operated very injuriously to the interests of the owners of real estate in that city, and has undoubtedly in some instances operated to cause lands to be sold for the payment of assessments, which the owners would have paid, if they had known their property by that designation, has, however, been in some degree remedied, by the adoption of the street numbers and farm numbers of the same property where they existed.

"On the *third* branch of this subject, the great difficulty which the citizens have encountered in obtaining a review and correction of alleged errors committed by commissioners and assessors in making awards and assessments, in opening streets, avenues, and public squares, and in making other improvements in that city; the committee have been compelled to the belief that some remedy should be proposed and adopted.

"When these questions first arose, the Court of Chancery affirmed its jurisdiction, entertained bills of complaint, and granted injunctions to stay proceedings in the sale for those assessments, until the alleged errors could be examined, on the same ground that it always asserted its jurisdiction in case of fraudulent judgments, and that although the judgment was illegal, yet it being a lien upon real estate was a cloud upon the title, and should be removed by the intervention of a court of equity.

"So these assessments, although stated to be illegally imposed, were declared by statute to be a lien upon the lands assessed, and would appear to be equally a cloud upon the tile, and for the same reason that a judgment is so regarded, they both being equally liens upon real estate.

"But that court has since denied, that it had jurisdiction in those matters, and referred the applicants to the courts of law.

"The Supreme court also, in the first instance, seemed to entertain these complaints, and allowed writs of certiorari to issue for the purpose of bringing up the proceedings before them.

"But subsequently they intimated that such writ could only bring up the record of the commissioners' report, and not the proceedings before, or connected with it; they again held that in analogy with a writ of error the certiorari should be governed by the same limitation; although it has been previously held, by good authority, that a common law certiorari, (which was the nature of the writ in those cases,) was not subject to such limitation; and it was afterwards intimated by the same court, and with a precision that would seem to give it the authority of a decision that a certiorari could not be directed to the corporation.

"And again, the Chief Justice, in delivering an opinion, in a case of assessment, in the court for the Correction of Errors, since the decisions above referred to, held that the remedy of the parties was in action of trespass against the individual members of the corporation who enforced the collection of those assessments, or against the officers or agents of such corporation who should, under their orders, attempt the collection of such assessment.

"The committee think that the orders of the corporation, in any matter within their jurisdiction, should protect an officer under them, and that he should not be held liable to inquire into the legality of all the acts done by that corporation, but their warrant should always be his protection; and so also the members of the common council should not be held personally responsible for any error in judgment in the discharge of their duties; and this view of the case is in analogy with the doctrine heretofore held, both by the Supreme court of the United States and of this State, that an agent of the government, or of any branch of public authority known to the laws, should not be held personally responsible for any contracts or engagements which he might enter into in behalf of his principals.

"These differences of opinion on the subject of the legality of those assessments, and of the sales made for their collection, have led to much bitter feeling between many of the citizens and officers of the corporation who assert the legality of those assessments; and which controversy has been unfortunately increased from the want of some proper tribunal to settle those questions by prompt adjudication.

"It is undoubtedly to be regretted that any steps should have been taken which would unnecessarily embarrass the common council in their proceedings in relation to such sales for assessments.

"But the committee doubts whether it will be wise or politic to interfere, in any way by legal enactment, with the expression of opinion on the part of citizens, either verbally or by publication, in relation to the legality of any proceeding, on the part of the government or of the corporation, in relation to assessments or to any other matter, in which their interests or those of the public are involved.

"The true way of settling those questions will be by the courts of our State, in examining into the justice and legality of the matters complained of.

"If the people can be satisfied by the decision of any one of our higher courts, after a full and patient examination of the whole subject, that those assessments are legally imposed, there will be undoubtedly an end of those complaints, and they will acquiesce in such adjudication.

"In view of all the embarrassments which now surround this subject, and the differences of opinion which have heretofore existed in the court of Chancery and the Supreme court on the question of jurisdiction in matters relating to the opening of streets and avenues or public squares, and the assessments consequent thereon, the committee think that the Legislature should interfere and by statute law settle that jurisdiction in the Supreme court; which would be in accordance with the principles adopted by the court for the Correction of Errors in the case of the mayor and common council of the city of Brooklyn *vs.* Gertrude Meserole et. al. in December last.

"And to cover all the doubts heretofore expressed by the Supreme court in their decision in several cases which have been decided by them on assessment cases from the city of New York, the Legislature should give that court full power to examine into all the matters preceding that assessment, as well the acts of the common council, as of the commissioners of estimate and assessments; and for that purpose the certiorari should bring up all matters connected with those proceedings as well as the report of the commissioners.

"It is well known that the judges of the Supreme court in confirming those reports in street openings, do not act as a court, but as commissioners under the statute; it may therefore be well to authorize the court to examine their proceedings as commissioners.

"If it shall be thought best to extend the statutes of limitations to the common law certiorari, it should not be left to judicial de-

cision or analogy for determination, but should be ascertained by legislation.

"Under the act of 1839, the costs of the proceedings in opening streets, &c. are required to be taxed before payment.

"But the committee cannot discover any instance in which such costs have been taxed except in that of opening Cherry street, which was discontinued. Those expenses have always been heretofore paid upon a mere abstract of the report of the commissioners, containing the sums total of the awards and assessments, and of the costs of the commissioner's counsel, &c. But the street commissioner avers that since he has become acquainted with the existence of that law, no bill of such expenses has been paid without taxation; and that he had supposed that the Supreme court in passing upon the confirmation of the commissioners report, taxed and confirmed all the expenses, statements of which were appended to such report.

"To obviate all the difficulties which arise from this view of the case, or from a difference of construction which may be given to that law, it is suggested that the Supreme court, either as a court or as commissioners, should not confirm any report until after the costs have been taxed and certified in the manner required by that law.

"And while on this branch of the subject, the committee would observe that many complaints were made, that those commissioners of estimate and assessment having several streets or avenues under their charge, at one and the same time, would merely meet for a few minutes and then adjourn, charging their four dollars for a day's service.

"This objection might be obviated by requiring the commissioners to sit at least three hours on such streets, before they should be enabled to charge for a day's service.

"For the last three or four years it has been a frequent subject of complaint, that the persons assessed have not had notice of the imposition of such assessments before their property was advertised for sale for the payment thereof.

"By the act of May 14, 1840, by the second section, the commissioners and assessors were required to give notice to the owners of houses and lots affected, of their assessment, by publishing the same daily, in at least ten of the daily newspapers for ten days successively.

"And by the ninth section of that act it is provided that no land shall be sold for such assessments, unless notice of such sale shall have been published once in each week for three months, in at least ten of the daily newspapers in the city of New York.

"By the first section of the act of May 7, 1841, the notice to be given of their assessment by the commissioners and assessors was to be published in at least two daily newspapers in that city for ten days, and the second section of the act of May 14, 1840, was repealed.

"It is urged that the notice required by those acts and particularly the notice of the imposition of such assessments are not sufficient, and that it would save much expense to the citizens, and induce the payment of many assessments at an early period, if the owners of real estate had some more particular notice of the imposition of the same, than can be given by a notice in a newspaper.

"It has been suggested that a personal notice should be given to the owners of the real estate thus assessed, or to their agents, and that such notice should also be given to the person who last paid the taxes on such property; and that such personal notice should be served upon parties who claimed to be owners of such premises, but who were not the last assessed or the last who paid taxes thereon, who shall file a notice in writing in the office of the street commissioner, claiming to be such owner, and desiring that such notice should be served upon them, or upon such persons as they may designate as their agent for that purpose; and that a longer time should be allowed for the redemption of real estate, which shall have been sold for the payment of the assessments imposed thereon without such personal notice having been previously given, than is now allowed by law.

"And where notices connected with the opening of streets, avenues or public squares in the city of New York, and the assessments consequent thereon, are required by law to be published in newspapers, it would be well to specify a particular day, on which such notices should appear, to the end that owners of lands charged with such assessments, or affected by such improvements, may know when to look for notices on those subjects."

REMARKS.

FIRST—"*In the manner of opening Streets, Avenues and Public Squares in the city,*"—

It will be seen by referring to the documents accompanying the Report, page 113, that the board of aldermen and board of assistants, composing the common council of the city of New York, proceeded, on a resolution of one of the aldermen, to order an application to be made to the Supreme court for appointment of Commissioners of Estimate and Assessment to make an estimate of the expense of Opening all the streets from 42d street up to and including 57th street, and to assess the same upon the owners and occupants of land deemed by them to be benefited.

This district embraced fifteen streets, extending from the East river to the North river, and consists of a tract of farming land about three fourths of a mile wide by about one and a half mile long.

None of the citizens interested in the property to be affected by this proceeding made application for the opening of these streets; and although the resolution for opening these streets was passed on the 16th March, 1837, the land remains in the same state and condition as before: nothing whatever has been done beyond the appointment of commissioners, making the assessment, and collecting the amount by a sale of the property for the assessment.

The second proceeding which we propose to notice in this order is—

"All the streets and avenues up to and including 42d street which had not been opened by due course of law or by deeds of cession prior to the 19th day of February, 1836."

No authority was given by the Common Council, in this case, for the application to the Supreme court for the appointment of Commissioners of Estimate and Assessment, and none was intended to be given as appears by the affidavit of the Chairman of the Street Committee *(see documents accompanying the report, page* 311). Notwithstanding this want of authority, an application was made to the Supreme court and twenty-seven distinct sets of commissioners were appointed.

Thus in these two proceedings, embracing forty-two streets and avenues, not a single individual interested in the property petitioned the common council, but they were *got up* by Public Officers solely for the purpose of making FEES and COSTS to fill the pockets of Corporation Speculators, of whom they themselves were the principals.

The next proceeding we notice is that for opening the Ninth avenue from 45th street to the Bloomingdale road.

This proceeding was on petition of eighteen individuals, *none* of whom were interested a single dollar in the lands assessed, or affected by the proceedings. ☞Citizens interested in the property, however, *remonstrated*, but their opposition was DISREGARDED *by the common council.*☜ This proceeding was in 1836, more than six years ago, and the avenue still remains in the same plight and condition as before, although the assessment has been collected by coercion! Some of the lands assessed, but not *benefited*, have been sold for the term of a thousand or more years to pay the assessment—a conclusive evidence of the wickedness of the assessment, which was, in effect, a confiscation of the property.

The proceedings in relation to the opening of the Tenth, Seventh, Sixth, Fifth and Second avenues were upon petition, in which very few of the persons interested united. These avenues are in the same situation in every respect as the Ninth avenue.

Manhatten Square,

A piece of ground consisting partly of a swamp and partly of ledges of rocks, about six miles from the City Hall, was proceeded in on the resolution of a member of the common council. Commissioners of Estimate and Assessment were appointed by the Supreme court, on the application of the common council, and the assessment was made to the extent of near $50,500, and confirmed; and an attempt has been made to collect it by a sale of the property assessed. This square still remains in a state of nature, and will probably so remain for a century to come. It is of no benefit whatever to the persons assessed for the expenses of it, and many of these assessments are greater in amount than the value of the land on which the assessment is imposed, amounting therefore to actual confiscation. These proceedings were commenced six years ago, and in truth it may be said that the interest on some of these assessments will in some cases exceed the value of the land. The assessments for this Paper Square are very heavy, amounting on a single estate to more than Three Thousand Dol-

lars. Not a solitary individual interested in the property applied for these proceedings, and none of them approved the act.

Mount Morris Square.

This is a proceeding on the resolution of an alderman. The ground selected for this square is *Snake hill*, at Harlem, about seven miles from the City Hall. It is a ledge of rocks, about 80 or 100 feet high, and worthless. The cost of this proceeding is near Thirty Thousand Dollars, and it was had in 1836 or '37. Some of the assessments for the Paper Opening of this square exceed One Thousand Dollars on the property of a single individual. The proceeding was not asked for by any person interested. A public square in such a place and of such ground is the most absurd measure imaginable, and yet the property assessed has been advertised for sale to pay the assessment, but owing to the fact that some of the assessments exceeded the value of the land assessed, the property could not be sold.

Of all the proceedings which we have noticed, above FIFTY in number, the owners of the property to be affected thereby to the extent of MILLIONS OF DOLLARS, had in but *five* cases out of FIFTY any voice in the matter—in these *five*, to a very small extent only.

Such extraordinary proceedings on the part of the City Government in such matters is no where else on this globe to be met with.

The motives which the movers had in view in these cases, was to make fees and costs for public officers.

Such reckless proceedings are destructive to the rights of citizens, to the security of private property, and dangerous to civil liberty, and would be a disgrace to the most despotic and barbarous government on the earth, as they truly are to our own government and to the public bodies which have thus proceeded.

SECOND—"*In the appointment of Commissioners of Estimate and Assessment*"

The assessments for the pretended opening of the streets from 42d street, up to and including 57th street, were made by FIFTEEN distinct sets of commissioners. On five of these streets a young man, who was at that time a clerk in the street commissioner's office receiving a salary from the corporation of one thousand dollars per annum, was appointed a commissioner. This young man is a brother-in-law of the street commissioner. Another of the commissioners was a young man who was at that time in the office of the corporation office: he was appointed on two streets.

Another of the commissioners appointed on these streets was also a brother-in-law of the street commissioner, and he was also appointed a commissioner on two other streets. Another of the commissioners was also employed in, or indirectly connected with the office of the counsel of the corporation. An opinion of the balance to make up the first fifteen sets, may be formed from what is here stated.

The commissioners on the second class of streets named as embracing TWENTY-SEVEN streets and avenues below 42d street, were EIGHTY-ONE in number. In the report of the committee on streets (see Senate Document, page 100) the plan was to have but one set of commissioners, that *nineteen twentieths* of the expense usually incurred of opening streets in detail might be saved, and the committee withheld the usual resolution, that the counsel take the necessary legal measures, &c., and no such resolution was at any time passed. Twenty-seven distinct applications however were made to the court on petition signed by two officers of the corporation, who were not probably aware of the tenor of the proceedings which had been had in this matter for the appointment of as many sets of commissioners. On reference to Document No. 71 of the Board of Assistant Aldermen, of 1840, we find that the clerk in the street commissioner's office, and a brother-in-law of that officer, was appointed on two of these streets, and this is the same person who was commissioner on five of the other streets above named, and also on one other street besides. One of the clerks of the Supreme court was also appointed a commissioner on one of these streets, and this same gentleman had also been appointed a commissioner on seven other streets and avenues. A deputy clerk in the office of the Clerk of the court of Common Pleas was also appointed a commissioner on four of these streets; the same gentleman was also appointed a commissioner on three or more other streets: he is a brother of the then deputy or assistant street commissioner. One of the appraisers in the custom house was appointed a commissioner on three of these streets, he was also a commissioner on seven other streets and avenues.

The Committee of the Senate remark:—

"This appraisement is now made by three commissioners appointed by the Supreme court, who are generally nominated at the instance of the counsel of the corporation."

There are some of the gentlemen who have acted as commissioners who are qualified for the performance of the duties required of them; but the loose manner in which a great proportion of the assessments have been made and the notorious fact that much of the property assessed could not be sold even for a term of ten thousand years for the amount of the assessment and some of it not even for the interest of the assessment, is a sad commentary on their fitness, qualifications and judgment: but as we before observed, there are some exceptions—some were well qualified.

Public officers whose time is necessarily occupied in the duties of their respective offices, should not be appointed commissioners.

The appointing power we apprehend has also been misplaced. Commissioners are judicial officers, and should in compliance with the provisions of the Constitution be appointed by the Governor with the consent of the Senate; but the Constitution of 1777 and of 1821 we think clearly provides for a jury in all cases of taking land for public streets, &c. on the island of New York. The Constitution provides that the judges of the Supreme court shall not hold any other office or trust. This may be called a duty imposed by law upon the court, and if so, it is a trust to be executed by the justices of the court.

The Constitution designed that the Judiciary branch of the State Government should be distinct from and independent of the Executive and Legislative: hence the provision above noticed.

The appointing power is one that has at its command great patronage, and in this case as will be seen when we come to the next head, one of extraordinary patronage.

The exercise of this power places the court in a very peculiar predicament when called upon to review proceedings of an aggravated and extraordinary character in which the acts of their own officers are called in question. It will be seen on reference to page 278 of the documents forming the appendix of the Report of the Senate Committee appointed to investigate assessment abuses in the city of New York, that the Counsel of the corporation claims that the Commissioners of Estimate and Assessment are officers of the Supreme court.

If the Judges of the Supreme court proceed as a Court in these matters, and are not acting as *quasi* commissioners, then in that case their acts are not in conformity with the provisions of the Constitution of this State.

The appointment of the commissioners of estimate and assessment in the matter of opening streets, avenues and public squares in the city of New York has not been judiciously exercised, for these Commissioners should not have been appointed on an ex-parte application, in such important proceedings, persons whom the justices of the court did not personally know; and it is evident that they did not know many of the persons appointed: if they had possessed this knowledge they surely would not have appointed some of them.

The Honorable Senate Committee however have come to a conclusion in this matter as to the mode of the appointment, which they have expressed in the words which are above quoted.

THIRD—"*In the Expenses of these Commissioners, and the Time spent in the discharge of their Duties.*"

Under this head we have much to say.

John Keyes Paige, Esq. Clerk of the Supreme court at Albany, appeared before the Senate Committee in the senate chamber, in the Capitol of that city, and stated in evidence as follows:

"Witness never knew of any bill of items of the expenses in opening streets or avenues, or public squares in the city of New York, presented to the Supreme court for taxation when the reports of the commissioners of estimate and assessment were presented to that Court for confirmation, though it is possible when such confirmation was opposed, such bills of items may have been presented to the court with the report and other papers, and the judge may have passed upon them, but the witness never saw any such bills, and none have fallen under his observation *in his office.*"—*Senate Document, No.* 100, *page* 85.

All the Reports of Commissioners of Estimate and Assessment which have been confirmed by the Supreme court are filed in the office of the Clerk of the Court at Albany.

The witness stated also—

"There is no Abstract or Summary accompanying said reports as far as the witness has examined the same."

Robert Emmet, Esq. for many years corporation counsel, in a letter written by that gentleman to a member of the common council, which is set forth in the document accompanying the report of the Hon. Senate Committee, page 278, uses this language:

"I have received a copy of a resolution offered by you and passed by the BOARD OF ASSISTANTS on the 9th instant, requiring me to furnish that board with the items of the bill for counsel fees and court charges in the matter of opening the 7th avenue; also a bill of charges of the commissioners of estimate and assessment and the surveyor's bill in the same matter. I had determined to send back the copy of the resolution, enclosed in a short communication, to the President of the board of assistants, respectfully denying the right of that board, or of the common council, to require any such information from me; but being informed that the resolution was not drawn by you, and believing that you might not well have considered its fitness or propriety when you introduced it, I have thought it due to you to make this personal communication to yourself on this subject. A very brief statement will, I think, satisfy you that as a matter of *strict right* the common council are not entitled to make any such demand; and I can hardly suppose that any member of that body could desire that its aid should, *without right*, be made subservient to the investigation's spirit, however laudable it may be deemed, which may have suggested this resolution in any other quarter.

"The proceedings for opening the Seventh avenue were conducted and concluded under the Act of April 9th, 1813, the 189th section of which provides that the commissioners of estimate and assessment (who are appointed by, and are officers of the Supreme court) shall be entitled to receive the sum of not more than four dollars per each day actually employed by them in their duties besides all reasonable expenses and disbursements. The law directs these expenses shall be paid by the corporation and included in the assessment, by the subsequent collection of which it was intended the corporation should be reimbursed. There is no provision in the act for the taxation of these expenses, or for the regulating of them by any other rule than the discretion and good faith of the commissioners who are authorized to incur them. But even admitting them to have been extravagant in any case they could not affect the corporation, who were mere agents required by law to pay the money and refund themselves by the Collection of the Assessments; and whatever right the parties assessed may have had to inquire into the necessity or reasonableness of these expenses, or to object to them, should have been exercised while the matter was before the commissioners or the Supreme court. If the law was defective in this respect, the Legislature have endeavored to remedy it by an act passed April 20, 1839, which among other alterations requires a rigid taxation of all costs, charges and expenses in cases of this kind before they can be paid; but I know of no law which made it my duty to preserve and exhibit to the common council, or to any other party, *or even to make out a bill with items* of the costs, fees and court charges in the matter of opening the SEVENTH AVENUE, or in any other of the numerous street cases which I had charge of, and which were terminated before the Act of 1839 was passed, and I might with just as much propriety be now called upon to furnish the items of the expenses of any estimate and assessment confirmed ten years ago, or of all that have been confirmed since that time."

This communication is dated Nov. 12, 1840.

The Senate Committee in their report, page 13, remark—

"It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so very great as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the commissioners for the same exhibited before the committee.

"In the opening of the seventh avenue, from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was $28,141.41, while the Fees and expenses of that opening amounted to the large sum of $12,435.70, and if to that is added the collector's fees for collecting the assessments, $1,115.00, it will show a total of expenses paid by the owners of land on that portion of the seventh avenue for its formal opening, amounting to $13,550.70.

"The amount paid to the commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen months*' services for each commissioner, in making the estimate of the land taken for opening that avenue, and assessing that value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, the commissioners were each engaged three times the whole period that the Legislature is employed in legislating for the State, and each of them received about three times the compensation that is paid to a legislator for passing the whole winter from his home in attending to the public business. And in addition to that it was shown to the committee that commissioners were frequently engaged on several streets or avenues at the same time, taking their four dollars per day on *each* of those improvements; and that they received and were paid that compensation in some instances where they did *not* attend to the duties of their appointment, and in others where they attended *but* once or twice.

"If the case of the seventh avenue had been a solitary instance the Committee might have supposed that it had taken place through some mistake; but they found the same principle of enormous expenses to extend throughout the whole system of street openings in that city, and that to such an amount that the surprise should be not that the inhabitants now complain of it, but that they had not done so at a much earlier period!"

On pages 58 and 63 of the report of the Senate Committee is the following testimony:

"*Peter Perine* being called and duly sworn on the part of the Memorialists, says—was engaged as a draught-man in the street commissioner's office, from March 1837 to October 1839. Witness's duties were pretty general: he participated in almost every branch of business in the office: he computed about four fifths of all the assessments for regulating, paving, curb and gutter in streets and avenues; those assessments in which the street commissioner, assistant street commissioner and chief clerk were the regular constituted assessors. By Document No. 71 of 1840 it appears, that on the opening of the Seventh avenue the commissioners' Fees are $4,920.00, being $1,640.00 to each commissioner; which will, at $4 per day, pay for four hundred and ten days, which is, at 26 days per month, fifteen months and twenty days; room hire and contingent charges are $723; counsel Fees are stated at $3,976.77; surveyor's fees $2801. Witness has never acted as commissioner, but he would suppose *that to compute an assessment for paving or regulating a street or avenue was quite as much work, if not more, than to make an assessment for opening a street or avenue: he would think it was more work as there are many more Items.*"

This testimony of Mr. Perine's is confirmed and sustained by the following testimony of JONATHAN THOMPSON, ESQ. formerly COLLECTOR OF THE PORT OF NEW YORK, one of the most worthy and estimable citizens of this republic:—

(From Senate Doc., 100, pages 47 and 48.)

September 25, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

Jonathan Thompson being called and duly sworn, on the part of the Memorialists, says—that formerly, between 25 and 30 years ago, the witness was personally acquainted with all the assessments of the city of New York, being the collector of the internal revenue of the United States. Afterwards, the witness in 1819 or 1820, at the request of the common council, valued all the property of the city of New York with Mr. Targee and Mr. Smith. Witness has been a commissioner upon forming and grading the Third avenue, and upon a number of other improvements. Witness knows the labor and time necessary in making out assessments, as he has spent several weeks at it, or rather months. Witness has examined the commissioners' map of Second avenue, from Twenty-ninth to Eighty-sixth streets, and also the abstract of the commissioners' report, showing the number of persons to whom awards and against whom assessments were made, in the matter of opening said Second avenue. He can only estimate the time necessary to be spent in making the estimate and assessment of said Second avenue, by comparing it with Third avenue from the Bowery road to Harlem bridge, which was six miles and a quarter in length, and on which the witness made the assessment for regulating and grading. The expenses of the commissioners on said Third avenue, (which was in May, 1819.) The assessment-roll contained

about a quire and a half of paper closely written, was as follows:

Total expense of working and regulating, - - - - -		$97,514 00
To which add:		
For advertising, - -	$ 8 00	
For surveying, - - -	244 00	
Collector 3 per cent. on $33,280 31, - - -	998 41	
Assessors for assessing, stationery, &c. - -	886 56	
Contingencies (paid to street commissioner,)	190 03	
		2,327 00
Total, - - - - -		$99,841 00

The witness produces the surveyor's bill above referred to, which is sworn to, August 3, 1820, by the affidavit of Mr. Daniel Ewen the surveyor, which is "surveying, compiling, collecting information, and drawing maps of the Third avenue, from its commencement at the Bowery to Harlem bridge, 61 days at $4 per day, $244." The assessment on the Third avenue, extended one half way to the next block same as Second avenue. The Second avenue is parallel to the Third avenue and about 500 feet distant, and there is not much difference in their situation and grounds, and he thinks it was as easy to make the maps of Second avenue as to make that of the Third avenue; in fact he thinks it was much more labor to make the map for the Third avenue, for the same distance, than it was to make that of Second avenue; it was a new thing when that of Third avenue was made, and there were many more assessments. The witness should not say there was the one tenth of the labor in making out the estimate and assessment of the Second avenue, that there was in making out the assessment which witness made out on Third avenue. The assessment which the witness referred to, as being a quire and a half of paper, on the Third avenue contained descriptions of all the property assessed. The abstract of the commissioners' report on the Second avenue is made out on two sheets of paper. The witness knows what services used to be rendered in cases of street improvements by the corporation counsel. The commissioners or assessors would make out their report or assessment-roll, and hand it to the counsel who would put it into legal form.

JONATHAN THOMPSON.

Cross examined by counsel for corporation. —The proceedings on the Third avenue, were not relating to the opening of that avenue, but relating to the regulating and grading. The witness is not aware that all such business in assessing, &c. relating to such regulating and grading, is now done by the corporation officers. The witness has understood that such proceedings would now cost a great deal more money than they did in 1820, when he thus acted; but he does not know why they should.

JONATHAN THOMPSON.

In further illustration of this matter we give below the testimony of JOHN LEONARD, ESQ. who acted as a commissioner on several streets.

(From Senate Doc. 100, p. 32, 33, 34.)

John Leonard being duly sworn, says—he was one of the commissioners of estimate and assessment, in opening Second avenue from 28th to 86th streets; was associated with Henry P. Robertson and Andrew Mills. Mr. Robertson and the witness were the only two who did any work on such estimate and assessments. Mr. Mills was there once or twice. Mr. Mills may have been there oftener than that, but he never did any thing, except to sign the report. Mr. Mills may have been there three or four times, but witness does not recollect distinctly of his being there more than twice; there was work enough for him to do, if he had attended to it, and had been capable of doing it. Mr. Mills signed the report. He made the same charge for his services that was made by the other commissioners; he received the amount of his charge from the comptroller of the city, through the witness. The witness was the chairman of the commissioners, and it was usual for the chairman to receive the whole of the compensation. Mr. Robertson's compensation was not received by the witness; but he believes it was received by his, Mr. Robertson's, assignee, Mr. Francis Fickett. The witness gave his receipt for such compensation, to the comptroller. The witness does not recollect distinctly, but thinks the report of estimate and assessment was confirmed, about August or September, 1839. The witness always made it a practice to give all the notice in relation to presenting such report, that the law required; and in order to make sure of that, the witness consulted with Mr. Emmett, the corporation counsel, who then had charge of those street proceedings. The witness does not recollect that any notice was given of presenting such report, by posting handbills in the vicinity of the contemplated improvement; nor in how many newspapers the said notice was published; that was left to the counsel of the corporation, who then had charge of the proceedings.

At the time the witness made that report, he was not aware of the existence of any law which required such notice to be posted up in handbills.

The witness thinks the amount charged by each commissioner in that case was over seven hundred and fifty dollars. The charge for room-hire was a separate charge. The allowance to the commissioners is four dollars per day. None of the fees of the commissioners or surveyors were taxed previous to being paid to the witness's knowledge. Those fees were assessed upon the property supposed to be benefited by the improvement. The fees were not paid until some time after the confirmation of the report. Mr. Robertson served the same number of days that the witness served. To make that report was a very long piece of work. From four to eight hours was generally considered a day's service; from five to six hours was the general length of time in a day. The room of the commissioners was in the witness's house. The report of the commissioners was drawn up by the witness. The witness examined the avenue so to be opened personally. The elevation of the ground on the Second avenue between Twenty-eighth and Eighty-sixth streets, was very irregular, some points very high above the city grade, and the soil rocky, and some points wet and below that grade. On some parts, it would be exceedingly difficult to reduce that avenue between those streets to the city grade, and would cost a large amount of money. The said avenue, when the commissioners went over it for the purpose of making their estimate and assessment, could not be travelled by carriages without being graded, by reason of its unequal surface. By awards, the commissioners understand the amounts due to the parties interested for the land taken. In making this assessment, the lots were estimated as to their respective value, in order to put upon each a regular per centage of the benefit to be derived. Corner lots were generally charged a third more than intermediate lots. In estimating the value of the lot, they took into consideration whether the lot was to be dug down or filled up, and upon ascertaining the value of the lots, a regular per centage was laid upon each, to the amount of the awards and expenses; so that the assessments for benefits equalled the whole amount of the awards and expenses. Such has always been the practice of the witness, and he has acted frequently as such commissioner of estimate and assessment. The witness recollects the old Kip's Bay road, which terminated near the line of the Second avenue, on a ledge or precipice of rocks, and that the same could not be travelled farther by reason of those rocks. If the witness owned land in the neighborhood of Kip's bay, he would not thank any body to open the Second avenue for his accommodation. If two commissioners done the work, it was always the practice to charge for the same compensation for the third commissioner, although he was absent. Witness always understood such to be the practice. The witness made out the bill in the case of Mr. Mills. Witness thinks he mentioned the case of Mr. Mills to Mr. Emmet the counsel of the corporation who had charge of these proceedings.

JNO. LEONARD.

(From Senate Doc. 100, pages 37 to 43.)

John Leonard, recalled on the part of the Memorialists, and he says: The witness was chairman of the commissioners of estimate and assessment on opening Second avenue from Twenty-eighth to Eighty-sixth street. At some meeting of the commissioners, witness set Mr. Andrew Mills to ascertain how many square feet was in part of a lot, and he could not do it. The witness did not attempt to make use of the services of Mr. Mills any further in that proceeding. Mr. Henry P. Robertson concurred with the witness and declined to make any further use of Mr. Mill's services in the matter of that estimate and assessment. After that abortive attempt at figuring, Mr. Mills went asleep in the commissioners' room, and done nothing more towards accomplishing the estimate or assessment. It is usual for the commissioners to draw the report in such cases, at least in all such cases the report was drawn by some one of the commissioners, where the witness was a commissioner. The witness ascertained the fees of the corporation counsel, included in the assessment from his suggestion; the counsel furnished merely the sum total of the amount of his services; the witness does not recollect any instance where he furnished items of such charge; he was merely asked how much his bill would be; it was towards the last of the

commissioners' calculations, and before preparing the report, that the corporation counsel was asked such question; the witness did not see any bill of such counsel for his services in such matter taxed or certified by any officer. Did not assess any lands for such improvement northerly of Eighty-sixth street, or southerly of Twenty-eighth street. The witness did not know that he could by law assess any lands northerly of Eighty-sixth street and southerly of Twenty-eighth street; on the contrary, witness believed that the commissioners could not legally make such assessment, and supposed the practice to be contrary. The witness thinks it would be a benefit to lands on the Second avenue, south of Twenty-eighth street, to open the said avenue to Eighty-sixth street. In the immediate vicinity of Eighty-sixth street, and above that street, the witness thinks the lands would be benefited by opening that avenue, but that would not extend far. In all cases where the witness has been a commissioner, it has been the uniform practice to limit the assessments to the end of the improvements each way. The statement produced in relation to Second avenue is signed by the the witness and the other commissioners. The sum total of assessments is $19,259.60. The aggregate amount of awards is $12,595.23¼. The expenses are,

Surveyor's bill,	$1,700 00
Appraiser's bill,	60 00
Corporation attorney, counsel and court charges,	2,033 55
Commissioner's fees,	2,280 00
Room hire, clerk hire, printing and stationery,	324 72
Collector,	300 00
Total expenses,	$6,698 27
Total amount of awards and expenses,	19,293 93

The witness arrived at the amount of surveyor's fees by the surveyor's bill, which was generally handed to the commissioners and carried back when the report was done. That bill was generally an aggregate amount. The commissioners knew the extent of the work, but they were no judges of the value of services. They received the surveyor's bill from the corporation counsel, and when they did not receive it that way they would ask the corporation counsel whether it was correct. The surveyor's bill was not audited or certified by any officer to witness's knowledge. The witness does not know who selected the surveyor. The commissioners did not select the surveyor. The first thing put in the commissioners' hands, after being qualified, was the map of the proposed improvement. The witness does not recollect who was the surveyor in case of Second avenue; he believes it was Thomas R. Ludlum. (The report of estimate and assessment in matter of opening Second avenue was confirmed on 4th September, 1839, as appears by certificate of amount of report on file with records of corporation. This forms no part of the testimony of Mr. Leonard.)

The Second avenue above Kip's Bay, runs through farms to 86th street, at the time when the estimate and assessment was made. The witness does not know how commissioners were appointed in 1835: his impression was, that Mr. Emmett usually selected or nominated them; but he does not know how it was. And he thinks there have been instances where the owners of land have interfered and nominated some. The witness does not know how it happened that Mr. Mills was appointed on that commission. He knew nothing of his own appointment until he saw the names of all three as such commissioners. The witness does not recollect particularly, any other instance in which an incompetent person was appointed a commissioner besides this Mr. Mills.

JNO. LEONARD.

September 24, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK,
Mr. SCOTT.

Mr. John Leonard was recalled and examined by the Memorialists. By drawing up the report by some one of the commissioners, the witness meant that the commissioners drew up a copy or statement of their work, and the counsel of the corporation drew up the long report, which contains the descriptions of land taken. The witness cannot tell the particular number of days Mr. Mills was there; he was not there five times, and done nothing when he was there; he was a perfect cypher. The precise number of days for which the commissioners charged, upon the said Second avenue, was 190 days for each commissioner, at four dollars per day. They called it a day, when they had from three to four hours' meeting, sometimes it was six hours. The room-hire charged was $285, which includes the time the witness was employed in making the abstract of the commissioners' work for the corporation council. The witness cannot now say, how much of that $285, was apportioned to each of said charges. The balance of $324.72 is made up with clerk-hire, printing notices to the parties to come forward and show titles to the property embraced in the assessment, and stationery. The expenses as they appear upon the minutes of the commissioners, kept by the witness, are as follows, to wit:

Surveyor's bill,		$1,700 00
Attorney's bill,		2,000 00
Collector's bill,		300 00
Appraiser's bill,		60 00
(These appraisers went twice or three times to examine buildings or any damages done apart from the land. They generally have two sets, but there was three in this instance.)		
Commissioners,		2,280 00
Room rent,	$285 00	
Clerk, printing, stationery,	39 72	
		324 72
		$6,664 72

For their services upon the said Second avenue, each commissioner charged for seven months and eight days, allowing 26 working days to each month.

The witness owns the house in which he resides and in which the commissioners transacted their business. The commissioners had always a room to themselves. The witness's house is worth a rent of $800 per year. The commissioners occupied the witness's ordinary parlor or back sitting-room on the first floor. Of the number of meetings of the commissioners, one fourth was for the purpose of notifying the owners of real estate, to produce their title deeds, and in attending to hear their statements; sometimes they came pursuant to the notice, and sometimes some of them did not appear; but the commissioners were always in attendance to receive and hear their statements.

JNO. LEONARD.

Cross examined by the counsel for corporation.—After they have completed the report, the counsel attend to giving the notices. The abstract of the estimate and assessments is what the commissioners are in the habit of making out, and from that, the counsel made the report. For each day the commissioners charged four dollars; and although but one commissioner met, and no business could be done, yet the commissioners each charged four dollars, as for a day's service. The witness never charged less than four dollars per day, nor more. The appraisers were professional persons; carpenters or masons to appraise the damages upon buildings. And it has always been the practice to employ such appraisers. The commissioners could never give satisfaction to the owners, unless competent persons were employed. The clerk hire was paid to the person who done the writing, and the witness done the writing, and the charge was received by the witness. The commissioners' bills or the witness's bill, in case of Second avenue, were not verified in any way. The witness was a commissioner in the case of Twenty-ninth street, between one and two years ago, and witness has not received his compensation in that case. This case of Twenty-ninth street was the last case in which the witness was a commissioner. He does not recollect when he was appointed. The report was confirmed, witness believes, last winter.

JNO. LEONARD.

Direct examination resumed by Memorialists.—When the witness received his compensation from the comptroller for his services as such commissioner on Second avenue, at the request of the comptroller, the witness furnished a statement in round numbers, the same as contained in abstract of report. The following memoranda from the witness's book of the proceedings of the commissioners, contain the statement which the witness so furnished to the comptroller, viz:

"Called at the Comptroller's office, 24th Nov. 1839, and was requested by him to furnish a statement of the demand of the commissioners. The following was addressed to Alfred A. Smith, Esq. Comptroller.

"*New York, 26th Nov.* 1839.

"ALFRED A. SMITH, Esq. *Comptroller.*

"*Sir*,—I annex, as requested, the amount of charges as per report of the commissioners

[Continued on the next (710th) page.]

for opening Second avenue from Twenty-ninth to Eighty-sixth streets, and remain,

"Respectfully, yours,
"J. L."

Expenses as Reported.

Surveyor's bill, - - - - - -		$1,700 00
Attorney's bill estimated, - - -		2,000 00
Collector's bill estimated, - - -		300 00
Appraiser's bill, - - - - - -		60 00
Commissioner's bill, - - - -		2,280 00
Room hire $285, clerk, printing and stationery, - - - - -		324 72
		$6,664 72
John Leonard as commissioner, - - - -	$760 00	
Do. for appraisers, - -	66 00	
Do. for room hire, &c. &c.	324 72	
		$1,144 72
Henry P. Robertson, commis'ner,		760 00
Andrew Mills, do. - -		760 00
Smith, surveyor, - - -		1,700 00
		$4,364 72

No other call for a statement was made upon the witness by the comptroller, than that above stated, and it is the first of the kind that the witness ever received. The witness cannot now state without a reference to his book, whether he was paid his charges as stated above, before or after he presented that statement to the comptroller. The witness does not know of any connexion existing between the said Henry P. Robertson the commissioner, and the said Francis Fickett, alderman, in relation to the said improvement.

JNO. LEONARD.

(From Senate Doc. 100, *pages* 113, 114, 115.)

John Leonard, recalled on the part of the Memorialists, says he was one of the commissioners for opening Twenty-ninth street; his associates were Lovell Purdy and George A. Baker; they completed the assessment within a year past; Mr. Purdy and witness made the estimate and assessment; Mr. Baker attended a very few times; in the estimate of expenses, Mr. Baker was allowed the same amount for services as the witness and Mr. Purdy, and that amount assessed on the property; witness delivered the report to Mr. Emmet, the counsel; don't know whether the statement of the expenses accompanied the report when the same was deposited for examination in the county clerk's office; don't know what Mr. Emmet done after said report was so delivered to him. JNO. LEONARD.

Cross examined by street commissioner on part of corporation.—Witness was chairman of the said commissioners; Mr. Baker was notified to attend verbally; Mr. Baker attended the meetings of the commissioners about half a dozen times; witness always considered that the attendance of two commissioners was all that was necessary in the making of such estimate and assessment; and when two attended witness never waited for the third commissioner; witness always considered two sufficient, even if the third commissioner did not attend at all; witness never heard of the law that required if one of the commissioners refused or neglected to act, another should be appointed in his place; witness has read the law in relation to his duties as such commissioner, but never heard or knew that the attendance of three comissioners was indispensable; witness does not recollect of signing any memorial to the Senate complaining of the high charges of the commissioners, surveyors, &c. in the matter of opening streets; witness is shown a printed memorial, in the Municipal Gazette, to which his name is printed, but has no recollection of signing his name to it; he may have signed it, probably did sign it; he should hardly have signed it without knowing the contents; his signature may have been given on some statement having been made to him, of its contents; the commissioners allowed Mr. Baker the same compensation for attendance, although he was there but five or six times, as was allowed to witness who attended all the time; the witness done all he could to correct those erroneous charges for services not rendered, by stating the fact to the corporation counsel, after they had completed the assessment, and after the Fees of Mr. Baker were included in the assessment; Mr. Emmet, the counsel, told witness it was necessary for the commissioners to swear to their attendance, and witness and Mr. Purdy made their affidavits to their full attendance and left Mr. Baker to take care of himself. Witness does not recollect whether the law requires the commissioners to make their report to the Supreme court or whether it is to be made by the counsel, but he has always handed in the minutes of the estimate and assessment to Mr. Emmet, the counsel, and he made out the report and presented it to the Supreme court, as the witness understands; does not recollect seeing any thing in the law which recognizes the agency of corporation counsel in the matters of estimate and assessment in opening streets or avenues after the appointment of the commissioners, but the universal practice to the witness's knowledge has been to present the report after the estimate and assessment were made to Mr. Emmet, the corporation counsel, and to no other person. Witness thinks it is very likely that he told Mr. Baker that he need not attend the meetings of the commissioners of estimate and assessment as he lived a great way off; Mr. Purdy and the witness, two of the commissioners attending, witness did not tell Mr. Baker that it was unnecessary for him to attend, but that he might suit his own convenience as to attending; witness made no complaint to the counsel about Mr. Baker's not attending, but merely stated the fact, and nothing probably would have been said about it, but that Mr. Emmet, the counsel said something about a new arrangement, witness thinks as to the oath required of the commissioners as to their attendance, and then witness stated to him the fact of Mr. Baker not attending; witness knows of no law which would authorize Mr. Emmet, as corporation counsel, to control the acts of the commissioners.

JNO. LEONARD.

Direct examination resumed on the part of the Memorialists.—When witness made the return of estimate and assessment to the counsel, Mr. Emmet, he informed the witness it was necessary for each commissioner to make out a statement of his services and swear to it for himself; and the witness then sat down at the desk of Mr. Emmet and made out his statement, swore to it, and informed Mr. Purdy. Mr. Emmet never told witness that he was not the proper person for him to make the return of the estimate and assessment to, nor any body else. It is now for the first time that the witness ever heard that the commissioners were obliged to return their report of estimate and assessment to the Supreme court, and never heard of an instance where it was done by any other set of commissioners; and by way of confirming that matter, witness would state that he has been on such commissions with Murray Hoffman, the present assistant Vice-chancellor, and Thomas R. Smith*; and witness would have supposed he would have gone correctly with them, even if he had been in error before; and never did the witness ever hear Mr. Hoffman intimate that such a course was required. Mr. Emmet, the corporation counsel, never told witness that he could not control the commissioners, and witness never knew that he could control them, or that any power could control them but the law. While acting as commissioner, witness always considered Mr. Emmet as the legal adviser of the commissioners; and where there was any doubt as to the course the commissioners should pursue, and they were not clear as to the law, they resorted to him for counsel, and always got it.

JNO. LEONARD.

Cross-examination on the part of the corporation resumed.—When the commissioners presented their report to Mr. Emmet, the counsel, to be presented to the Supreme court, the witness was morally certain he would present it to that court, and witness regarded him as the proper person to present it to that court.

JNO. LEONARD.

Direct examination on the part of the Memorialists resumed.—The witness received his

* On referring to Document No. 45 of the Board of Aldermen of 1839, and Document No. 71 of the Board of Assistants of 1840, we find it stated that Mr. Hoffman was a Commissioner of Estimate and Assessment on *twelve streets*, avenues, &c. On two of these he was appointed in 1831, two in 1832, three in 1833, one in 1834, two in 1835, and two in the early part of 1836. The aggregate amount of the three Commissioners' Fees in these TWELVE STREETS is stated $7050 00, which is $2350 00 for each Commissioner, or $195 83 for each commissioner on each street. The total amount of Awards on these twelve streets exceeded NINE HUNDRED THOUSAND DOLLARS: all the commissioners' Fees therefore in the twelve streets amount to a fraction over three fourths of one per cent.; whereas, in the 2d avenue the Awards were about $12,600 00 and the commissioners' Fees were $2,280 00, or about 18 per cent. [See page 38 of the Senate Report], and in the Seventh avenue the Awards were $28,141 42 and the commissioners' Fees $4920 00 or a fraction less than 18 per cent.—both of them, however, being about twenty-two times as much as those streets Mr. Hoffman was commissioner upon. The commissioners' share of Fees in 7th avenue were $1640 00 and in 2d avenue $760 00 each against $195 83 each in Mr. Hoffman's streets.—ED.

compensation, as commissioner of estimate and assessment on the Second avenue from Twenty-ninth to Eighty-sixth street opening, in corporation bonds which had some months to run, but witness does not recollect how long. JNO. LEONARD.

Cross-examination on the part of the corporation resumed.—Witness does not know whether the costs in case of opening Twenty-ninth street have been taxed in which witness was a commissioner of estimate of assessment; witness has not yet received his fees on that street. JNO. LEONARD.

FOR SEVENTH AVENUE.

The Counsel Fees are - -	**$3977.76**
Commissioner's Fees - - -	**4920.00**
Room hire - - - - - - -	**410.00**
Surveyor's Fees - - - - -	**2801.00**
Clerk hire - - - - - - -	**250.00**
Contingent Expenses - - -	**77.00**
Collector - - - - - - -	**1115.00**
	$13,550.76

(From Senate Doc. 100, *pages* 119 *to* 125.*)*

Anthony L. Robertson, having been called on the part of the Memorialists, and duly sworn, says—He is a counsellor at law and resides in the city of New York; he was one of the commissioners of estimate and assessment in the opening of the Seventh avenue from Twenty-first to One hundred and twenty-ninth streets; appointed by the Supreme court on the petition of parties interested, the principal of which was the representatives of the estate of Henry Eckford, deceased, and two or three other estates, which he does not now recollect; his associates were John Harris and George W. Murray. Mr. Harris, witness thinks, gave himself the title of chairman, but witness regarded him as having no precedence among the commissioners; the meetings of the commissioners were held partly at a room belonging to Mr. Harris, in Fulton street, and partly at his house, in Harlem lane; don't recollect when he was sworn in as commissioner; witness can't tell how many days or months they were occupied in making the estimate and assessment; the number of meetings will appear from the report; the whole time that elapsed from the commencement to the finishing of the report, was from two and a half to three years. The witness, by his recollection, received for his commissioner's fees $1,400. The charge for the commissioners, as appears by document No. 45, is $4,920, which would make the fees of each commissioner 1,640; he can't account for this discrepancy; from his memory he would still state that he received for his fees $1,400; witness does not think he did attend all the meetings held at Mr. Harris' house, at Harlem, but was engaged in making calculations at his own house, upon the same parts of the avenue they were engaged upon at said meetings. Witness does not recollect whether Mr. Murray was absent from the United States a considerable part of the time while that estimate and assessment was making, but witness's impression is that he was not, as he was in the habit of seeing him frequently and would notice any long protracted absence; witness never made out any bill of the number of meetings; only made out a statement of the gross amount; he kept an account of the number of days he was employed; he has not got that account; he has either destroyed it or it is in the possession of Mr. Harris. Has occupied an office adjoining that of Mr. Emmet, former corporation counsel, and communicating with each other until within a year past; witness is acquainted with the hand-writing of Mr. Emmet, and is shown a letter dated New York, November 12, 1840, signed R. Emmet, and addressed to William Adams, Esq. assistant of the Fifth ward, and says that it is in the hand-writing of Mr. Emmet. Four thousand nine hundred and twenty dollars, at the rate of four dollars per day, is the pay of three commissioners for four hundred and ten days each; the commissioners, as is usual in such cases, made an abstract of their estimate and assessment, from which Mr. Emmet made out the report; a report was deposited in the county clerk's office by the direction of the commissioners, and signed by them; witness never saw that report afterwards, and does not know what became of it. When witness applied for his fees as commissioner he got a warrant from the street commissioner's office, from Mr. Gaines he thinks, or the comptroller; at the time of getting that warrant he deposited in the street commissioner's office an abstract of the estimate and assessments, with the expenses in gross amounts as commissioners' fees, $4,920, surveyors, $2,001, &c. the Supreme court having passed upon the accuracy of the items contained in their report, he did not consider the corporation or any of its officers authorized to question their right to the amount charged by them, they being the mere depository of moneys paid by persons assessed, to be paid to those to whom it was awarded by their report. Witness believes the expenses are stated in a paper annexed to the report, and the Supreme court passed upon that report. He has been a commissioner on other streets; he believes the amount of their charges are such as commissioners have stated in their report; they are stated in gross. The persons interested in that avenue could have ascertained the amount of expenses by deducting the amount of awards from assessments; the balance would show the amount of those expenses. To ascertain that, they must add up the items on each page, which are probably not more than three in number on each page, and are carried out on the margin for facility of reference. Thinks the report must have contained two hundred leaves, but that is a guess; it was very thick, and asked if it might not contain one thousand pages, witness says he can't tell; at a mere guess he should say there was about one thousand persons assessed. Witness thinks he saw Mr. Harris and Mr. Murray together, meeting as commissioners, two hundred times, principally at Mr. Harris's room, in Fulton street; at these meetings they were together between four and six hours.

ANTH'Y L. ROBERTSON.

The committee adjourned to November 9th, inst. at 7, P. M. to meet at the assistant vice chancellor's room, in the City Hall, in the city of New York.

November 9, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK,
Mr. SCOTT.

Anthony L. Robertson, being recalled and further examined on the part of the Memorialists, says: he wishes to correct his testimony so far as to state that the commissioners met in a room in the building at the north-west corner of Wall and Nassau streets, a room of Mr. Harris's, previous to meeting in the room of Mr. Harris's in Fulton street. Being asked upon what principle he made the assessment on Seventh avenue, says it is a very difficult question to answer; does not know that any one principle was adopted; they estimated the benefits and damages according to certain rules of valuation. Being asked what were those rules, answers that considering the laws allowed them to assess to half the distance between the avenues for benefit, that a block formed by a line drawn half the distance from middle of Seventh avenue to the middle of the avenues on each side of the lines drawn through the middle of each street, and the line drawn through the middle of the Seventh avenue should have the assessments for benefit and estimate of damage exactly balanced, distributing among the parties assessed for benefit their proportionate share of the expenses connected with making the estimate and assessment, and establishing a rule for varying the rate of assessment for benefit of the land adjoining each street crossing the proposed improvement, according to the distance of such land from the line of the improvement; each 100 feet of land, as it receded from the proposed improvement, being charged with a different and regular per centage of assessment to be paid for land to be taken for said avenue; where the owners of the land adjoining the proposed improvement were not the same as the owners of land taken for the said improvement, an assessment was charged upon the owners of the adjoining land to make up a fixed sum to be allowed to the owners of the lands taken for the said improvement, at a certain price per square foot. The assessment upon each lot of 25 by 100 feet, or less, was calculated upon the basis of valuation adopted by the commissioners. The reason of taking each lot of 25 feet by 100 for the calculation of separate assessments, was, that it had been found by experience in previous assessments that lots would frequently change ownership during the progress of the assessment, whereby inconvenience would arise to different owners in paying their assessments to the corporation, and great difficulty to the officers of the corporation in making the apportionment of such assessments; it being a period in which real estate had frequently changed owners, and pieces of field ground were divided up and sold by lots of said dimensions. Upon being asked whether a large portion of the land on the Seventh avenue was not laid out in farms upon the maps, he answers that upon the map furnished to the commissioners the witness thinks the land was laid out in lots the most

of it. Being asked upon the principle he had stated how long it would take a commissioner to make the estimate and assessment on Seventh avenue, from Twenty-first to Twenty-second street, and to the centre of the block each way, he answers, that would depend upon the number of owners, the size and shape of the lots, and the distance of irregularly shaped lots from the proposed improvement, and the size and shape of lots in the line of the proposed improvement. Being asked in the worst case he could put it, how long it would take to make that estimate and assessment, he answers, that would depend somewhat upon the facility of the commissioners in making arithmetical calculations; he should think some lots would take a person of ordinary facility in such calculations, a day. The witness being asked if he viewed the ground when he made the assessment, answers, he went over the ground and took a view of it in the eye of the law, but did not go over the hedges and ditches and ponds which lay in the way. Being asked if he visited Alderman Townsend's ground, says he cannot now recollect; if there was any thing remarkable about it to call it to his recollection he might say, but he could not now state from recollection how many persons' grounds he saw. Witness recollects a gentleman, who Mr. Emmet called Mr. Townsend, calling upon witness after the report was presented, and he thinks disposed of, in relation to some assessment; he complained of his having been assessed wrongfully, in some way, and witness thinks he referred him to Mr. Harris, and told him that Mr. Harris had the papers, calculations, &c. Witness is asked if, upon the principle they made the assessment, whether, if Mr. Townsend owned from the centre of the avenue to the centre of the block, he would not have been entitled to an award instead of an assessment? He answers that he would, provided that the share of expenses charged on him did not exceed the estimate of benefit to those in his rear. They got the amount of counsel fees from Mr. Emmet; he stated to the commissioners what his charges were; did not consider the amount allowed to Mr. Emmet any more than a fair legal compensation, taking into consideration the services performed by him in the size of the report, and going to Albany to attend its confirmation.

The witness being asked what services Mr. Emmet rendered for that amount ($3,977.76), he answers preparing the petition for the appointment of commissioners (witness thinks he has seen petitions like those shown him); going to Albany, making the motion for the appointment of commissioners, advising with commissioners upon legal questions as to the ownership of lands, and as to their duties in assessing; the drafting and preparing copies of the report to be filed in the county clerk's office, and to be presented to the court; drafting and copies of advertisement of notice of presenting report for confirmation; advising with the commissioners in relation to objections, if any are presented; preparing affidavits to oppose objectors; preparing drafts and copies of final rule for confirmation of report, which included the whole report; counsel fee upon moving report for confirmation; being prepared to meet objectors, and printer's bills, with clerk's fees for filing report and entering long rule including substance of report, and which is longer than the report itself.

The surveyor was employed by the commissioners, except the one to make the map, previous to the appointment of the commissioners.

Upon being asked why so much larger sum is allowed to the collector of assessments on that Seventh avenue than on similar improvements, answers, he cannot say; there were a great many persons assessed. His impression is there was some rule for making that allowance, either the number of owners, or there was such a number of sums to be collected.

In regard to room-hire, he thinks they had some rule, and allowed the same amount that was charged and allowed for room-hire in a public house as in case of legal references in the city of New York. Mr. Harris received all the allowance of room-hire in case of Seventh avenue, as it was his room the commissioners used.

Witness has been commissioner on other improvements beside Seventh avenue; he thinks Forty-seventh street and Forty-eighth street. It was the general custom to allow each commissioner for an attendance at each meeting, although they were not all three present; but witness was never allowed for any attendance as such commissioner when he was not engaged upon business as such commissioner. Witness had no interest directly or indirectly in the Eckford estate. Mr. Tillou, who represented that estate, witness thinks, in the opening of some other street, complained of the acts of the commissioners, and wished to have some person appointed on this commission on whom they could rely; but whether it was Mr. Clinch or Mr. Tillou who suggested the witness' name as such commissioner he does not now recollect.

Witness believes Mr. Harris was engaged as a commissioner in some other streets at the same time that he was a commissioner in the Seventh avenue; witness thinks that Mr. Harris was engaged at the same time in as many as Five streets. The commissioners generally met together; but sometimes the witness met with Mr. Harris, and sometimes with Mr. Murray. Dr. Boles was the clerk of the commissioners in Seventh avenue; the witness received his pay, he thinks, as a commissioner, in a warrant on the Mechanics Bank.

The witness thinks a fair rent for the basement room which the commissioners occupied in Wall street would be $2 or $300 per annum; they were six or nine months in Fulton street; they occupied a front room in third story, three story building, worth a rent of $150 or $200 per annum; they were there the balance of the time, except the time at Mr. Harris's home in Harlæm lane, and they allowed $1 per day for room hire at his house in Harlæm lane; that charge included candles and fire. The surveyor's bill, $2,801, witness thinks, is a reasonable charge for his services, as he had to examine the register's office as to titles and make all the surveys.

ANTH'Y L. ROBERTSON.

Adjourned to November 10, 1841, at 7, P. M. at the City Hall in the city of New York, at the assistant vice-chancellor's room.

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November 10, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK and
Mr. SCOTT.

Anthony L. Robertson having been recalled by the Memorialists, and his examination continued. The witness examines the map for opening Seventh avenue, between Sixty-first and Sixty-third streets; he should think the commissioners had nothing to do upon the two blocks between those streets but to estimate the proportionate part of the expense, the said two blocks belonging to one owner, and being described to one owner; between Sixty-first and Sixty-seventh streets, and between Seventh and Eighth avenue, the whole land is owned by three owners, and divided into three parcels; the block between Twenty-ninth and Thirtieth streets, between Sixth and Seventh avenues, no one could have calculated the assessments in less than three days, adopting the rules that the commissioners did in that matter. The map now shown is the damage map of the Seventh avenue, showing the land taken from the avenue. Half the width of the avenue appears to have been taken from Mr. Benjamin Townsend, and he has complained of an assessment being imposed upon him instead of an award given to him.

The witness cannot now tell how the commissioners arrived at their conclusion in making that assessment, as all the minutes of the commissioners are now lost or destroyed, as witness understands from Mr. Harris, one of the commissioners; but witness supposes that the lots of Mr. Townsend and those adjoining have originally belonged to the same farm and been owned by the same person, and that by the conveyances of such adjoining lots, the land in the avenue had been dedicated as a public way so as not to entitle Mr. Townsend to any thing more than a nominal compensation for it. The land of Mr. Townsend, lying between Forty-ninth and Forty-eighth streets, is 105 feet six inches wide in the rear, and but 76 feet five inches wide in front on the Seventh avenue, so that he would be obliged to pay, according to the principles adopted by the commissioners, his proportionate share of the land lying in the avenue in front of the rear of his land so as to make a square at right angles. The land on the opposite side of the avenue from that of Mr. Townsend, extended from the Seventh avenue to the Bloomingdale road, so that there were no lots in the rear, the conveyance of which would operate as a dedication of the avenue; and that part of said land lying between Forty-ninth and Forty-eighth streets was but 40 feet and four inches wide in the rear and about 65 feet six inches wide in front on said avenue, so that the land lying in the rear of such front would be liable to pay its proportionate share of the amount allowed for the land taken for the avenue from them.

Mr. Townsend's land runs back two hundred feet from the avenue, and Smith & Moore's on the opposite side runs back from the avenue about 175 feet, so that they would pay still less of their share of the assessment than Mr. Townsend would be obliged to pay. The fact that the land on the damage map of the Seventh avenue to the centre of said avenue is marked with the name of Benjamin Townsend, is not presumptive evidence or any evidence that Mr. Townsend was the owner of that land, as the same was made by the surveyor, who might not know the legal effect of the conveyances before made. No award was made for that land marked with the name of Benjamin Townsend to any other: the presumption would be that if it belonged to any person to be awarded, it would belong to Mr. Townsend. Witness has examined the abstract of the assessments in the Seventh avenue, and there appears to be near 800 items of assessments for the opening of that avenue. The awards on that avenue are stated at $28,141 42, as appears by that abstract, which the witness has no doubt is correct. The witness assessed lots fronting on the Bloomingdale road, and he presumes upon the ground that the road was to be considered in law as closed, and that the owners on each side were entitled to take in to the centre of that road. There is but one house from Twenty-first to Fiftieth street on the Seventh avenue, and witness cannot tell whether any award was made for that house or not; and no house from Fiftieth to Seventieth street; and no house from Seventieth to Ninetieth street; none from Ninetieth to One hundred and tenth street; and none from One hundred and tenth to One hundred and twenty-ninth street; and witness does not think that one house on said avenue was awarded any thing.

ANTH'Y L. ROBERTSON.

Cross-examined by the street commissioner on the part of the corporation.—After the commissioners were appointed on the Seventh avenue, the services rendered by Mr. Emmet, he rendered as counsel of the commissioners. The commissioners are not under the control of the corporation or other officers, nor under the control of the counsel of the corporation in any way. The commissioners audit the surveyor's bill for making maps. Witness took charge of Mr. Emmet's general unfinished legal business when he was appointed counsel of the corporation, but had no connection with him in his corporation business or as connected with said reports of commissioners. Witness believes Mr. Murray was appointed commissioner on the application of parties interested, as he saw a petition for his appointment signed by parties interested in Mr. Murray's possession. Witness believes Mr. Emmet applied for three commissioners in the usual way for Mr. Harris and two other persons, and those two others were stricken off by the Supreme court, and Mr. Murray and the witness appointed in their stead. The Supreme court had done so before; Mr. Hallett and Mr. Kinney had been so appointed on other streets. When the commissioners made the allowance to the collector for collecting the assessments, the witness did not know who was to collect those assessments, and does not know to this day who is such collector. In making the awards for damages, the commissioners examined the title deeds brought to them by the parties claiming such damages. ANTH'Y L. ROBERTSON.

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November 2, 1841.

The Committee met pursuant to adjournment.

Present—Mr. Furman,
Mr. Verplanck and
Mr. Scott.

Benjamin Townsend having been called on the part of the Memorialists and duly sworn, says: That he resides in the city of New York, and was formerly an assistant alderman of the said city; that as to the assessment for opening Seventh avenue from Twenty-first to One hundred and twenty-ninth streets, while the same was pending before the commissioners, he was sick, and remained so for about eighteen months. Some three or four years elapsed between the resolution of the common council for opening said avenue, and the confirmation of the report. He supposed it was abandoned, and heard nothing about it until he was called on for the payment of the assessment on his property. When the bill was presented, he called at the street commissioner's office, obtained names of the commissioners, and examined the maps. In examining the maps and abstract, he saw the property adjacent to his, and owned by Baltus More, awarded at $293 and some cents. The division fence between More and witness runs through the centre of the avenue; the adjoining land below witness belonged to the estate of Thomas Addis Emmet, deceased, and he was awarded $205 and some cents. Mr. Guest for adjoining land above witness, was awarded $274 and some cents; and witness was assessed $213 and some cents, and awarded nothing. Witness owned to the centres of the streets on all sides of his property, except in the rear, and more land was taken from witness for said avenue than from either said More or said Guest. Witness then made application to Mr. Murray to see his notes, and he said, if he saw the map he could tell witness how it was. Witness then carried him a map of the property of witness and that adjacent, and he then said to witness, that to tell him the truth, he knew nothing about the maps, and had no knowledge by which he could judge or estimate the value of the property; that Mr. Harris made up the assessment, and if there was any mistake in it, he presumed Mr. Harris would give explanations, and it would be corrected. Witness then called on Mr. Robertson, one of the other commissioners, who was in an office opening with folding doors into that of the then corporation counsel, Mr. Emmet, and he found Mr. Emmet and Mr. Robertson both present in that office, and witness asked Mr. Robertson in regard to that assessment, how such a mistake could be made; and witness described the situation of his property on the Seventh avenue. He answered witness, that he knew nothing about it; he was never there; he believed the avenue was some five or six miles long; that he was never on the premises; that Mr. Harris made the assessment, and witness should apply to him. Witness then asked Mr. Robertson where Mr. Harris lived, and he replied, that he lived in Harlem, and that he did not know that he kept any office in the city. Mr. Emmet observed, that Mr. Harris was frequently in the Times office, in the lower part of the same or an adjoining building; and witness wrote a note directed to Mr. Harris, and left it at the Times office, and called there once or twice, some little time afterwards, and there met Mr. Harris, and asked why he should have made such a difference in the awards and assessments for property taken for that avenue and adjacent to each other; and he told witness that the property was very accurately surveyed and examined into, and the value of the land in the awards made up by the square foot; that the land taken from the witness for the Seventh avenue was awarded at the same rate as the land taken from Mr. More and other persons for the said avenue; that his minutes of making up his report would show that fact: and that if it was not so in the report, and such award made to the witness, it had been altered by the counsel of the board; and witness then asked him what authority the counsel of the board had to alter a commissioner's report, and he answered witness, that the counsel had done so sometimes.

Witness then petitioned the common council, and in the board of aldermen it was referred to the committee of which Alderman Benson was chairman; and in the assistants, to the committee of which Assistant Alderman Underwood was the chairman; and that neither of said committees made any report. The witness attended the committee on assessments on notice, and the chairman told him that he had sent for the commissioners, and they had not attended; the witness was then dismissed, and never heard any more about it. During the last summer or fall, a special committee in aldermen, and committee of assessments in assistants, was appointed to hear complaints as witness understood; and Assistant Ald. Underwood requested witness to make out his complaint in relation to opening the Seventh avenue; and in his petition he told said committee that the maps in the street commissioner's office would show, by the location of the property, that a mistake had been made, and that it was an award due to the witness in place of an assessment against him for such opening. Witness told Mr. Underwood that Mr. Harris the commissioner had told him that his Harris's notes would show that it was an award, and that Mr. Emmet the then counsel of the board in the matter of the Seventh avenue had those notes. Mr. Underwood told witness that he had twice made application to Mr. Emmet for those notes of the commissioners, and he once promised to give them to him, but had not done so, so that Mr. Underwood could not have them to assist him in making out his report on the petition of the witness.

Witness went to Albany, and there saw the report of the commissioners in the matter of opening the Seventh avenue, on file in the

Supreme Court clerk's office, and examined the report, and looked for a bill of costs with it, but could find none accompanying it or attached to it. Witness was three or four hours in examining the said report.

Witness at the supreme court clerk's office first asked for the court records, and they handed him books as the records, but which contained opening roads in the western counties of the state, but nothing in relation to the city of New York. Witness then told the clerks that he came from the city of New York, and wanted to see about opening streets in that city; he had a list of eighteen streets, together with the names of the commissioners who served on those street openings, and the clerk showed the witness the reports for five of those streets, and told witness there were no papers relating to the other streets, but they were probably to be found in New York. About three weeks or a month afterwards witness went to that office a second time, and again asked for the same papers, and was told that he might find them in the city of New York; that they were not in that office to their knowledge. Witness then went to John E. Lovett, who had held the office for opening streets in the city of Albany for the period of nine years, as he informed witness, and the witness told him what occurred with him in the office of the supreme court clerk, and he told witness that he thought there must have been some misapprehension, but witness insisted there could have been no such misapprehension, for the matters occurred just as he related them above; that Mr. Lovett then went with witness to the clerk's office, and when there, and in the presence of the clerks, witness asked Mr. Lovett to take his (witness's) protest that those papers were not in that office. Mr. Lovett then spoke to the clerks and told them the papers were in the office, and if not they could say so; then the clerks produced the journals of the court, and then Mr. Lovett went to the cases and laid his hands upon the papers without difficulty; and witness found that only five streets out of the eighteen of which witness had the list, had been entered upon the journals or records of the court; the papers of those five streets were there; then they examined the index for four years back, and also the proceedings of the court for the different terms for four terms, and could discover nothing about any other of those streets but the five. Mr. Lovett then asked the clerk if the journal of the court contained their proceedings, and he said it did; and Mr. Lovett then asked him if there were any proceedings or transactions of the court not entered on the journal or put in the index, and the clerk replied no. Witness and Mr. Lovett informed the clerk of the deficiency as to the papers in the other streets which could not be found in the index or journals of the court, and he said the reports were probably in New York; that there might be some loose papers about the office which would show that some action had been had by the court in those other streets, but where those papers were he could not tell, and knew nothing about them.

About a fortnight after that witness received a letter from Mr. Lovett, which letter is now in the possession of Alderman Jones, in which he stated that he had spent a great deal of time in examining in the Supreme Court clerk's office, and found some papers which showed that some action had been had in some other streets, but which were not entered on the court records, but that in relation to two of those streets witness believes that no papers could be found.

Mr. Lovett also asked the clerk about the expenses attending such street openings, and he said it was eighteen cents for entering rule, eighteen cents for certified copy, and six cents for filing report. The principal clerk with whom witness and Mr. Lovett had the preceding conversations was Mr. Wendell, and he sometimes called the attention of other clerks to produce the books, whose names the witness does not know. The Seventh avenue from Twenty-first to Twenty-fourth streets, witness thinks is opened actually, but he thinks not beyond Twenty-fourth street.

The witness's property was assessed $52, for opening Mount Morris square; witness examined the assessment map in that case, and found it to contain nine blank numbers, which had no assessment carried out against them, which formed nearly a whole block which was not assessed. The Fifth avenue runs through the centre of the square; on the easterly side the property from One hundred and eighteenth street is assessed, and the property on the westerly side is not assessed at all. The lots not assessed are within the limits of the assessment district; lots beyond those lots not assessed are assessed. Mount Morris square is a cone of rock about one hundred and fifty feet above the level of Harlæm plain.

While witness was chairman of street committee in board of assistants, a resolution offered by Mr. Holden the year previous for opening all the streets on the commissioner's map, not opened up to Forty-second street, was among the unfinished business of the street committee in the street commissioner's office, and this resolution came as a matter of course before the committee of which the witness was chairman. It lay along some considerable time; the street commissioner, Mr. George B. Smith, was consulted on the subject. The committee went out and examined all the grounds; examined the water works, house of refuge and poor house, which belonged to the corporation, and covered ground of the streets. In this proceeding more than double notice was given to the owners of the land. The estates in this district had nearly all been sold out in lots, with the exception of some three or four large estates, as Mr. Eckford's, Mr. Ray's and Mr. More's. It was deemed proper on consultation with Mr. Smith, that reservation of the lands of Bellevue, the poor house, house of refuge, the water works and all grounds owned by the corporation and ceded to them by the owners. The persons who inquired of the street committee in relation to the matter, were informed that it was the intention of the corporation to reduce the expenses of street openings, and the irregular mode of assessing lots two or three times for one improvement. There was but one person who objected to these openings; it was the attorney of Mr. Eckford's estate, Mr. Tillou, but said if it was not to take place in two or three years he would not object to it. He was informed by Mr. Smith that those openings would not take place before the expiration of two or three years. Witness intended to open all those streets to Forty-second street by one general opening and by one set of commissioners, and he asked Mr. Smith what would be the saving in expense by pursuing that course, and Mr. Smith then ordered Mr. Warner, his assistant, to show witness the expense of opening streets in detail, two or three blocks at a time, and witness found the expenses much greater than he had anticipated. Witness asked how it came that the commissioners' fees were so large, and he replied that their expenses could not be much reduced. He showed witness that the commissioners were allowed not to exceed $4 per day, and asked if that was too much; witness replied he did not think it was; that it was difficult to obtain surveyors, and they were allowed $3 per day, and asked witness if that was too much, and witness replied that he did not think it was; and $1.50 per day was allowed for chain bearers. Witness asked how the court charges were so high, and Mr. Smith replied the counsel represented that he had to attend at Albany, and sometimes further west, and the court charges were sometimes very high.

On examining the amount of court charges, the street committee could not feel themselves authorized to report authorizing Mr. Emmet to make application for opening those streets, but that it should all be done at one time by the common council, or by some person whom they should authorize for that purpose. The finishing clause to a report, "that the counsel be authorized to take the necessary measures to carry the same into effect," was omitted purposely and not inserted in order to save the expense. The bill of costs of the counsel for street openings and court charges had never at that time been presented, and witness knew of no way to get it, and Mr Smith told witness he could not get it and must content himself without it. The report of the committee was left with Mr. Smith, who examined and approved of it before it was submitted to the board for action. It was afterwards presented to and adopted by the common council with one exception; the house of refuge was stricken out by the board of aldermen; it was again inserted and finally concurred in by the aldermen.

By examining maps, &c. the street committee made an estimate that the expense of opening all those streets to Forty-second st., would be five thousand dollars; that a ward map and a grade map had already been made which might be used in that improvement, would save the expense of surveying, and the great object of the committee was to save as much expense as possible to the owners of the lands to be assessed.

Mr. Henry Young called on witness and inquired why the expense of street openings was so great; it was before the report of witness, and the witness informed him of the

plan contemplated as above, and that the expense of street openings would thereafter be reduced very much.

Isaac Adriance has made a map for the Twelfth ward, which he engaged to make for one thousand dollars, and if there was any extra trouble about it, he told witness he contracted to make it for one thousand five hundred dollars; it is a full ward map, and was, after completion delivered to the assessors of the Twelfth ward to make out their assessment by; witness has examined the map, and seen his property on it.

With the exception of Forty-eighth street, witness does not know of any other street from Forty-second to Fifty-seventh street, which has been opened, for which assessments have been laid within the last six years. On recollection witness thinks Forty-sixth street, from Eighth to Ninth avenue has been opened within a fortnight past; Fifty-ninth street from Tenth avenue to North river, and no other to his knowledge. The Tenth avenue, from Seventy-first street to Kingsbridge is not opened at all. The Sixth avenue from Thirty-fourth street to One hundred and ninth street, is not opened. Manhattan square is in the same situation it was before the assessment was made, with the exception of the wood cut off it. The streets between Twenty-fifth and Forty-second streets are not opened, except two or three; Twenty-second street has recently been opened; Forty-second street is opened from Third avenue to Tenth avenue; Fortieth street is opened between Bloomingdale road and Eighth avenue, for one block, a little over 900 feet. Witness does not know how the commissioners of estimate and assessment were appointed; never heard how it was done; did not know they were appointed by the corporation; never heard of a book in the street commissioner's office in which the names of those commissioners were entered; did not before know of the existence of any such book.

The witness produces a bill for an assessment for regulating and setting curb and gutter in Eighth avenue, from Twenty-fourth to Forty-second street, on property of witness being about fifty feet front, amounting to $254 $\frac{44}{100}$, assessment, confirmed December 28, 1838, which bill he paid. The Eighth avenue previous to this regulation, was a good turnpike road from Twenty-second to Forty-second street. Between Twenty-seventh and Thirtieth street, at Strawberry-hill, the sidewalk was cut down in some places eight or ten feet, and in others two or three feet; about Twenty-eighth or Thirtieth street, the road was lowered about three feet; witness cannot be particular as to distances, he speaks merely as a traveller passing over it. There was rock and sand on the sidewalk at Strawberry-hill on the westerly side, about Twenty-seventh, Twenty-eighth and Twenty-ninth streets; the rock was blown out and taken away and sold, either as building stone or the scraps to fill in docks; the sand is the only building sand in that section of the city; it is carted as high as Fiftieth street; witness has paid one shilling a load for 400 or 500 loads of it. BENJ. TOWNSEND.

Adjourned to Nov. 3, 1841, at 7 o'clk, P. M.

November 3, 1841.

The committee met pursuant to adjournment.

Present—Mr. FURMAN,
Mr. VERPLANCK,
Mr. SCOTT.

Benjamin Townsend this day produced a letter from John E. Lovett to him, of which the following is a copy:

"*Albany, October 24th*, 1840.

"BENJAMIN TOWNSEND, Esq.

"*Dear Sir*—In compliance with your request, I have again and again gone over the books in the office of the clerk of the Supreme court in this city, in search of the rules in the cases by you specified. The clerk has in many of the cases rendered me the assistance in his power, but I find the examination to be thorough, would require a clerk at least a week to go over all the *papers*. I say the *papers*, for on inspection I find that the books do not give the facts required. I will give you an instance. I look on the printed sheet in the volume which you left me, and find 'Eighty-third street, from Third avenue to avenue A, confirmed 12th of June, 1837;' 'John Harris, Nichs. Schureman, J. Brown, commissioners.' I then examine the minutes of the court and find no such entry, then look at the volume of street reports, and find no such entry in the index. The original papers are then referred to, filed in the month of June, 1837, by the counsel for the corporation, and I find the return endorsed 'Opening avenue A from Seventy-ninth street to Eighty-sixth street,' and after that report is closed, and in the same sheet I find it entered thus: 'Also report in the case of Eighty-third street, from Third avenue to avenue A.' Commissioners as you have named them.

"This is given as an illustration of what I suppose to be the case as to the others.

"I called the attention of the clerk to this case, and he says he presumes the others will be found in the same way. But so long as the index is not the true test, I might search a week and then be no wiser than when I commenced. The clerk says he presumes that he has given certified copies of the rules confirming the reports of commissioners as stated in the printed pamphlet, though he has no means of deciding at the present time.

"I called his attention to the amount of court fees; he replies as did the deputy clerk in your presence.

"Motion is made in open court for confirmation, a rule is thereupon entered; the charges are six cents for filing each paper; entering rule eighteen cents for each folio, and eighteen cents for each folio of the certified copy of rule and copy of commissioners' report, he says that the report will often contain a thousand folios and sometimes more.

"He refers you to the copies on the files in New York, as to the length of the reports of commissioners.

"Thus I find I can get nothing at the office here, unless it be by going over all the reports filed since 1837, and now blended with the other papers in the office, for the index does not tell the whole story as is illustrated in this sheet. The clerk declines giving any certificate as to the expenses; says it will be impossible to be got at with any thing like exactness.

"Yours respectfully,
"JOHN E. LOVETT."

"*Benjamin Townsend cross-examined on the part of the corporation of New York, by street commissioner.*—Witness knew that Seventh avenue was ordered to be opened by the common council before the report of commissioners was confirmed, but did not know names of commissioners, and made no examination as to whether his property was assessed, because he was then and had been for some time previous sick and unable to attend to business.

Among the streets, witness inquired about in Supreme court and clerk's office in Albany, were the following, viz:

Eighty-fourth st., which was found right.

Second avenue from Eighty-sixth street to Eighty-ninth street.

One hundred and nineteenth street from Fourth avenue to Hudson river.

Eighty-third street from Third avenue to avenue A.

Avenue A from Seventy-sixth street to Eighty-sixth street.

One hundred and twentieth street from Fourth avenue to Hudson river.

Fifty-seventh street from East river to Hudson river.

Eighty-fourth street from Third avenue to Fifth avenue.

One hundred and twenty-fifth street from Manhattan street to Bloomingdale road.

Eighty-fifth street from Third to Fifth av.

One hundred and twenty-fourth street from old Church road to Hudson river.

Forty-ninth street from East to Hudson river.

Fifty-sixth street from East to Hudson river.

Second av. from One hundred and ninth to One hundred and Twenty-third street.

Forty-seventh street from East to Hudson river.

One hundred and twenty-second street from Third avenue to Hudson river.

Seventh avenue from Twenty-first street to One hundred and twenty-ninth street.

Fifth avenue from Forty-second street to about One hundred and twenty-ninth street.

John Harris was commissioner on all the openings of those streets and avenues, but the Fifth avenue. Witness was assessed for opening Mount Morris square $52, for 14 lots of land. Witness does not recollect whether any resolution was passed while he was a member of the common council, to apply to the Legislature to change the location of that square. The resolution for opening streets up to Forty-second street, did not contain the clause authorizing the counsel to make application for opening those streets, but the committee designed the same should be opened by one set of commissioners, in the same manner as the upper part of the city was laid out by Rutherford, Morris, &c. commissioners under the act of the Legislature. By the witness's statement, that he has known the

same property to be assessed two or three times for the same improvement, the witness does not wish to be understood as meaning to say that the same property has been assessed two or three times for the opening of the same part of a street or avenue; but that instances have occurred, where streets or avenues have been opened by two or three different proceedings, a part at a time in detail, and the same property has been assessed each time such partial opening in detail was made; but such assessments have not been made more than twice on the same property to the witness's knowledge. The intention of the street committee was to open all the streets to Forty-second street by one set of commissioners, with one court charge. There was no resolution submitted to the common council to carry out that plan of the street committee, stated in their said report, which report is as follows:

"The Street Committee to whom was referred the annexed resolution, which proposes to inquire into the expediency of opening all the streets and avenues (not already opened), up to and including Forty-second street, respectfully report: They have caused public notice to be given, of the pendency of the before mentioned Resolution, in the daily papers in order that the most extensive information should be given to all parties concerned, as in a contemplated movement of such magnitude was desirable to obtain a very general expression of public opinion.

"The only remonstrances which have been presented against opening these avenues and streets, are but from a very small number of proprietors or lessees, whose interest is either limited in amount or of very short duration, while on the contrary an almost universal opinion is loudly expressed in favor of its consummation.

"It is a well known fact that all the lands, comprised within the limits before mentioned, viz. up to Forty-second street, and indeed far beyond it, have for several years past been entirely laid out into town lots, bounded on the avenues and streets, and are at present held mostly in small parcels of a few lots, by a great variety of persons, many of whom are anxious to erect buildings, but are at present prevented from doing so, from their inability to obtain access to their property, without passing over the land of other persons, in consequence of the streets, on which their lots are bounded not being opened.

"This fact, in the opinion of the committee, has a very powerful bearing on this question, and is strongly indicative of the great expediency of an affirmative decision thereon.

"No position would appear to be better sustained by reasons of sound policy, than the constituted authorities of the city should provide, in reasonable and proper time, that every citizen be furnished with the means of access to and enjoyment of his property, and in no other way can this be effected, than by their taking this legal measure, authorized by the statutes of the State, for the opening of streets and public thoroughfares.

"The exceedingly rapid increase of our population, and the measures which have been taken to lay out and form public squares, have so much enhanced the value of lots, in their vicinity, as to render it desirable for persons of lesser means, to turn their attention to situations somewhat more removed from the denser parts of the city, where lots can be purchased at such moderate prices, as come within their means. And unless facilities by opening the streets are afforded, a very large proportion of those classes in society whose means of subsistence arise from their daily labor, will be compelled to locate themselves on the opposite shores of our rivers, instead of fixing their habitations in our immediate suburbs.

"There is, however, another very substantial reason, offered why the measures proposed, should embrace at one operation the whole extent contemplated, which is the great saving of expense which will thereby be produced. The amount involved, by proceeding in this business, with one general commission will probably not exceed one twentieth part of the cost, which must unavoidably be incurred if it be suffered to progress in detail by particular sections of individual streets; besides the much more reasonable assurance of equal justice being done to all parties, when the commissioners are placed in a situation, which will enable them to take a general and comprehensive view of the results to be produced, by opening the streets, in a large section of the city, and their relative bearing each upon the other, than in the method heretofore generally practised, of opening special pieces in detail.

"Instances are upon record of the same piece of property having been assessed a second and even a third time, for opening some portions of the street or avenue contiguous to it. Now, it is quite clear, that by substituting the general system of opening, as herein proposed, in lieu of the former practice, the expenses consequent thereon may be very much diminished, and this point is thought to be worthy of particular attention, as any mode of proceeding which will lessen the amount of assessment on the property interested, is believed to be entitled to a favorable consideration.

"The committee having fully discussed this matter, are decidedly in favor of the general proposition as contained in the resolution; yet they still think that existing circumstances render it proper to make some exceptions from its operation, and these relate to the establishment at Bellevue for the poor, the lands occupied by the managers of the House of Refuge for juvenile delinquents, and the square between the Fifth and Sixth avenues, and from Fortieth to Forty-second st., originally intended for a public cemetery, but now proposed to be occupied as a site for the distributing reservoir by the water commissioners.

"The reasons for the exceptions above mentioned are obvious, inasmuch as the opening of the avenues and streets through them will necessarily prevent the possibility of their being used for the purposes now designed.

"Besides these properties belonging entirely to the public, the streets and avenues passing through them can be opened at any time free of expense.

"In conclusion—the committee report to the board, that, in their judgment, it is expedient to open all the streets and avenues (not already opened) up to and including Forty-second street, with the exceptions above mentioned, and offer the following resolutions:

"*Resolved*, That all the streets and avenues, as laid down on the commissioner's map of the city, be opened up to and including Forty-second street, excepting

"1st. Such parts of the streets and avenues lying within the said limits as have already been opened, either by deeds of cession from the proprietors thereof, or by due course of law.

"2d. Such parts of the avenues and streets as are contained within the limits of the public establishment at Bellevue.

"3d. Such parts of Forty-first street as lie between the Fifth and Sixth avenues, it being understood this land will be required by the water commissioners for uses connected with the aqueduct.

"All which is submitted.

"BENJ. TOWNSEND,
"M. VAN SCHAICK,
"EDWARD CURTIS,
"*Committee on Streets.*"

There is a resolution contained in the said report, which is, "that all the streets and avenues as laid down on the commissioner's map of the city, be opened up to and including Forty-second street."

The idea was, that the corporation should make an inquiry into the court charges, and make one application to open all those streets and avenues, so as to save expenses; and that was the reason why the resolution did not indicate the course which the committee thus designed to pursue. They wished to give the corporation time to make the inquiries as to the amount of those court charges, which they could not obtain from Mr. Emmet, the counsel. The report does not contain any such recommendation or provision. The street commissioner was to make such inquiry, but no one was authorized or directed by that report to make such inquiry. After that report the witness or the committee made no such inquiry as to those court charges. Although the resolution contains no recommendation that those streets up to Forty-eighth be opened by one set of commissioners, but the report does contain such recommendation. (The minutes will show whether this report was adopted as well as the resolution.) The report of said street committee was drawn by the witness and revised by George B. Smith, street commissioner, but cannot say positively whether the report submitted was in the witness's hand-writing or that of Mr. Smith. There was a map of the Sixteenth ward in progress of being made at the time that report of the street committee, but he does not now recollect whether it was then ordered or not, but such map was then contemplated to be made, and was soon afterwards made. Nothing was said of such map in that report, and that the making of such map would reduce the expense of such street openings; and neither was a great deal of other information which the committee had obtained as to the saving of such expenses

inserted in that report, and the committee had their reasons for not making such statements in their report. The witness examined the map of Adriance of the Twelfth ward, so far as his (witness's) property was concerned, and found it all located upon it, and witness had previously given him such information for the purpose of being correctly assessed, as witness had been previously incorrectly assessed; and witness also gave Mr. Adriance other information as to the property and owners adjacent to that of witness. Witness pretty thoroughly examined that map, and considers it correctly a map of the Twelfth ward, showing the ownership of property, but witness believes there were some pieces of property of which Mr. Adriance could not obtain the owners' names. Witness was a member of the common council in April, 1836, and chairman of street committee in board of assistants. Witness does not recollect whether his committee made any report on change of grade in Chapel street, nor about the sewer being taken up and a new one laid down.

The cutting down at Strawberry hill, on *the Eighth avenue*, was about twelve feet, but has no particular knowledge. The avenue is one hundred feet wide, and was regulated its whole width and the curb and gutter stone set; has formed no opinion as to the amount of excavation in cubic yards done on that (Eighth) avenue. Understood that the Eighth avenue, as a country road, was graded and worked by the corporation, but never saw any profile of it, nor heard of any assessment. The witness did not, within his knowledge, report any set of grades for the streets up to and including Forty-second street; has no distinct recollection of it; he may have done so; he recollects Alderman Van Schaick introduced a resolution about a grade in that part of the city.

From witness's knowledge of and connection with the common council during the time he was a member, he believes the several members with whom he acted on committees and otherwise, performed their duties carefully and with a due regard to the interests of their constituents, to the best of their judgment. BENJ. TOWNSEND.

Direct examination resumed on the part of Memorialists.—Witness does not recollect when Mr. Emmet was removed as corporation counsel; thinks it was in 1837 or 1838. From half of 1837 to 1839, witness was sick and confined to his house most of all that time and unable to attend to business, and knows nothing about the business that took place during that period. There was a square laid down on the commissioner's map of 1807 in the vicinity of One hundred and tenth street and Sixth and Seventh avenues; witness has no distinct recollection of the change of that square for that of Mount Morris, but a conversation he had with Mr. Ingraham, who said the first square was level and valuable, and Mount Morris was rough and less valuable, and being high ground an observatory might be erected on it from which the corporation might derive some income; and that to change the location it would be necessary to apply to the legislature. The commissioners allowed about $23,000 for that of Mount Morris square, with $3,338 costs of commissioners, &c.

It is the common practice for the street committee to append to their resolution for opening streets a direction "that the counsel take the necessary legal measures for carrying the same into effect," and that every report made by the witness, as the chairman of that committee, contains that direction, except the above report for opening the said streets to and including Forty-second street. The intention of the committee was, that Mr. Emmet, the counsel, should not make application for the appointment of commissioners for opening those streets without further orders. The committee estimated that it would cost one twentieth part of the expense to open those streets by one set of commissioners as proposed by that committee. The witness had no knowledge that during his connection with the common council, any member of the common council had any interest in any contract under the common council, and had not the least suspicion of any such thing during the time the witness was in the common council. BENJ. TOWNSEND.

Cross-examination on the part of the corporation resumed.—Witness was a member of the common council when John Ewen was appointed street commissioner; never heard of Mr. Ewen making any application for that situation. Judge Ingraham recommended him to witness, then chairman of the street committee, as the most competent person he knew of for that situation; some of the democratic members, then forming the majority, objected to Mr. Ewen's appointment as being a whig, but that objection was waived in consideration of the importance of the situation. The Eighth ward from Twenty-fourth to Forty-eighth street is now one continued village, built up since the regulation of that avenue. BENJ. TOWNSEND.

Adjourned to November 4th, instant at 7, P. M.

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The following is from the testimony of Jno. Keyes Paige, Esq. Clerk of the Supreme court at Albany.—[See Senate Document, pages 85 and 86.]

John Keyes Paige being called and duly sworn on the part of the Memorialists, says, he is clerk of the Supreme court in the city of Albany. Witness produced the report and additional report of the commissioners of estimate and assessment in the matter of opening Sixth avenue in the city of New York, which was filed in his office June 6, 1839, and appears by endorsement to have been confirmed on that day. It appears by affidavits annexed to said report, that notice of presenting said report for confirmation was published daily in the New York Evening Star and Evening Post, respectively, commencing on the 18th day of May, and continuing to the 3d day of June, 1839 inclusive, Sundays excepted; and in the New York Times and Commercial Intelligencer daily, from the 20th day of May to the 3d day of June, 1839 inclusive, Sundays excepted. There does not appear to be any evidence that said notice of presenting such report for confirmation was published in handbills, annexed to said report, or additional report. Witness never knew any bill of items of the expenses in opening streets, avenues, or public squares in the city of New York, presented to the Supreme court for taxation when the reports of the commissioners of estimate and assessment were presented to that court for confirmation, though it is possible when such confirmation was opposed, such bills of items may have been presented to the court with the report and other papers, and the judge may have passed upon them; but the witness never saw any such bills, and none have fallen under his observation in his office. There is an endorsement on this report to the following effect: "Deposited in county clerk's office 18th May, 1839."

There is a charge upon each opening street, avenue or square, for the extended rule, including the whole report of the commissioners of estimate and assessment, with a certified copy thereof, which extended rules have not yet been entered in many cases, and in making witness's return to the Comptroller he would not include the fees for the prospective services in making out such extended rule and the certified copy thereof.

Witness produced the reports of the commissioners of estimate and assessment in the opening of the Seventh avenue from Twenty-first to One Hundred and Twenty-ninth st., which is on file in his office, filed and confirmed February 9, 1839. There does not seem to be any endorsement upon it of having been filed in the county clerk's office in New York. Witness never knew a case of opening a street or avenue where the proof of publication did not accompany the presentation of the report; such proof is not attached to this report; but witness has no doubt it is upon some other paper in his office. There is no abstract or summary accompanying said reports so far as the witness has examined the same. The report of estimate and assessment in the Seventh avenue contains, as numbered, eleven hundred and ninety-six pages. Sixth avenue about nine hundred pages.

JOHN KEYES PAIGE.

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(From Senate Doc. 100, *pages* 147 *to* 148.)

Thomas R. Ludlam having been recalled on the part of the corporation, and his direct examination resumed, says: In making out assessment lists for grading and paving streets, he has been in the habit of calling on the street commissioner, as one of the assessors, for instructions how to make the same. Witness recollects receiving a printed circular from the street commissioner as to the law of 1840, relative to assessments and putting down street numbers, or maps for opening and improving streets. Witness made out the assessment lists for regulating and paving John, Cliff and Gold streets, in 1840, and he put down the street numbers on those lists.

THOS. R. LUDLAM.

Cross-examined on the part of the Memorialists.—Witness received the pay for making the maps for opening Seventh avenue from Twenty-first to One hundred and twenty-ninth street, by warrant given him by Jacob S. Warner, assistant street commissioner.

Witness did not render to the street commissioner a bill for his services on that avenue, but did to the commissioners on that avenue, and they gave the amount of witness's bill to the street commissioner. Mr. Harris was chairman of those commissioners. Witness did not render to the commissioners a bill of items of his charge; they were perfectly satisfied with the charge without the items. Witness gave them five distinct bills, one for each section, as the same were completed. Witness's charge was made by the day, which was four dollars for six hours, including the assistant at the same price.

THOS. R. LUDLAM.

(From Senate Doc. No. 100, pages 42 to 46.)

John Ewen being duly called and sworn, on the part of the Memorialists, says—that the witness is the street commissioner of the city of New York, and has held that office since the 4th day of May, 1836. The witness produces the map of the commissioners in the matter of opening the Second avenue from Twenty-ninth to Eighty-sixth streets. That the following named petitioners, have the following number of feet of land fronting upon the said avenue, between said Twenty-eighth and Eighty-sixth streets, as stated in the annexed statement headed, "Petitioners for opening Second avenue from Twenty-ninth to Eighty-sixth street," and signed by the witness. The whole number of feet, front on each side of said Second avenue, from Twenty-ninth to Eighty-sixth streets, is about fourteen thousand, nine hundred feet.

Petitioners for opening Second avenue from, Twenty-ninth to Eighty-sixth street.

Richard Riker, 198 ft. 11 in. front on east side Second avenue; do. 199 feet 1 in. west side do.—Total, 398 ft.

W. B. Lawrence, 1,106 ft. 9 in. front on east side Second avenue; do. 935 ft. 10 in. do. west side Second avenue.—Total, 2,042 ft. 7 in.

W. B. & I. Lawrence, 177 ft. 5 in. front on east side Second avenue; do. 337 ft. 10 in. do. west side do.—Total, 515 ft. 3 in.

R. Riker and Isaac Lawrence executors of John Lawrence, 173 ft. 11 in. on 75th st. embraced in the assessments of opening Second avenue.

I. Green Pearson and W. B. Lawrence, 352 ft. 6 in. front on east side Second avenue; do. 342 ft. 10 in. do. west side do.—Total, 695 ft. 4 in.

H. W. Warner, 391 ft. 3 in. front on west side Second avenue.

Henry J. Anderson, 240 ft. front on Thirty-sixth street, embraced within the assessment of opening Second avenue.

Total number of feet, front on Second avenue, exclusive of the streets, 4,042 feet 5 in.

JOHN EWEN,
Street Commissioner.

Opening Second avenue from Twenty-ninth to Eighty-sixth street.

October 31, 1839.

Received from the street commissioner, bond A 27, for seven hundred and sixty dollars, being the amount of fees to Henry P. Robertson, in the matter of opening the Second avenue from Twenty-ninth to Eighty-sixth street.

$760.

(Signed,) FRAS. FICKETT,

December 20.

Received from the street commissioner warrant No. 3,605 for $33.55, and bonds A No. 41 and A No. 42, for $1000 each, making twenty hundred and thirty-three dollars and fifty-five cents, for attorney's fees and court charges in the above matter.

$2,033.55.

(Signed,) R. EMMETT.

December 20.

Received from the street commissioner warrant No. 3,608 for four dollars and seventy-two cents, and bond A No. 75, for seven hundred and fifty dollars, and bond A No. 76, for eleven hundred and fifty dollars, making nineteen hundred and four dollars and seventy-two cents; being in full for fees and expenses in the matter of opening the above.

$1,904.72.

(Signed,) JOHN LEONARD.
for self and A. MILLS.

December 20.

Received from the street commissioner bond A No. 77, for seventeen hundred dollars, in full for surveys and maps in the above matter.

$1,700.

Signed for EDWIN SMITH.
GARDNER A. SAGE.

The commissioners' fees, counsel fees, and other expenses on said avenue, were principally paid by Richard I. Smith, the assistant street commissioner, whose duty it is by an ordinance of the common council to apply for the warrants for these moneys, and to pay over all moneys on assessments. That ordinance is an old one of fifteen years standing. The witness paid some of the items in those during the absence of the assistant street commissioner; he paid the commissioner Robertson's fees to Mr. Fickett, who had an assignment of the same, and the expenses of the surveyor to Mr. Sage. The witness produced a copy of the original receipts for the expenses on Second avenue, on file in his, witness's, office, which are marked A, and signed G. F. The present counsel of the corporation was appointed two years last May. The notice which that counsel gave to witness's office, not to pay such bills unless taxed, was after the payment of the above bills. The bills which the witness so paid were not taxed to his knowledge. The abstract of the report signed by the commissioner, containing the aggregate amount of the expenses, awards and assessments, is the only voucher on which such payments were made; the claimants for such expenses were never in the habit of presenting any bills. Taxed bills for such proceedings have been paid in witness's office, but he cannot say that he has paid them, because it is not his duty to do so. The witness thinks such taxed bills in the case of Cherry street, Anthony street, William street and the Bloomingdale road. Witness is not certain as to Anthony or William street, or the Bloomingdale road. Such, however, is his impression. They were all cases in which the proceedings were discontinued and the report not confirmed. The witness has no knowledge of taxed bills in case where report was confirmed; his assistant has charge of that branch of the business; they might have been paid and the witness not know it. These expenses are paid upon the abstract of the commissioners' report; no bills of particulars are required further than is stated in that abstract. The witness does not know whether any bill for taxation in the matter of Seventh avenue was filed; it might be filed in his office without his knowing it; there are three or four rooms in his office.

The witness supposed that upon presenting the abstract of the report of the commissioner the expenses therein mentioned had been taxed by the Supreme court as required by law, and that the officers of the corporation had no power to withhold their payment. The first knowledge witness had such bills had not been taxed and the legal requirements complied with, he had from the present counsel of the corporation, (the witness does not recollect the time when he received such information, he recollects the circumstance,) since which the witness does not believe that any such charges have been paid without taxation. These charges are made upon the general authority of an ordinance passed some fifteen or twenty years since, and revised some three years. The ordinances were revised every three years until the passage of a law allowing them to remain in force until repealed.

The authority in question is to be found in the ordinance relating to the street commissioner and his duties. The practical routine in payment of such bills, is as follows: when such abstract is presented, it is usual for the assistant street commissioner to make a requisition upon the comptroller in writing for the amount, and in favor of the parties to whom the same is due; the requisitions are made or presented to the comptroller once in every fortnight, and the warrant is received in return from the comptroller, about one week after the requisition is made; it is made payable to the order of the party in whose favor it is drawn and is paid by the chamberlain of the city upon being presented. There is no other check upon such charges than above stated, no affidavit or auditing, the abstract of the report signed by two of the commissioners, is the only evidence that such amount is due. The warrants are drawn by the comptroller and countersigned by the mayor and the clerk of the common council, the requisition being exhibited to the mayor and clerk each time. There are no maps of the wards through which the Second avenue runs, in the office of the witness, they would be there if they existed; there was a map of part of the 16th ward, from 24th street to 40th street, but it was made after the survey of the Second avenue was made. The commissioner's map of 1807 exhibits all the streets and avenues of the city, and the boundary lines of particular properties as they existed at that time; under the law on which that map was made, a monument was placed at the inter-

section of each avenue and street. The map of the commissioners on the Second avenue, the witness thinks could not have been made from the map of 1807, because the map of 1807 is upon a small scale, and has upon it no distances and no figures, and has upon it no dimensions of the particular pieces of land. That map has the width of the streets and avenues and dimensions of the blocks, and is upon a scale of 100 feet to an inch; the elevations and depressions given by that map are not accurate, they have been tested and found inaccurate. It is only occasional that such elevations are given upon some avenue and at distances pretty wide apart; but that would have no bearing upon such map as that of the Second avenue, for such map exhibits no such elevations. The witness has been an engineer and surveyor for a considerable period, could not say what would be a fair compensation for making such a survey and map as that of Second avenue by a mere inspection of the map, because he does not know what time or labor was spent in producing it, and because he has been out of the profession for the last five years, a person now in the profession may give a better judgment. There has not been a map made for the corporation of the Twelfth ward; the witness has heard that Isaac Adriance is now engaged in making such map; and he has engaged to make it for about fifteen or sixteen hundred dollars. The witness understood such a map was directed to be made by the board of supervisors.

The witness has always understood that the counsel of the corporation draws up the reports of the commissioners on opening streets and avenues. There is no document in relation to the Second avenue but the abstract of the report in his office, a copy of the report does not come in until sometime afterwards, Mr. Emmett is to furnish a copy of the report, but has not yet done so. There are several copies of such reports on file in the witness's office. The abstract and the copy of it on the street commissioner's books, is the document by which the owner of real estate assessed for Second avenue, could find a description of his property assessed. The abstract refers to the map by the numbers of the lots. The map is kept in the street commissioner's office. There is no other document but such abstract until such copy of the report is furnished. The collectors use such map in collecting, to show owners that they are paying upon their own property. The collector's office is part of the street commissioner's office or department. Arbitrary numbers and not the street numbers are put upon those street maps, because the street numbers are more variable, but the street numbers are put on in very many cases as well as the map numbers; it is as usual to put them on as to leave them off; but there are no street numbers on the Second avenue. If there should be four assessments for opening or regulating streets, sewers, &c. would have different numbers. The same lot for each improvement would have a different, and they would all vary from the street number. If the street numbers are upon the map in the notices sent to the owners, the arbitrary or map numbers are used. The act of 1840 requires that the street numbers and the ward numbers should be placed upon the map as well as the arbitrary numbers; and that in all since the passage of that law that requisition has been complied with.

In publishing notices of sale for assessments for street openings since the act of 1840, the street numbers where they are known, are put on as well as the ward numbers, and all other numbers by which the lots are known. All the sales now advertised, are for improvements, before the law of 1840, with the exception of John street and intersecting street paving, in which case the street numbers are used in addition to the other numbers. When inquiries are made whether there be outstanding and unpaid assessments on lots in the upper part of the city it is answered by reference to an alphabetical list in a book arranged under the heads of streets, on which the property assessed is situated, and that book is called record of assessments; it states the street, the map, ward, street and farm numbers, the side of the street, between what streets, describes the property, states the assessment, and what it is for; when any payment is made upon any lots it is entered in that book, with the interest paid upon it, the total amount of assessment and interest, who paid it, and when paid, and that record will show upon reference whether there be any assessment and it is paid. There is not such book for each improvement. The lot is put down in that book, by map number, and since the law of 1840, by all the other numbers upon the map, there are columns for map numbers, ward numbers, and street numbers. Upon answering such inquiry they look first to book of lands sold for assessments, which is alphabetically arranged, and if sold, then look to book entitled "sales for assessment," which is also alphabetically arranged. If it be assessed for seven different improvements, or for seven assessments, they would examine under the street and between the streets upon which the improvement was made, and would then refer to the map. If all the assessments were upon Tenth street they would be found under the head of that street.

JOHN EWEN.

Adjourned to Sept. 25th, 1841, at 7 P. M.

We have thus given the testimony of the Commissioners, the Surveyors and the Letter of one of the Counsel of the Corporation, and also the testimony of the Clerk of the Supreme court at Albany; and to all these we have added the testimony of a distinguished citizen, Jonathan Thompson, Esq., together with that of Ex-assistant Alderman Townsend, formerly Chairman of the Street Committee of the board of Assistants, and also that of the Street Commissioner, including that of Mr. Perrine, a Clerk in the office of the street commissioner.

A careful reading of the above specified documents will be most convincing.

The Committee from the Senate, appointed to examine into these abuses, remark that—

"*It is difficult now to comprehend how the Expenses in Opening Streets and Avenues in that city could have been so very great as they are represented to have been, but of the fact of their being so very great there can be no doubt; it is established by the Receipts of the Commissioners for the same exhibited before the Committee.*"

It was asserted by Officers of the corporation that the Court Expenses and Clerks' Fees of the Supreme court were very high. In order to ascertain if such was the case we examined the official returns of the Clerk of the Supreme court at Albany, made to the State Comptroller in pursuance of a law of this State, and now on file in his office, and find by these returns that less than Ten Dollars was charged to the Counsel of the corporation of the city of New York in all the street proceedings by the Clerk of the Supreme court for a period of Two Years, commencing July 1, 1839, and ending June 30, 1841. During this period the reports of the commissioners of estimate and assessment were confirmed by the Supreme court for the opening of a GREAT number of streets, avenues and public squares, in which the court charges and counsel fees together are put down at a large sum of money.

How such proceedings should have found countenance with persons in AUTHORITY is a matter of surprise and astonishment!! but of the fact that *such* was the case our citizens have had AMPLE demonstration.

That the Commissioners should have allowed these extraordinary charges to Counsel is by no means surprising, for we find by their OWN AFFIDAVITS herein set forth that they allowed Members of their own Board large Sums of Money as a compensation for services never even pretended to have been *performed*, and assessed these large sums on the property of persons owning land near the lines of streets in which they were making an assessment for the expense of opening. The Counsel in his letter sets forth that he never made or rendered a bill of particulars in these matters, and that the law did not require it previous to April 20, 1839: and it appears from the testimony of John Ewen the Street Commissioner that no bills were filed in his office, *subsequent* even to that time, as required by the Act above referred to, although he says "it might have been done without his knowing it as he had *three or four rooms* in his office."

The following is the Provision of the section of the Act above referred to:

"§ 12. No cost or charges to the said commissioners, their attorney, counsel or others, shall be paid or allowed for any services performed under this act, or the act, hereby amended, unless the same shall be taxed by the said court, who are required to make rules to apply to the said bills of costs, the existing laws in relation to the taxation of costs, and the nature and proof of the services rendered and disbursements charged, as far as the same can be made applicable; and no unnecessary cost or charges shall be allowed. Public notice of the time and place of the taxation of costs shall be given, for the same time and in the same manner as notices are required to be given by the above ninth section; and a copy of the bill of costs, containing items and particular services performed, shall be depos-

ited in the office of the street commissioner at the time of the first publication of such notice."

Now it appears to us that this provision of the Law is clear enough to illustrate the excuse of the "three or four rooms," and that the explanation in regard to it does not help those who make it.

It appears by Mr. Perrine's testimony that the amount paid Corporation Counsel in 1839 was **$37,470.88,** to which is to be added the Counsel Fees in Thirty-fourth street, Anthony, John and William street—in all four, **$8876.30:** these four last sums were not paid within the year ☞ for the reason that the City Treasury had not funds to meet these Claims, but the amounts belong to *that year's account* and swell the aggregate to the enormous SUM of **$46,347.18:** ☜ and this is not all—much besides, is omitted. It will be seen by a comparison of this amount with the Salaries of the State officers that it exceeds the *united* salaries of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Commissary General, Surveyor General, Chancellor, Vice Chancellor, Assistant Vice Chancellor, Chief Justice and Associate Judges of the Supreme court, eight Circuit Judges, the Mayor of the city of New York and the Recorder of the said city, added thereto!!!

The Commissioners' and Surveyors' Fees are stated in the Comptroller's report, including John street and Thirty-fourth street, at the enormous sum of **$70,633.21:** and this is not all—much besides is omitted. This sum it will be seen by estimate exceeds the sum total of the per diem Pay of One hundred and sixty-one Members of the Senate and Assembly composing the Legislature of the State of New York for an *entire* session of the longest of any one term held the last twenty years.

The aggregate amount of Counsel Fees, Surveyors' Fees and Commissioners' Fees payable that year for services of very little worth exceeded in amount the annual salary of the President of the United States, together with the salaries of all the Heads of Departments at Washington, with the whole and entire EXPENSE of the Government of the State of New Jersey for a WHOLE year, in addition thereto!!

The Surveyor's Fees in the Seventh avenue proceeding is stated at $2801.00. Mr. Ludlum, the surveyor in that proceeding, states in his examination before the Committee of the Senate that his charge for himself and assistant was $4 per day. This then is pay at that rate for 700¼ days, equal to two years, two months and fourteen days, and one fourth of a day.

The Surveyor's Fees in the Sixth avenue are stated in Document No. 71, published by authority of the Board of Assistant Aldermen in 1840 at $2480: this at $4 per day is pay for six hundred and twenty days or one year, eleven months and twenty-four days. Daniel Ewen, Esq. we are informed was the surveyor in this case.

The surveyors in the Second avenue are stated at $1700, which at $4 per day is pay for 425 days or one year, three months and twenty-two days. Gardner A. Sage, Esq., surveyor.

The Seventh avenue consisted of 108 blocks of 270 feet each; the Sixth avenue of about 96 blocks of same size; and the Second avenue of 58 blocks of like dimensions. All three of these avenues were laid out through farming land.

As to the compensation paid surveyors, the Street Commissioner who is himself a city surveyor, in his testimony herein before stated, says—

"The witness has been an engineer and surveyor for a considerable period; could not say what would be a fair compensation for making such a survey and map as that of Second avenue by a mere inspection of the map, because he does not know what time or labor was spent in producing it, and because he has been out of the profession for the last five years: a person now in the profession may give a better judgment."—[Senate Doc. 100, page 45.]

Mr. Leonard, in his testimony (Sen. Doc. 106, page 38) says—"he arrived at the amount of the surveyor's fees by the surveyor's bill, which was generally handed to the commissioners and carried back when it was done. The bill was generally an aggregate amount. The commissioners know the extent of the work, but they were no judges of the value of the services. They received the Surveyor's bill from the corporation Counsel, and when they did not receive it that way they generally asked the corporation Counsel if it was not correct. This surveyor's bill was not audited or certified by any officer to witness's knowledge. The commissioners did not select the surveyor. The first thing put in the commissioners' hands, after being qualified, was the Map of the proposed improvement."

Mr. Ludlum, in his testimony (Senate Doc. 100, page 148), says: "Witness did not render to the Commissioners a Bill of Items of his charge; they were perfectly satisfied with the charge without the items. Witness's charge was made by the day, which was four dollars for six hours, including the Assistant at the same price."

This witness's testimony relates, in this particular portion of it, to the Seventh avenue proceeding. This last named witness also says—"Witness received pay for making maps for opening Seventh avenue from 21st to 129th st. by Warrant given him by Jacob S. Warner, Assistant Street Commissioner."

In the testimony of John Ewen, Street Commissioner, on page 44 of Senate Doc. 100, he says "the Abstract of the report, signed by the Commissioner, containing the *aggregate* amount of the Expenses, awards and assessments, is the ONLY voucher on which such payments were made: the claimants for such expenses were never in the habit of presenting any bill." Again, he says "the witness supposed that, upon presenting the abstract of the report of the commissioners, the expenses therein mentioned had been taxed by the Supreme court as required by law, and that the officers of the corporation had no power to withhold their payment."

The Counsel Fees in the following stated proceedings are an illustration of the extraordinary Expenses which have been assessed upon individuals:

Seventh avenue,	$3976.77
Sixth avenue,	3580.77
Tenth avenue,	2100.00
Second avenue,	2033.55
Chapel street,	3443.00
Centre street,	2970.34
Art street,	1896.75
Thirty-fourth street,	1080.88
Fifty-third street,	1055.57
Manhatten square,	1449.13
	$23,586.76

The Commissioners' Fees in these Ten Proceedings amount to **$21,899.00.**

The Surveyors' Fees in the same Proceedings (above) amount to **$16,845.29.**

The Room-hire of the Commissioners in the Seventh avenue is put down at $410.00.

The Clerk-hire in the same proceeding is put down at $250.00.

In the Sixth avenue, the room-hire, clerk-hire, &c. is put down at $411.00; in the Tenth avenue at **$600,00;** in the Second avenue at $324.72.

The number of different proceedings in which have been paid Counsel, Commissioners and Surveyors, as appears by Document No. 71 of the Board of Assistants, since February, 1835, are stated at 116, to which are to be added several not included in that report which will swell the aggregate to near **130** different, distinct and separate Assessments, in which these enormous charges have been made, and PAID by the corporation officers WITHOUT Bill of Items, Taxation, Auditing, Approval, or any Check or *Investigation* whatever!!! with the exception of some half dozen proceedings which were discontinued; and well may the Honorable the Select Committee of the Senate say that "*the surprise should be* NOT *that the inhabitants* NOW *complain of it, but that they had not done so at a* MUCH EARLIER PERIOD!"

The *reason* the Citizens did not sooner complain will appear obvious to the reader on examining the testimony of Mr. Paige, Clerk of the Supreme court at Albany, where these proceedings were confirmed: he says these Expenses were *not* before the court. Mr. Robinson, a Commissioner in the Seventh avenue Proceedings, states in his testimony that the Expenses were *not stated* in the Report filed in the office of the Clerk of the city of New York for Inspection; that the Owners had no other means of knowing what the Expenses were, unless by adding up the amount of awards and also the amount of assessments in the report (which, we say, would probably be a day's work) and deducting the one from the other. Mr. Ewen the Street Commissioner says that the Expenses were paid on a mere Abstract, signed by the Commissioners, and set forth in an aggregate sum; that no Bills of Items were rendered—and these were paid at once, after the Report was confirmed. The Counsel of the Corporation in his Letter, which we have stated, admits that he never made a Bill of Items in the Seventh avenue case, nor in other assessments; that the commissioners &c. were Officers of the Court; that the common coun-

oil had nothing to do in these matters but to pay the Claims: and in the same letter he says that the parties should have objected to these Charges when the proceedings were before the Commissioners, or before the Court at the time of confirmation. His last excuse is in a bad shape. In the matter of 29th and 30th streets objections were made before the Commissioners, from what the parties interested learnt indirectly from one of the commissioners, that expenses were included in the assessment which had never been incurred and also before the court; but the Objections were entirely disregard by the Commissioners, and the Court which confirmed the assessment took little notice of them, although the Objections were strenuously urged.

Much of the Island of New York has been absolutely confiscated by these proceedings if they shall be adjudged legal. Thousands have been injured and hundreds have been ruined by these extraordinary measures; widows and their HELPLESS CHILDREN have been reduced to beggary; venerable citizens, whose heads have been *whitened by the frosts of more than three-score winters*, have in the evening of life been driven from their possession of competency and abundance, to the extremes of penury and of suffering. Alas! shall these things be—nay more—be tolerated—be countenanced and encouraged?—NO, NO!—there *is* VIRTUE in the people;—there *are* patriots in this land:—men who are BOLD to say, in the language of Mr. Jefferson, "SUCH IS NOT THE KIND OF GOVERNMENT WE FOUGHT FOR"!

The indignation of the public mind has kindled up—patience has been exercised until it has almost ceased to be a virtue, and now the time has arrived when Citizens feel that they are CALLED upon to take measures for the protection of Private Property, which lays at the foundation of the superstructure of Civil Liberty: for where there is no security to private property there is no liberty.

Justice has slumbered, and
It has slumbered long. Alas! alas!

There is not another civilized government on the earth where such Abuses could have been so long—so successfully—so extensively practised. The throne of the most powerful monarch in the old world would have been shaken to its foundation by such proceedings. No crowned head would have dared to have tolerated such Abuses if disposed so to do, or permitted, if so disposed.

In order to form a correct estimate of the price of the wages of labor of the Commissioners of Estimate and Assessment in the matter of the Pretended Opening of the Seventh avenue we will, as a convincing illustration, compare the total amount of COMPENSATION they received for their trifling services with the RESULTS of the labors of the Farmers of the State of Illinois where they are favored with the richest soil in the United States.

The Commissioners were three in number, and their aggregate wages are stated at Four Thousand Nine Hundred and Twenty Dollars, which is equal to the value of Forty-nine Thousand Two Hundred Bushels of Corn at the price the Illinois farmers are now selling it, which is ten cents per bushel delivered at their granaries.

The Share for each commissioner would be equal to Sixteen Thousand Four Hundred Bushels of Corn, which if they had the land furnished them rent free, and also were freed from all taxes during the time, it would require the labor of each commissioner, allowing each to cultivate ten acres and each acre to produce fifty bushels annually, near THIRTY-THREE YEARS' LABOR to earn by raising Corn the amount of wages demanded by them for making this SMALL Assessment.

The Surveyor's Fees in this proceeding of the Seventh avenue are stated at Two Thousand Eight Hundred and ONE Dollars, which is equal in amount to the value of Twenty-eight Thousand and Ten Bushels of Corn at the above estimate.

The Counsel Fees in the same proceeding are stated at Three Thousand Nine Hundred Seventy-six Dollars and Seventy-Seven Cents, which is equal to the value of Thirty-nine Thousand Seven Hundred and Sixty-seven and a half bushels of Corn at the above estimated price.

The Collector's Fees are stated at Eleven Hundred and Fifteen Dollars, which is equal in amount to the value of Eleven Thousand One Hundred and Fifty bushels of Corn at the above estimated price.

The Room-hire of the Commissioners is stated at Four Hundred and Ten Dollars; Clerk-hire at Two Hundred and Fifty Dollars. These are equal in amount to Six thousand Six hundred bushels of Corn.

The Carriage-hire is stated at Thirty Dollars, which is equal to the whole necessary expense of a person in traveling from the city of New York to the city of Louisville in Kentucky.

The aggregate amount of these Fees are $13,550.77, which, if it was all invested in Corn at ten cents per bushel, would purchase One Hundred and Thirty-five Thousand Five Hundred and Seven bushels and a half; and this quantity, to be sent to mill to be ground into meal, would require thirty-three thousand eight hundred and seventy-six horses, each carrying four bushels, and as many boys for riders, and would make a procession of one entire column reaching from the city of New York to the city of Philadelphia.

These fees, for this single street, if invested in congress land at the present price, would purchase one hundred and eight farms, of one hundred acres each, of the finest farming land.

The Counsel Fees in this one street exceed the per diem pay of a Senator for four whole years, allowing him to devote his whole time to the duties of his office as a Legislator and as a Member of the Court for the Correction of Errors—and this street is BUT ONE of more than ONE HUNDRED AND FIFTY.

The citizens who own property on the Seventh avenue are not benefited a brass farthing by all these expenses, and how such enormous sums should be paid out of the public treasury for such proceedings is not only a wonder, but a cause for alarm and distrust.

Citizens need not wonder that real estate is depressed and depreciated in value as well as in price, nor need they wonder that Taxes are consuming their substance and swallowing up their incomes: the secret is here ushered forth in FIGURES of the ***blackest face***.

We will make a further illustration. The land belonging to Assistant-alderman Townsend upon this pretended avenue extends from a line drawn through the centre of the avenue and running back therefrom 250 feet, and along the line of the avenue and parallel with it about 260 feet (see his testimony). Of course he furnished all the land required in front of his property for the half of the avenue, not only for himself but for those owners two hundred feet in the rear; he therefore was entitled to such sum as an award for damages as was proper to be assessed on the land in the rear of his for benefit, deducting therefrom the expenses of estimate; but instead of this award, he was assessed for benefit $213.00. The person who owned a less quantity of land opposite to him, and furnished less in proportion for the avenue, was awarded $293.00: the land was of the same quality as that of Mr. Townsend; and those owning land each side of him were awarded, one $205.00, the other $274.00: neither of them furnishing so much land as himself.

The estate of John Schuyler owned a small piece of land on the corner of 28th street and the 7th avenue as laid out by the Commissioners appointed in 1807 to lay out the island into streets and avenues: this piece of land is 58 feet 10 inches by 98 feet 10 inches, and was assessed for the pretended opening of the 7th avenue $209.93 for benefit. The same piece of land has been assessed for the pretended opening of 28th street the sum of $1037.05, which both together make the sum of $1347.03, which is double the entire value of the land claimed to be benefited.

The Seventh avenue was laid out and surveyed, and a large map made of it and all the streets that intersected it from 1807 to 1811, and a new survey was not necessary. Most of the land which is laid out over is farming land, and the same person owned not only the land required for the avenue, but the land on each side to the centre line running between the parallel avenue so that there was neither assessment or award to be made, as their interests were balanced, but notwithstanding, a new survey must be charged for and an immense amount of Fees imposed for *pretended* services worth less than nothing.

It may be truly said to be a mystery how these Abuses have been so long and so extensively carried on: time will develope.

Citizens who have PAID these ASSESSMENTS have RE-PURCHASED their Land at its *full value:* those who have NOT paid, attempts are made and encouraged to DIVEST of their Estates.

The finger of Scorn is pointed at such proceedings, and History will record them to tell to after-generations yet unborn.

Some persons have been disposed to put these Abuses to the account of land speculators, but the investigations made by the Hon. the Select Committee from the Senate have

[*We will continue these remarks in our next number.*]

N. Y. MUNICIPAL GAZETTE...Extra.

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[Concluded from the preceding Number, page 224.]

put this excuse to flight: the Speculators in FEES are the cause. Most of these obnoxious proceedings have been consummated long, long after the speculation in real estate had terminated and ended.

Out of one hundred and fifty different proceedings there are but a very few that were petitioned for by owners, and the greater part were without a solitary petition, or any thing in the shape of a petition.

These things must all come to light: INVESTIGATIONS WILL BE CONTINUED UNTIL THE WHOLE IS DEVELOPED THAT SECURITY MAY BE PROVIDED AGAINST THE REPETITION OF THESE ABUSES IN FUTURE.

The making of an Estimate and Assessment of the Expense of OPENING a Street, avenue or public place, is a work of *very* little labor; and we believe that there are few of any of the streets, avenues or public squares on that part of the island, which were laid out by Commissioners in 1807, in which the whole business of making the Estimate and Assessment could not be done in ONE WEEK, and the same may be said of the necessary Surveys.

It appears by the Documents of the Hon. the Select Committee from the Senate, appointed to investigate Assessment Abuses in the city of New York, that John Harris was a commissioner and assessor on 21 streets &c. *(see Senate Document No. 100, page 66)*; that M. D. L. Gaines was also a commissioner on several streets as follows:

"The volume of documents shown witness is volume 16 of the Journal and Documents of the Board of Assistants of the city of New York, from May, 1840, to Nov. 9, 1840. On page 299, document No. 71, is a statement of the amount paid council, commissioners and appraisers, also room and clerk hire, &c. Witness has looked through the statement, and the name of M. D. L. Gaines appears upon the following streets as commissioner: upon Fifty-seventh street, from East to Hudson river; Fifty-ninth street, from Tenth avenue to Hudson river; Forty-fifth street, from Hudson to East river; Fifty-sixth st., from East to Hudson river; Fifty-fourth st., from Tenth avenue to East river; Thirty-third street, from Eleventh avenue to East river; Thirty-fourth street, from Eleventh avenue to East river.

"Fifty-seventh street was ordered to be opened by common council, March 16th, 1837, and confirmed by Supreme court June 7th, 1837, as appears by said document. Fifty-ninth street was ordered to be opened July 7, 1837, and confirmed September 5, 1837. Forty-fifth street was ordered to be opened March 16, 1837, and confirmed September 5, 1837. Forty-eighth street ordered to be opened March 16, 1837, and confirmed December 6, 1837. Fifty-sixth street ordered to be opened March 16, 1837, and confirmed December 6, 1837. Thirty-third street ordered to be opened February 19, 1836, and confirmed June 13, 1838. Thirty-fourth st. ordered to be opened February 19, 1836, and confirmed June 13, 1838.

"Witness examines Doc. No. 45; and from that it appears that the commissioner's fees in opening Fifty-seventh street was $732, and room hire and contingent expenses $121. Forty-eighth street, the commissioner's fees was $885, and room hire and contingent expenses $908. Fifty-sixth street, commissioner's fees $762, and room hire and contingent expenses $82.50. The number of days on that street between the time it was ordered to be opened by the common council and the time it was confirmed by the Supreme court, was eight months and twenty days. The commissioner's fees on Fifty-seventh, Forty-eighth and Fifty-sixth streets amount to $2,382, being $794 to each commissioner. On Fifty-ninth street the commissioner's fees are $144, and room hire and contingent expenses $10. On Thirty-second street the commissioner's fees are $912, and room hire and contingent expenses $88. On Thirty-fourth street the commissioner's fees are $1,320, and room hire and contingent expenses $156; (see Doc. 71 of Board of Assistants, p. 310, of 1840.) On Fifty-fourth street the commissioner's fees are $930, and room hire and contingent expenses $109. M. D. L. Gaines was a clerk in the street commissioner's office during the above dates, and received a salary. His salary was $1000 per annum."

MEMORIAL.

The following is a Copy of a Memorial which was presented in the Senate of this State in April 1840, and which gave rise to the Act of May 14th, 1840.

To the Honorable the Senate and Assembly of the State of New York:

Your Memorialists, citizens of the city of New York, most respectfully beg leave to represent to your Honorable Body the manifold evils and grievances which the inhabitants of this city experience in consequence of the great and arbitrary power now and heretofore exercised by the Corporation of the city of New York, its officers and servants, in imposing unnecessary, heavy and grievious burdens upon the people in the assessing of real estate, houses and lands for ruinous, unnecessary and uncalled and unasked for improvement.

Your Memorialists represent that the ancient charter of the city of New York did not vest the Corporation with any power to assess the citizens of the city for what are now miscalled improvements. The first power given the corporation in this matter was by an Act of the Legislature of 1807, and subsequently other Acts were passed. These Acts were not asked for by the People, but were granted on the application of the officers of the Corporation.

Your Memorialists herewith present public documents published by authority of the Common Council, showing the great extent to which this power has been exercised which fully sustain the charge that the powers granted have been wickedly abused.

Your Memorialists further represent that one of the officers of the Corporation has now advertised for sale at public auction near seven thousand lots for the non-payment of assessments, that many of these lots belong to widows and orphans, and in many instances to persons who are absent from the city, and in other cases to persons who have been unfortunate in business, to unsettled estates, and to others who cannot at this time, owing to the prostration of trade, pay the assessments.

Your Memorialists herewith present the list of property advertised for sale by the officers of the corporation by which it will be seen that 1145 of the lots are assessed sums less than five dollars each, 49 sums less than one dollar each, and in very many instances farming lands held in one tract and belonging to one and the same owner, have been by the assessor or commissioner sub-divided into lots of 25 feet by 100 and assessed separately small sums, by which the expenses have been enormously increased.

Your Memorialists also state that it is the practise of the Officers of the Corporation to exact exorbitant Fees and charges upon lots sold for the non-payment of assessments, viz: —Two Dollars each for advertising and Ten Dollars each lot for selling, and 40 per cent. interest on this cost, which makes Four Dollars and Eighty cents additional, and in all $16.80 on each lot, and thus on 49 lots the aggregate assessments of which amount to $39.$\frac{99}{100}$ the costs will be $823, and on 1145 lots the assessments which are less than five dollars each, the costs will be $18,410, and on 7000 lots the costs of advertising, selling and extra interest exclusive of the increased interest on the sum assessed will be $117,600, and these costs go into the pockets of officers who are paid very large salaries besides.

Your Memorialists further represent that it is the practice of Commissioners and Assessors to describe property by an arbitrary map number instead of the known street number by which the owners of property are misled in knowing that assessments have been imposed; this will be seen by the documents herewith. It very often happens that property is assessed as that of unknown owners, and many times in a wrong name; and in consequence of this practice property is often sold, and the first information the owner has of the assessment is obtained from the purchaser of the property at a sale for unpaid assessments, when he comes to take possession. By the Act of 1816, Commissioners

were authorized to extend their assessments for improving streets, &c. as far as they judge the property benefited, but no provision was made by that Act to give a notice to the distant owners of the property thus affected, by which means such owners are deprived of the opportunity of making objections to the assessments in sufficient time to be available. Another serious objection to the present system in making assessments for public improvements is to the extravagant charges made by commissioners, assessors, surveyors and corporation counsel: it will be seen by the public documents herewith, that for one street less than three thousand feet in length, this class of charges amounted to near $12-000. When property is sold at public auction for unpaid assessments, the corporation sell the property for a term of years, which in many cases is equivalent to selling the fee simple absolute. Very many of the lots so sold are purchased by Corporation Officers, who from being employed by the corporation to make surveys, collect the assessments, &c. &c., acquire information of the absence &c. of owners, and by that means possess themselves of the estate.

Your Memorialists could go further into detail of the mischiefs against which they seek to be relieved, but they deem it unnecessary.

Your Memorialists therefore, in consideration of the premises, respectfully ask your Honorable Body to pass a law to remedy the evils complained of, and also, to suspend the sales of property for unpaid assessments until the termination of the next session of the Legislature, and to make such further and other enactments in relation thereto as the Legislature in their wisdom shall deem needful and right.

And your Memorialists in duty bound, &c. &c.

The above Memorial is signed by Caleb S. Woodhull, Calvin Ballis, Thomas Lawrence, J. P. Phœnix, Abel T. Anderson, B. Deming, Robert Smith and David Graham, jun., then Members of the Common Council; also by David Banks, John Morss, Joseph Tucker, John R. Peters, Peter Sharpe, Robert Bogardus, Joseph Hoxie, Jacob Acker, R. R. Ward, John De Lamater, Gideon Tucker, Benjamin Townsend, John Shepherd, jun. and Morris Franklin, formerly Members of the Common Council; and also by Dow D. Williamson, formerly and now City Comptroller; by John Newhouse, formerly Clerk of the Board of Assistants; by Edwin Smith and Edward Doughty, City Surveyors; by William Paxon Hallet, John Harris, Forsyth Labagh and H. P. Robertson, Commissioners on Streets; by Chief Justice Jones, Judge Tallmadge, Judge Ingles; David B. Ogden, Surrogate of the county of New York; by David Hale, M. Y. Beach, W. L. Stone, M. M. Noah, Editors of daily papers published in New York; by Peter Lorillard, John M. Bradhurst, John Anthon, Gerardus Clark, Isaac Young and several hundred other HIGHLY respectable Citizens of the city of New York, *without* distinction of party.

The Abuses which were complained of, were notorious.

WILLIAM M. HOLLAND.

Alas! how frail is human life, how uncertain its duration, and oft times how unexpected its termination! The much beloved individual whose name heads this obituary notice has departed from among us. In the meridian of his life, the days of his earthly pilgrimage have ended—his labors, his toils and his sorrows in this troubled scene, have ceased—he has entered into rest.———

The event is solemn and instructive—the separation of the immortal spirit from the tenement of earth, its temporary abode, is a change of mighty moment.

When we commenced this volume Mr. Holland was in the enjoyment of health, and looked forward to the enjoyment of years yet to come with the same confidence that we all anticipate the coming years;—but ere these few brief numbers are completed—he has finished his course and departed.

Our opportunities of knowing Mr. Holland gave us a very high opinion of his WORTH—of his TALENTS. He was the biographer of the distinguished individual who filled the highest office in the gift of this Republic after the termination of the presidency of General JACKSON. We refer to the Biography of President VAN BUREN which was written by Mr. HOLLAND.

Mr. HOLLAND was for some years one of the Professors of a College in Connecticut, and was some time law partner of Governor Ellsworth.

He was one of the counsel employed by the Anti-assessment Committee to appear before the Hon. Select Committee appointed from the Honorable the Senate of the State of New York, at the session of 1841, to investigate assessment abuses in the city of New York. At their sitting in the Lecture room of Clinton Hall, some brief heads of his argument were noted down by the Chairman of the Senate Committee, and are copied from the documents accompanying their report, into this volume.

Mr. HOLLAND also appeared as Counsel for several of our most influential citizens in the argument of assessment causes before their Honors Chancellor Walworth, Vice Chancellor McCoun and Assistant Vice Chancellor Hoffman; and also before Mr. Chief Justice Nelson and Mr. Justice Cowen; and subsequently before the three Justices of the Supreme court. A notice of his argument before the Assistant Vice Chancellor is to be found in this volume.

The arguments of Mr. HOLLAND before these high judicial officers were eloquent and able, were listened to with great attention by the Court as well as the auditors, and the conviction which they carried to the understandings of those to whom they were addressed, as well as to those who were spectators, will *hereafter* make an impression and produce an effect which will reverberate from mind to mind, until the public mind shall become awakened to a right view of the importance of the doctrines and principles he discussed: and although he whose lips gave utterance to the words which were then addressed to the ear, has gone down to repose in the warm bosom of mother Earth, there to await the joyous sound of the trump of the bright and glorious morning of the Resurrection, yet his voice has gone forth on the wings of the wind, making its imprint upon mind as well as upon matter, from both of which it shall again re-imprint until it will produce an effect on minds not yet embodied in mortal flesh and show forth in after generations!

In his death the bar has lost one of its highly valued members, the country a most excellent citizen; society one of its brightest ornaments, his surviving parents a most dutiful son, and his only sister a most kind and affectionate brother.

During the last winter Mr. HOLLAND was advised by his physician to visit the island of St. Croix for the benefit of his health which appeared to be failing: he did so, and remained there some time, but finding no benefit from a change of climate he returned to this city. His health rapidly gave way, and in a few short weeks the period arrived which witnessed the final separation of his celestial and immortal spirit from its tenement of clay, to continue until the glorious morning of the resurrection when the ashes of mortality shall be clothed with immortality!

ROBERT BOGARDUS.

Among the names of Memorialists to the Legislature in April, 1841, was that of General Bogardus, and he was the first individual out of a list of about 300 persons who signed these Memorials in March and April, 1841, whose decease we are called to announce. These signers are most of them citizens advanced in years, and it is somewhat remarkable that during the then succeeding twelve months, the death of GEN. BOGARDUS was the only one which occurred amongst this great number. GENERAL BOGARDUS was extensively known and much valued. At the Procession for the funeral obsequies of President HARRISON he officiated as Grand Marshal of the day: the weather was very inclement, and he was then in feeble health—was exposed for several hours to wet and cold, and survived but a few months after. GENERAL BOGARDUS had been a member of our city councils, was for more than forty years an active and highly respectable member of the bar, and a most excellent citizen. He died at the age of about 70. Since the death of

General Bogardus we have to record the death of two others of the Memorialists.

—

JOHN RATHBONE, JR.

For many years a very successful merchant of this city, and after his retirement from active business he was chosen a Director of several of our most extensive monied institutions. He died suddenly, after a short illness. Mr. RATHBONE was highly esteemed.

—

PETER SHARPE,

Another of the Memorialists, has also departed this life. Mr. SHARPE was formerly a member of our city council, and represented the city of New York in the Congress of the United States. He has been much in public life, and was highly respected and beloved.

* * * * * * * *

Thus one after another are called away—until at length none will remain.——What a subject for meditation—for contemplation!———Yes, ere the close of the present century, few—if any—whose names are recorded in this volume—will be numbered among the living.

The earth, on the surface of which they now move, will then have received their mortal remains into its bosom as a sacred deposit.

Sublime, indeed, it is to pass forward on the wings of thought and contemplation to the glorious morning of the Resurrection of the Dead!—to that bright, shining day when our globe shall become "a new Earth and a new Heaven"! How terrific, however, must be that day which must intervene—that day when our globe shall melt with fervent heat—a heat that shall kindle up a blaze that will illuminate a comet's path with the fire of a consuming world!—Yes—that day when our globe shall fly with the velocity of a comet's speed to the boundless and unbounded regions of space, until, moving onward, it shall meet with that repelling force which shall hurl it back, revolving and re-revolving until it shall have again acquired density, and again resumed its original orbit, a new earth—a new creation! Such a view as here expressed is not inconsistent with the prophetic language of the inspired penman whose declarations are recorded in the Sacred Scriptures, nor are they inconsistent with the order of Nature as developed in the spectacle displayed in the visible Heavens of the revolutions of consuming worlds, presenting to the naked eye of astonished beholders, a world on fire leaving in its path millions of leagues of light, resulting from the mighty blaze of the unquenchable fire of our terrestrial world!

The sublime spectacles which meet the eyes of mortals is less a wonder than that we frail mortals, who are candidates for immortality, should be indifferent and unmoved spectators of such scenes, and unconcerned in such momentous realities.

What a theme for the contemplative mind to dwell upon—is that mighty reality that the human race, whose place of temporary sojourn is the earth's surface, is bounded on the one side by the regions of perpetual frost, on the other, by those of internal fire. Upward, within a few short miles, is unchanging cold, and not far distant is that point where all fluids become solids—hence our highest mountains are covered with perpetual snow:—downward as we progress into the body of our earth, the heat increases, until (in all human probability) it reaches that point where the vast centre is an ocean or lake of liquid fire:—between these two extremes, is the dwelling place of mortals—the temporary home of our race:—beneath this surface is the grave also—the temporary resting place of the ashes of mortality. We say temporary, for such they will be when compared with unending the day that will succeed the morning of the Resurrection.

Shall mortal man calmly sit down to calculate the time when the last Trump shall sound?—shall he forget the declaration uttered by the GLORIOUS MAJESTY OF HEAVEN, THE PRINCE OF THE CELESTIAL WORLD?—those words which although spoken near two thousand years ago, are yet extant. "*That hour no man knoweth,*" said the SAVIOUR of our race, the Holy Redeemer.

We speak of days—of our day—and the Sacred Historian speaks of "that day in which GOD made the Heavens and the Earth"—shall we measure the day of HIM with whom a thousand years are as one day——our day terminates in the grave.

The grave is the terrestrial couch on which the ashes of mortality repose. The grave is a SACRED PLACE—oft, it arrests the gaze of mortals—oft a momentary sojourn near its borders brings to the human mind grief mingled with sorrow, which humbles human pride. Alas—alas!—could this influence but continue, and endure, and expand, until it shall produce an EFFECT that shall protect the NARROW HOUSE from *sacrilegous hands.*——

Our city—the largest, the most populous in the Western World—is yet in its infancy. Less than two hundred and fifty years ago the Island on which it stands was the habitation of the red men of the forest. More than eight generations of our race have here lived and died—their mortal remains were consigned to the narrow house—but alas! their resting places—WHERE ARE THEY?——Gone,—gone,—and the precious ashes of mortality have been *scattered to the winds or trampled under feet.*

The dead are made to give way for the living: is this right?—is there to be no resurrection of the dead?—are we unbelievers in that sacred declaration of that blessed volume on which rests the Christian's hope?

It is not the NECESSITIES of the living that induce the violation of the place of sepulchre, but their *convenience*—a desire that the ashes of mortality and the ground in which they repose may become a surface for public streets over which the thoughtless shall harshly tread until they in their turn shall follow to the same temporary repose of those of their kindred who have preceded them, and thus "ashes to ashes, and dust to dust."

The untutored savage venerates the ashes of the dead—he treads lightly over the soil beneath which lie the ashes of his kindred—in this, his example is a lesson, that the enemy of his race might be proud to copy; but no: that people who have the pages of Revelation, shining with the bright promises of Celestial bliss, of eternal glory, placed before them, reverence not the ashes of the dead:—nay those who have the Sacred Word of the MIGHTY PRINCE OF JEHOVAH'S THRONE in his Written Volume, placed in their hands—are neither deterred by its threatenings, nor persuaded by its promises!

If we turn back and peruse the pages of Sacred history, we shall find that the place of sepulchre was a hallowed spot. Joseph of Arimathea purchased the sepulchre for the temporary resting place of the crucified Prince of Heaven; Abraham purchased the cave of Macphelah for the repose of the mortal remains of his beloved consort;—Joseph when in Egypt visited the same place of sepulchre near two centuries afterwards, there to deposit the remains of his beloved father; and when he, himself, was about to put off this earthly tabernacle, he exacted a promise from his people that they would carry his remains with them out of Egypt.

We have said of the ancient places of sepulchre in our city—where are they?—we add, of the modern places of sepulchre,—where are they?——in what manner are the latter regarded?——Shall we answer—and shall we say that one of these hallowed spots—one of the sacred depositories of the silent dead WAS offered for sale to the person who would pay a Corporation Assessment, imposed upon it, for the lowest term of years that any one would *take it for*, in consideration of paying this assessment and Expenses. We allude to ST. MARK'S CEMETERY, which was assessed for *Benefit* for the Opening of Art street, and was advertised to be sold at auction by the Street Commissioner in 1841 for the non-payment of the assessment. It was offered FOR SALE—Silence sealed the lips of the auditors.

We had hoped that the ties of consanguinity would have had an influence to protect the ashes of the dead,—but in this we were disappointed.

The Deaf and Dumb Asylum, the Asylum for the Blind, and several houses consecrated to the Worship of the TRIUNE GOD, were offered for sale for Corporation Assessments, and many of these were sold!

If the ties of CONSANGUINITY will not protect the ashes of the Dead, the Laws of the Commonwealth should.

Places of sepulchre, the silent tomb, the grave where rest the silent, should not be the objects of assessment imposition for public improvements.

Churches, or houses used for Religious Worship, should also be exempt from such imposition.

Charitable Institutions—Colleges, Academies and Schools—should likewise be exempt from such proceedings.

Perhaps it may be said that the Commissioners of Assessment and Assessors have the needful discretion in this, and the same may be said of the Court or power which confirm the report of such Commissioners or Assessors, but *discretion*, is a term without a meaning, so far as these practices are concerned—the WILL of the officers is called, *discretion!*

The LAW of the Commonwealth should determine that such Impositions shall not be made.

MEMORIALS

PRESENTED IN THE SENATE OF THIS STATE AT THE EXTRA SESSION OF THE LEGISLATURE IN AUGUST 1842.

THE following are copies of several Memorials presented to the Legislature of this State by Mr. FURMAN.—We give below the names of some of the Signers. We have mislaid a part of the list, but enough however are here stated to show the opinion entertained by the public on this question.—As no other business other than that of apportioning the State into Congressional districts was done at the Extra Session, the Memorials were not then acted upon.

TO THE HONORABLE THE LEGISLATURE OF THE STATE OF NEW YORK:

Your Memorialists most respectfully represent to your Honorable Body that the powers now and heretofore exercised by public officers in assessing private property for what are miscalled public improvements have the effect to lessen the Value of Real Estate upon the Island of New York, to render Titles doubtful and insecure, and prevent City Lots from being improved.

Your Memorialists refer your Honorable Body to the Report of the Honorable the Select Committee, appointed by the Honorable the Senate of this State at the session of 1841 to investigate Assessment Abuses in the city of New York, and to the numerous Memorials presented your Honorable Body for the details of these abuses.

Your Memorialists, in consideration of the premises, most respectfully ask your Honorable Body to repeal all Acts heretofore passed which authorize the Imposition of Assessments upon Private Property for public improvements, and to repeal the Act passed April 12th, 1816, authorizing the Mayor, Aldermen and Commonalty of the city of New York to sell or lease lands for unpaid assessments, leaving those assessments a Lien upon the land, and to be collected in an action of Debt, that the persons assessed may be able to test the legality of said assessment in a Court of Law.

Your Memorialists ask that the first and second section of the act passed May 25th, 1841, entitled "an Act in addition to the Acts respecting the Collection of Taxes and Assessments in the city and county of New York," may be repealed, and that the act passed May 6th, 1841, entitled an Act in relation to the Redemption of Land sold for Taxes or Assessments in the city of New York," may also be repealed, leaving the Act of May 14th, 1840, requiring notice to Mortgagees, in full force: so that in any case of a Sale of lands, for taxes or assessments, a Mortgagee shall not be divested of his Mortgage Security without due notice. And your Memorialists will ever pray, &c.

W. W. Fox,
Jonathan Thompson,
James G. King,
John I. Palmer,
Robert C. Cornell,
G. G. Howland,
J. Smyth Rodgers,
Peter Embury,
Garret H. Striker,
Samuel Marsh,
Abel T. Anderson,
Lawrence Ackerman,
Henry Breevort,
Augustus Thomas,
Burtis Skidmore,
Charles H. Russell,
Edgar Harriot,
John Wadsworth,
Wm. C. Rhenlander,
Tonnelle & Hall,
Phelps, Dodge & Co.
Richard Mortimer,
A. B. Meech,
O. Halstead,
John R. Peters,
Gerardus Clark,
Thomas Lipincott,
Thomas M. Burney,
John A. Schuyler,
James M. Murray,
John. P. Atkinson,
Edward A. Cook,
William Leggett,
J. C. Morrison,
John H. Howland,
Jacob Drake,
John Haggerty & Co.
Brown, Brothers & Co.
Winifred Mott,
B. Deming,
T. O. Fowler,
C. W. Faber,

William B. Crosby,
Peter Schemerhorn,
Jonathan Lawrence,
Philip Milledoler,
Nathaniel Weed,
Hiram Walworth,
H. W. Field,
Horace Holden,
Charles Town,
John Brouwer,
Peter Lorillard, jun.
Duncan Phyfe,
A. A. Alvord,
A. D. Cushman,
John L. Mason,
Thomas Riley,
Samuel Thomson,
Valentine Mott,
Wm. Browning,
Stacey Pitcher,
Benjamin L. Swan,
Alexander Lawrence,
S. S. Ward,
Treadwell Seaman,
William Torrey,
R. Reed,
Samuel S. Howland,
James Lovett,
John Morss,
L. & V. Kirby,
Jonathan Hunt,
John P. Austin,
Roger Pegg,
W. W. Todd,
R. E. Skidmore,
Zenas Hyde,
James Wilkie,
Thomas Glover,
John H. Hurtin,
Isaac M. Wooley,
Sinclair Tousey,
A. B. Cox,

George B. Smith,
Robert Smith,
James Boorman,
E. W. Leight,
Anson G. Phelps,
John Anthon,
James Fellows,
H. R. Dunham,
Wm. Thomson,
Duncan P. Campbell,
John H. Tallman,
Isaac Adriance,
Lambert Suydam,
John H. Cornell,
Wm. Scott,
Samuel G. Raymond,
Mott Brothers,
Smith Harriot,
Nevins, Townsend & Co.
F. Marquand,
C. Bolton,
P. M. Suydam,
James McBride,
William and John James,
Henry Lott,
Hicks & Co.
A. M. Bruen,
C. M. Holmes,
J. L. Bowne,
George T. Hope,
Oliver H. Jones,
James A. Burtis,
Orsamus Bushnell,
George F. Butler,
James Harriot,
Wm. Samuel Johnson,
John Newhouse,
S. Hurlbert, jun.
Silas Dewit,
Joseph Alexander,
John L. Ireland,
C. Bartlett,

Philip Hone,
James I. Jones,
John M. Bradhurst,
Richard F. Carman,
George Ireland,
Timothy Whittemore,
John Morton,
Henry Mendell,
William Colgate,
Young, Smith & Co.
Horace Waldo,
J. Grosvener,
R. W. West,
J. Milhau,
S. W. Fox,
F. B. Cutting,
Isaac Bell,
Joseph Kernochan,
Herman Bruen,
Garret Van Doren,
John L. Norton,
John C. Beekman,
B. Drake,
Hamilton Fish,
H. Murray, for Est. of John R. Murray,
A. Lockwood,
J. A. Jones,
James K. Hamilton,
David Codwise,
R. Mott,
John S. Voorhes,
Edward Corning,
J. J. Stewart,
Matthias Bruen,
Maturin Livingston,
Henry Ogden,
J. R. Walter,
Fisher Howe,
H. W. Dalson,
Geo. E. Geenzebaugh,

John Haggerty,
Edmund H. Pendleton,
Peter I. Nevius,
Joseph Walker,
Richard Whiley,
T. W. Thorne,
A. M. Merchant,
R. W. Martin,
Sampson Moore,
R. Havens,
John A. King,
Robert Ray,
N. Paulding,
Charles St. John,
S. B. Reeves & Co.
John M. Dodd,
Woolsey & Woolsey,
Thatcher T. Payne,
Henry Andrew,
C. W. How,
John O. Fay,
William Gale,
David Merion,
Martin Hoffman,
Duncan C. Pell,
Martin W. Brett,
G. C. Therburn,
Samuel Ward,
Gerardus Stuyvesant,
Hendricks & Brothers,
E. Meriam,
Seymour & Co.
W. G. Bull,
R. Stebins,
Henry M. Carpenter,
W. C. Hickcock,
Abraham G. Thompson,
Aaron Clark,
C. A. Clinton.

N. Y. MUNICIPAL GAZETTE...Extra.

Published by the ANTI-ASSESSMENT COMMITTEE, and distributed gratuitously.----Edited by E. Meriam.

VOL. 1. NEW YORK, DECEMBER 14, 1842. No. —

TAXES.

We have thought it important to place before the public at the present time the Laws now in force in relation to the Assessment and Collection of TAXES.

The aggregate Tax now imposed on the Real and Personal Estates of the citizens and inhabitants of the county of New York have reached an amount, that has alarmed the Owners of real estate.

We have but to look back through the records of a few short years to a period when the WHOLE *Annual Tax* of this city amounted to a sum about EQUAL in amount to the SIMPLE INTEREST on the amount of the Tax for the present year for 190 days.

1801,	population	60,489,	Tax	75,000
1810	"	96,276	"	120,000
1820	"	123,706	"	250,000
1830	"	202,580	"	450,000
1840	"	312,883	"	1,100,000
1842	"	340,000	"	2,000,000

We have thus stated the periods, the population, and the annual tax, by an examination of which it will be seen that, in 1801, the population was more than one sixth of its present number, and the annual tax of that year only *one twenty-sixth* as great as the tax of the present year.

TAXATION HAS OUTRUN POPULATION.

Allowing that there are 40,000 voters in our city the present tax gives an apportionment of about $50 to each voter, and to each inhabitant of the city, estimating the population at 340,000, of about $6; but this equal distribution of our tax is not made. Taxation and Representation are *not equal:* far—VERY far from it.

The causes and the consequences of our present extravagant amount of Tax is a matter, that is all-important to consider.

We think that we find in the Revised Statutes one of the causes which has led indirectly to an extravagant expenditure of public money by our Common Council and Officers of the Corporation, and we desire to call the attention of citizens who are conversant with our municpal affairs, *particularly*, to the features of the Law to which we allude.

These Provisions of the law are to be found in the 1st Vol. Rev. Stat., new Ed., p. 361 & '3.

The substantial provisions of this law makes the Mayor, Recorder and Aldermen of the city of New York Supervisors of the county of New York, and also makes the Chamberlain of the city of New York Treasurer of the county of New York.

In 1830 the Legislature passed a Law in relation to the city of New York containing the following Provision, Chapter 122:

"§ 19. *The Common Council shall not have authority to borrow any sums of Money whatever on the credit of the Corporation, except in anticipation of the Revenue of the year in which such Loan shall be made, unless authorized specially by the Legislature.*"

This restrictive provision as to the Borrowing of Money is from the pen of that distinguished citizen, STEPHEN ALLEN, a member of the City Convention, whose acquaintance with our city affairs entitle his views thus embodied to great respect, and the highest consideration.

The City Chamberlain, by virtue of his office, becoming entitled to the custody of the monies collected from the county tax as well as those arising from the City Revenue, and also those arising from the Collection of special Local Assessments, placed these three distinct funds promiscuously to the Credit of the city of New York, and the Common Council and Officers of the Corporation considered and treated all three of these DISTINCT and separate funds as the "*Revenue of the Year.*" Here is the great error: the County Taxes are not City Revenue, any more than the State mill tax.

Mr. Allen supposed that the Corporation Officers were restricted from borrowing any sum exceeding $150,000 in any one year: true, they were; but they violated this salutary provision, and actually borrowed nearly Two Millions of Dollars, and to this cause is to be attributed the present enormous tax. The Corporation have been running behind hand for near twelve years—the arrears of one year accumulating upon the previous year until at length the city is a whole year behind hand.

The Hon. ISAAC L. VARIAN, on his entering upon the duties of Mayor of the city of New York in 1839, in his first executive message to the Common Council alludes to this subject in the following words:

"The practice which has *within a few years* grown up in the Common Council, of borrowing large sums of money under that provision of the Charter which authorizes temporary loans in anticipation of the ANNUAL TAX, I consider injurious to the financial interests of the City, and not contemplated by provisions of the Charter under which it is done. By a reference to the Comptroller's report, it will be seen that during the year 1838, temporary loans, amounting to EIGHT HUNDRED THOUSAND Dollars were made by him, in addition to the sum of *Four Hundred and Eleven Thousand Nine Hundred and seventy-five Dollars and Thirty-eight Cents, borrowed from the City Aqueduct Loans, &c.*"

"*These loans could, by the Charter, only be made in anticipation* of the TAX of 1838, as the tax of 1839 was not authorized by the Legislature, and the amount so borrowed was more than the whole tax levied. Of this amount so borrowed in 1838, there still remains unpaid the sum of $204,271.27, and since the commencement of 1839 the borrowing of $300,000 has been authorized by resolution, as a temporary loan, while there remains unpaid of the tax of 1838 comparatively a small amount. Such a system, if continued, must eventually end in direct violation of the provisions of the charter, and in the accumulation of a debt which is paid from one year to another by temporary loans, and which will always be a heavy burden upon the financial department of the city."

"The provision of the charter was expressly intended to *prevent* the Common Council from incurring such debt, and to confine the expenditures of the city to its annual income; and the authority then given to borrow money in anticipation of the tax, was only intended to defray the *ordinary expenses* of the city, in cases when, from unforseen occurrences, the ordinary collection of taxes had not been made to a sufficient amount."

"Connected with this subject is another, worthy of your examination. A large amount of money is annually received by the Comptroller in trust, to be repaid to others. I refer to monies received on assessments for opening, regulating and paving Streets, the whole of which is to be repaid to contractors or other persons entitled thereto. The money however is paid into the Treasury and applied to the general purposes of the city; and when called for, it becomes necessary to provide means for its payment, by temporary loans or other expedients. The union of these funds with the general funds of the city, tends to confusion in the public accounts, and at times to place at the disposal of the public authorities large sums of money, and thereby to induce more extravagant appropriations than otherwise would be done if these monies were kept separate from the common fund, and applied solely to the purposes for which they are received by the Common Council."

This language used by this worthy public officer, deserves a careful reading. Mayor Varian was several years a member of the Common Council, and was for some time President of the Board of Aldermen. He is now a member of the Senate of the State of New York. He is, and always has been, an old fashioned Democrat, and is much beloved and highly respected by his fellow citizens.

We agree with the worthy Mayor in the loans referred to being a violation of the City Charter, but we do not concede that the "*annual tax,*" to which he refers, is a city revenue: here we claim the right to differ in opinion with His Honor,—and this difference is very material.

Some few months subsequent to this, the Common Council petitioned the State Legislature for authority to fund this accumulated debt.

On the 14th January, 1840, the following Petition to the Legislature of this State was signed by the Mayor and Clerk of the Com-

mon Council, and to which was affixed the seal of the Corporation.

"To the Honorable the Legislature of the State of New York.

"The memorial of the Mayor, Aldermen and Commonality of New York, *respectfully represent*,

"That by reason of the great expenses which they have incurred in consequence of the various improvements in the said city, they have found the ordinary revenues of the Corporation altogether inadequate to meet the demands which these expenses have produced, and that they have therefore, from time to time, been obliged to issue their bonds under their Corporate Seals, to defray some of these expenses, as a mere means of temporary relief. The amount of this floating debt on the 31st of December last, amounted to One Million Seven Hundred Thousand Four Hundred and Sixty Dollars, and can probably be reduced from anticipated sources of revenue to *One Million Three Hundred Thousand.*

"The amount to be raised by the annual tax bill will be required for the ordinary expenses that will accrue pending its collection, and will therefore furnish no relief in liquidation of the floating debt.

"Your memorialists therefore pray your honorable body will grant *to them authority* to fund such amount of the said floating debt as they may deem expedient, not exceeding *one million three hundred thousand dollars*, by the creation of a six per cent. stock, redeemable in annual instalments of one hundred thousand dollars each.

"And your memorialists will ever pray, &c.

"ISAAC L. VARIAN, Mayor.

"Thos. Bolton, Clerk Com. Council."

[seal.]

Endorsed, "Board of Aldermen, January 13th, 1840.

"The within memorial and act approved.

"Thos. Bolton, Cl'k C. C.

"Board of Assistants, Jan. 13, 1840.

"The within memorial and act unanimously approved.

"Edw. Patterson, Clerk.

"Approved. ISAAC L. VARIAN.

"January 14th, 1840.

"Presented in Senate, Jan. 17th, 1840."

The Legislature authorized the funding of $400,000. See Act in Session Laws of 1840.

The Legislature authorized the Common Council to fund $400,000 of this debt reimbursable by annual instalments of $50,000 each: one of these instalments forms a part of the present annual tax.

Had the accounts of the County Treasurer been kept separate from those of the City Chamberlain, and both separate from those of the Local Assessments for public improvements, a great check would have been interposed to extravagant expenditures. The present Chamberlain has in this followed the practise of his Predecessor.

The Mayor, Recorder and Aldermen of the city being, by virtue of their said offices, Supervisors of the county, blended the duties of the two distinct classes of officers together, and, from this mixing up of duties, they mixed up the county taxes with the city revenue and called the county taxes City Revenue; and hence the mixing up of the different, distinct and separate funds in the accounts of the city Chamberlain.

This state of things shows the necessity of separating the Duties of County Supervisors and County Treasurer from those of City officers.

The Hon. Robert H. Morris, the present able and efficient Mayor of the city of New York, agrees with us fully in the importance of separating the Office of county supervisor from those of city alderman.

The consequences of a continuance of the present high rate of taxes will drive citizens whose funds are invested mostly in personal property, from the city—these citizens will remove, to other sections of the State where they will be less burdened: those who are left behind with their property will, therefore, be compelled to pay the Taxes of those who remove in addition to their own, and both of these combined will have the effect greatly to lessen the Income from real estate, as well as to diminish the Dividends of our banks and other incorporated companies.

While speaking of Banks and other incorporated companies, we will here stop to remark that the provisions of law which authorize an assessment of tax upon the Capital Stock,—*some of the Ward Assessors insist*,—makes no provision for deducting the losses which may have diminished that capital, however heavy these losses may have been. If a bank shall have lost all of its capital stock *no* tax is to be imposed; but if they have lost ninety-nine and three quarters per cent., the remaining *quarter of one* per cent. must pay the tax of the original 100 per cent: this is inequitable and therefore oppressive and unjust—and the consequence will be, that these descriptions of stocks will be depreciated. We do not so read the law.

The business of incorporated companies, is not so productive that they should be required to pay a greater tax than individuals, in proportion to their means.

There are a variety of opinions entertained in relation to our county taxes as to the mode of assessing, respecting the persons and property to be assessed. We have conversed with great numbers of our influential citizens, and find such is the fact.

It was well remarked by President Jackson, in his celebrated Proclamation issued shortly after the nullification ordinances of South Carolina were passed by that State—

"*That human wisdom had never yet devised a system of taxation that operated with perfect equality.*" Mr. Justice Story, one of the brightest ornaments of the American Bench, in speaking of this Proclamation of President Jackson, says, "as a State paper, it is entitled to great praise."

If money funds are to be subject to excessive taxation they will be withdrawn from such districts as impose the greatest burdens in the shape of annual taxes, and if real estate is alone to pay these impositions, it will decrease in value in the same ratio as the taxes are increased in amount.

The Question is, What is to be done under such a state of things?

We think the recommendation of Gov. Morton of Massachusetts, to the Legislature of that State, the only remedy which our citizens can adopt. The recommendation of his Excellency was very laconic: "*Adopt Retrenchment as a substitute for Taxation.*" This must be done—and it can be—on a very extensive scale.

The policy which has been heretofore pursued of increasing the amount of the public property by the appropriation of the funds belonging to citizens, paid into the public treasury in the shape of taxes, is not only dangerous, but absolutely ruinous. Municipal corporations should not own a dollar of property beyond that required for public use. Such a course as has heretofore been pursued in this matter, if continued, will lead to one of the most dangerous of Monopolies;—besides, it is at variance with the spirit of our Institutions and dangerous to civil liberty.

It is true that our city has experienced its full share of the fluctuations in business operations of all kinds these few years past, but if the public officers had confined themselves to their legitimate duties, the public interests would have passed unscathed.

The question is asked, How can the taxes be reduced?

In order to reply, it is necessary first to state what constitutes the aggregate of the taxes now being collected.

The Public Officers class them as follows:

1. STATE MILL TAX.
2. CROTON TAX.
3. COUNTY TAX.

First—The State Mill Tax, the present year, amounts to $237,783.60, and is imposed upon Real Estate valued at $176,489,042.00 and Personal Estate $61,294,559.00.

The following statement is copied from the State Comptroller's report to the Legislature made in 1840 of the Valuation of the real and personal estate in all the counties and cities in this State, from which we have selected seventeen of the richest counties, in which it will be seen that the assessed value of real and personal property in these counties is less than that of the county of New York for the present year.

The statement is as follows:—

The aggregate real and personal Estate in the county of Orange in the year 1839, is assessed at		11,420,916.00
In the co. of	Duchess	18,351,797.00
" "	West Chester	10,718,797.00
" "	Albany	13,626,100.00
" "	Greene	11,569,268.00
" "	Oneida	12,138,770.00
" "	Oswego	8,549,000.00
" "	Renselaer	11,245,113.00
" "	Onondaga	16,768,635.00
" "	Ontario	11,420,916.00
" "	Kings	31,103,113.00
" "	Monroe	15,731,524.00
" "	Cuyahoga	12,569,075.00
" "	Livingston	11,246,124.00
" "	Columbia	9,878,392.00
" "	Erie	12,238,392.00
" "	Queens	10,781,650 00

These seventeen counties above named contain four times the *actual* value of taxable

property that the city of New York possesses. It is in this, that New York suffers in the mill tax: the valuation, by the assessors in this city, is four times as high as the assessors in the country would rate the same property in their respective districts, hence the citizens of the city of New York pay *A Four Mill Tax.* A Farm in the country worth ten thousand dollars is rated by the country assessors at twenty-five hundred, whereas a house and lot in the city which is worth $6,000 is rated by the city assessors at $8000.

THE REDUCTION OF THE VALUATION OF REAL AND PERSONAL ESTATE IN THE CITY OF NEW YORK SO AS TO EQUALIZE IT THROUGHOUT THE STATE WOULD REDUCE OUR MILL TAX MORE THAN $100,000.00.

Here, then, is the first Item of saving.

Second—THE CROTON INTEREST TAX. Only a portion of the interest of the Croton Debt is included in the present annual tax. We may, in round numbers, set it down at $475,000.00 or three fourths of the actual amount of the interest of the debt for one year.

The City Comptroller, in his supplementary report made out October 3d, 1842, states the Croton Debt, as then existing, as follows:

Five per cent. Stock,	$8,771,500.00.
Six per cent. Stock,	645,312.00.
Seven per cent. Stock,	2,000,000.00.

The same report states that the Croton Water Rents, up to that period, had amounted to less than $9000, a very small sum indeed.

The Croton debt is *increasing*, and will be much increased beyond the amount of indebtedness above stated: the annual tax to meet the payment of the interest will also be much increased.

The only means of decreasing the interest, is to decrease the debt by a sale of all the public property not in public use. It is said that the present time is not a good time to sell—that the price of property is low. True, the price of property is low; and it is equally true that it will be still lower.

The immediate present time, is never considered a good time to sell. We hear it remarked by citizens that 1836 was the time that the public property should have been sold; but in 1836 and 1837, the opinion was then entertained that that was not the proper time to sell. We have before us a report of a Committee of the Board of Aldermen in this very matter, which as it is quite brief, we will quote in full.

Here it is:—

"The Committee on Finance, to whom was referred the resolution directing a report to be made on the expediency of disposing of part of the unimproved real estate belonging to the Corporation, *respectfully*

"REPORT

"That there is some part of the public property, where the leases have expired and without a covenant of renewal, that might have been sold; but, in the present pressure of the money market, they think it advisable not to offer the same at the PRESENT TIME. They therefore ask to be discharged from the further consideration of said resolution.

"Respectfully submitted,

"D. P. INGRAHAM,
"EDWARD TAYLOR,
"DAVID BANKS.

"Which was adopted and ordered on file."

This Report was made April 5th, 1837.—*See Pro. Board of Ald.*, Vol. 12, page 476.

Real Estate on this Island will not increase in value while the present enormous tax is continued, coupled with a prospect of being still more onerous;—and, in addition to this, the local assessments, which are of an alarming character, are destructive to the value of real estate and operate as a cloud upon the title, whether actually assessed or only intended to be assessed, for there is but little difference between these two classes.

If the public property shall be at once disposed of, or placed in the hands of judicious business men in whom the public have confidence, to dispose of when they shall deem the proper time, and the avails of these sales be appropriated to the retiring of the Croton bonds of an equal amount as fast as collected: the debt can probably be diminished by this means three or four millions of dollars, and that sum is the whole and full value of the public property not in public use.

The next item to lessen the debt, that we propose, is, the Water Rents: let these be appropriated every quarter to the purchase of the Croton bonds in the market, and, as fast as the same are obtained, they should be cancelled by writing across the face of the obligation the word CANCELLED, in letters on an inch square, attested by the Mayor; and also the Recorder, under a seal, and let this seal be a round punch an inch in diameter: when this is done, publish a statement of the bonds, so cancelled, in a city newspaper of the most extensive circulation, specifying the date, number, denomination and name of the payee of each bond: after this, let the Bonds be filed in the office of the City Chamberlain as an evidence of payment. Such a disposition of the bonds is better than any sinking fund, and bonds thus treated may be considered *Rat-proof.*

Those gentlemen who think the Croton rents will be large, will be satisfied with the consequent rapid diminution of their tax; and other gentlemen, who are of the opinion that the water rents will not pay the cost of superintendence, repairs, &c., will not be disappointed in having to continue the payment of the Interest tax.

The further expenditures upon the Croton should be, by all means, at once discontinued—no more money should be borrowed—not another dollar.

Our city authorities will find, to their surprise, that the present onerous and extraordinary tax will be difficult to collect: after the voluntary payments shall have been completed, the very large Arrears will be found to produce great complaints and great distress. Our city authorities have gone headlong, as a few short months will plainly show. Politics have brought the city to the very verge of ruin—the acts of both political parties.

We believe the Croton is a valuable acquisition—that it would, with proper management add to the intrinsic value of real estate on this island—but it is not worth what it has cost: thus the wages of labor, in this, are greater than the value of the product of the labor, for the introduction of the Croton is the result of labor.

We find it stated in the City Comptroller's Report of the present year, page 15, that the land used for the Croton costs $364,948: the balance of the great sum which has been expended is the money paid for the wages of labor.

Such is the result in all cases where the wages of labor exceed the whole value of the product of labor.

Labor is the foundation of wealth—without labor the products of the earth, however profuse or abundant, could not be gathered.

Our Railroads, Canals, Bridges and Manufacturing establishments are the products of labor.

Labor when called into extensive requisition produces results, that, were we not witnesses of, we should be slow to credit.

The Egyptian Pyramids are proud monuments of the products of labor.

Recently the product of labor on the continent of Europe in the cultivation of grain divested that great monied corporation, the Bank of England, of its vast accumulation of precious metals.

The Wages of labor should be proportionate to the Value of its product; otherwise the employer and the employee must change places, and the balance will be on the wrong side of the account. There can be no permanency in a state of things like what we have illustrated above, nor do either party derive durable benefit.

The Croton will become an expensive concern to the people, unless they arouse and attend to the great interests which concern them:—it will be made a retreat for politicians—here they will be quartered, by the successful party, at the termination of every election:—it is the newly formed shoal on which the City craft will founder unless experienced, skilful Pilots take the helm.

The Price at which the Water is furnished to Families, is a question of paramount importance.

It is said that the question is, whether the water shall be sold, or whether it shall be given away? *This is not the true position.*

The real question is—Shall citizens be assessed more than once for the water? Shall they be compelled to pay for the water and at the same time be prohibited from using it unless on paying a second time?

Every person who either owns or rents a tenement on this Island, pays for Croton water;—if not directly, in the shape of a tax, it is paid indirectly, in the price of the rent, to the person who pays the tax;—and the payment, in either case, is the full value of the water which may be required for family use.

Citizens however would, as a matter of patriotism or public spirit, be willing to pay

five dollars each for the water for a dwelling-house, and if a tariff of this rate should be adopted, the receipts would be far greater in the aggregate, than the present oppressive demand.

The great difficulty in regard to the water rent, is, that it is a compound screw of a double twist—the citizens are made to buy, at a dear price, that which belongs to them without buying: it would be more equitable only to tax those who do not buy the water.

The Croton Tax will drive more citizens out of the city than the purity of its waters will tempt to become settlers in it.

We have heard it proposed that Commerce should be taxed to pay the interest of the Croton debt.

It is said that Foreign Merchandize should be made to pay—that it is protected from fire by the Croton—from burglars by the watchmen—that the transportation of goods over our streets wear our pavements, &c. &c.:—all this is true; but foreign commerce pays another, and a heavy tax—a duty imposed by the General Government. The State of Maryland, in 1820, passed an act requiring importers and dealers in foreign merchandize who sold goods by the bale or package to take out a license, for which they were required to pay $50: a severe penalty was provided in case they neglected, refused, or omitted to obtain such license: the importers resisted, on the ground that the act was a violation of the Constitution of the United States, and a suit was instituted to test the validity of the Act. The question was brought ultimately before the Supreme court of the United States—was fully and most ably argued: the Court gave a very elaborate opinion, and decided that the law in question was unconstitutional, and therefore void.

It is Commerce that makes a piece of ground 25 feet by 100, on the thick settled part of this island, of more value than one acre of the best land on the Mohawk flats: commerce, therefore, should be encouraged, and not discouraged.

The question as to what are the most proper objects of taxation, is one of great difficulty: it is not a new question: it has agitated nations as well as communities a long time ago. The direct taxes which were laid many years ago were much complained of, and were very unpopular.

If a direct tax should be laid for the payment of the Interest of the Croton debt, the question is—In what way can it be imposed, and on what property shall it be assessed?—The practise heretofore adopted in assessing arbitrarily for pretended Street Improvements, will not answer—that has neither the Constitution of the United States or of the State, nor has it equity or justice to support it;—it is equally a violation of all. A citizen who owns a house may not choose to use the Croton: he may prefer the water of his wells and his cisterns for the use of himself and his family, and he has a right to do so: he cannot be required to pay an assessment for the Croton. It may be said that his house is protected from fire by the Croton—and true it is; but he prefers to make insurance notwithstanding: he pays less premium, however: here then is an advantage which it is right and just he should pay for. The Croton is used in washing the streets: in this it is also an advantage, and for this the citizen should pay; but both of these will not equal the Share of the Interest of the debt incurred for the cost of constructing the works of the Croton. It is buildings and merchandize that are protected from destruction by fire by the Croton, the ground derives no such benefit. Merchandize, if belonging to non-residents, is stored in warehouses, which houses are taxed: merchandize, therefore, pays indirectly—if the Croton tax is made very onerous, goods will be stored without the bounds of the tax district.

Thus difficulties are abundant, and how shall they be remedied? We see but one way, and that is to let every person who occupies a house that is taxed to pay the interest of the Croton debt, use the water without being required to pay a second assessment: to those who use it for manufacturing purposes, make a very moderate charge, for the more the water is made use of, the better will be its quality; and the more it is used for manufacturing purposes, the greater will be the business of the city, and whatever tends to increase its prosperity, benefits directly the real estate of its Citizens upon this Island.

Citizens pay taxes cheerfully where they are reasonable in amount and equitably imposed; but when the amount becomes unreasonable from a wasteful expenditure of public money, which is the case now with regard to our county tax, there will be a dissatisfaction and this dissatisfaction will increase, and to such an extent that something must be done. The taxes which are now being collected are by voluntary payment. When the 1st of February arrives, then will come the TUG—then dissatisfaction will be increased, and it is right it should, for citizens have for a few years left public affairs to take care of themselves or in the *care* of politicians, who also take care of themselves regardless of the public interest. The Croton debt is a very serious matter—it is a very large amount, and should be in the hands of men of experience, men of ability, of men who have the confidence of the bondholders as well as the tax-payers. There should be no pipe-laying in this business—it is too vast and important a concern to place in the hands of EVERY-DAY politicians, of men of inexperience. The Salaries of the public officers who superintend the interests of the Croton should be fixed at so low a rate as to prevent the hunting up of the Offices for the sake of the FEES.

There are contingencies attending the use of the Croton which may be serious in a pecuniary point of view:—the Corporation is liable for the damages from the bursting of pipes, &c.—the Corporation possess the right of way over the streets, but not the right to the *Soil* under the streets.

The contemplated change of the members of the Board of Supervisors, that this body may be separated from the Common Council, and the office of City Chamberlain also separated from the office of County Treasurer will be one of the most effectual Checks to extravagant expenditure of public money.

This is a matter of primary importance, and care should be taken in framing a bill to provide for property qualification in the persons to be selected for County Supervisors, and they should be elected by general ticket.

That Board should be composed of our best citizens—not selected by politicians convened for the purpose but by the property holders and tax-payers.

The duty of the Board of Supervisors of the county of New York are important—they have the assessing and disbursing of more than two millions of dollars annually—two millions of dollars is the amount of interest at six per cent. per annum of more than thirty-three millions of dollars, a sum nearly equal to the whole Capital Stock of the United States Bank in its best days. Shall such great interests be confided to politicians?—

Citizens should awake to a sense of their true interests—Economy must be introduced into the administration of our public affairs, otherwise destruction of the interest of individuals will be inevitable. Moderate men have been deterred by the violence of party politics from meddling in public affairs—they have NOW learnt that public affairs will not take care of themselves. Something must be done, and—done quickly. The citizens who have interests at stake must meet together, deliberate and consult upon public affairs.

The public property not in public use is set down by the City Comptroller in his Report of January 1842, page 15, as follows:

"*Real Estate not in Use for Public Purposes.*

"At Brooklyn, Williamsburgh, Hallet's Cove and 86th street,	$ 84,500.00
"City Lots under Lease,	947,200.00
"Wharves and Piers leased, $34,000, added for increase of 1841,	1,782,000.00
"Property between 23d and 42d street,	1,260,000.00
"Property north of 42d street,	928,400.00
	$5,002,100.00

That portion of the property between 23d and 42d street, and also that portion north of 42d street, is not worth more than one fourth of the sum which it is valued as above.

In page 87 of the same Report is the following:

"Present Capital of Sinking Fund in City Stocks,	$ 828,334.00
"Arrears and Commutation of Water Lot Rents,	365,630.00
"Fire Loan Securities,	615,489.00
	$1,839,453.00

In page 240 of the Comptroller's report of October 3, 1842, is the following Statement of the City Debt in addition to the Water Debt:

"New York Five Per Cents. of 1820 and 1829,	$ 500,000.00
"Public Building Stock,	515,000.00
"Fire Loan Stock,	525,000.00
"Floating Debt Stock,	300,000.00
"Fire Indemnity Stock,	353,000.00
	$2,108,000.00

[THIS SUBJECT RESUMED IN NEXT NUMBER.]

N. Y. MUNICIPAL GAZETTE...Extra.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, DECEMBER 22, 1842. [VOL. I....NO. —

Taxes.

[CONTINUATION.]

To these sums we add TWO MILLIONS OF DOLLARS of floating Bonds and of temporary indebtedness.

$2,000,000.00 is a large sum in addition to the other indebtedness which we have already stated in the previous pages at $13,-524,812.00—swelling the aggregate to the great sum of $15,524,812.00, the annual interest of which may be set down at about $900,000.00.

It will be recollected, that the interest of the Water Debt has previous to the present time been paid out of the principal. Is this sum to be reimbursed to the principal by subsequent taxation under the act passed May 26th, 1841? This Act will be found in full in our next number.

We state the public indebtedness on temporary bonds at two millions and this is substantially accurate: the form of this indebtedness is being continually changed for political effect.

We have shown in our previous number by documents, the correctness of which cannot be questioned, that this species of indebtedness existed in 1838, 1839 and 1840, and that it was certified to the Legislature by three branches of the City Government, under the great Seal of the Corporation, as being of a specific amount on the 1st day of January, 1840, namely, $1,700,460.00, of which only $400,000 has since been funded.

At the close of 1841 it will be seen by the city Comptroller's Report, page 23, that the sum of $193,283.00 of the Taxes of the succeeding year had been collected prior to 31st December, for most of which the Ward Collectors were allowed a premium in addition to their fees.

In the same report, page 5, the balance in the City Treasury on the 31st day of December, 1841, is stated at $67,504.07: this balance would look quite well under all circumstances, bnt unfortunately we find a terrible drawback on this stated balance, as on pages 77 and 79 of the same report outstanding warrants on the Treasury are stated at $315,-209.15, which makes the Treasury actually overdraw the large sum of **$248,105.13**

Merchants do not make up their accounts in this way: they do not state a balance in bank when it has already been drawn for, and not only drawn for, *but largely overdrawn.*

The same system of stating the balance in the Treasury is adopted in the City Comptroller's Supplementary Report of October 3, 1842. In this report he states the balance in the Treasury on the 2d October, 1842, to be $152,991.54, and on the same page (240) he states the outstanding Warrants at $143,430.-96, $10,500.00 of which was the sinking fund. It would have been much more simple and proper to have stated the actual balance in the Treasury at $9,560.58, which was the real balance, but this would not strike the eye at first glance as so large as the sum chosen.

As we before remarked, the mode of stating the fiscal accounts is being continually changed for political purposes.

The worst state, or the true state of the accounts is what the Tax-paying People want to see: they want to know the worst, and then they can judge what is best to be done.

At the commencement of 1842, it will be seen by what is above stated, there were two items of indebtedness, viz.—the outstanding Checks over and above the funds on hand to meet the payment of $248,106.13, and the sum of $193,283.80 of the next year's Taxes which had been obtained in 1841, both of which amounted to $441,389.93.

The closing of the present years' accounts will embrace of next year's tax receipts over half a million of dollars, collected by voluntary payment, in which is included the *State mill tax.* The city Treasury will claim the use of this fund until the State Comptroller calls for it.

We presume that the City Comptroller will not claim that the indebtedness on temporary bonds in 1840 has since been discharged, as the petition to the Legislature which we set forth in full. states expressly that the money to be raised by annual taxes would all be required for the ordinary Expenses of the City Government.

It may be said that the stating of the accounts in the way we have narrated is a matter of policy, and that it is good policy. This we do not admit; public officers are public servants, and they should state things in a way that they can be fully understood—no other policy need be resorted to. If the public treasury is embarrassed, let those who support that treasury know the worst, and they will take the proper care that it is seasonably replenished.

We do not wish to be understood as speaking unkindly of either the present Comptroller, Mr. Williamson, or of his predecessor, Mr. Smith; they are both excellent citizens, and in speaking of the mode of stating the balances at the end of the year, we speak of the system and not of the persons who are required to carry it out. As to the present Comptroller and his predecessors we say that both have been faithful public officers. We have found them always willing and ready to aid every good measure, but neither of them were at liberty to do all they desired to do; they were both ruled by the Common Council.

It will be seen by looking at the item of Interest which is payable quarterly, viz. on the 1st of February, May, August and November, that it will amount to about $225,000 per quarter, and when the other expenditures for the Croton are completed it will amount to One Million of Dollars per annum, which will be equal to $250,000 per quarter, which gives as the sum total of the interest of the public debt for only three months a sum exactly equal to the whole annual city tax for the year 1820.

What a contrast!

As we before observed, the interest on the public debt is payable quarterly, and as the present annual tax which is now being collected will more than all be expended before the 1st of May, there will therefore be no means to pay the August and November interest without a resort to loans.

This is a matter of serious consideration, and one which requires legislative provision. We have heard it proposed by Corporation Officers that the next year's tax shall be made payable at an earlier period: this will not do. It would be better to fund a sum sufficient to pay the interest, and then take a new start and try to keep even. It is high time that the Corporation should turn over a new leaf and make a new beginning.

The Corporation Officers—some of them—insist that all the Real and Personal property on the Island of New-York is mortgaged to pay the Corporation debts, &c. Such a doctrine has no soundness. Would a mortgagee, in foreclosing a mortgage on a house and lot on this island, be required to make all the Croton bond holders parties in consequence of this public mortgage? or would the Chancellor grant an injunction to restrain an individual from removing his property beyond the limits of the State because the Croton bond holders have in their public securities a chattel mortgage?

The holders of Stock of the Corporation of the city of New-York have no other security than the public property belonging solely to said corporation.

It is said that the public faith is pledged for the redemption of the Stock. What is public faith?

The holders of various State Bonds can best answer. The credit of the city of New-York must be preserved, not by representing the existence of a pledge which has no existence, but by the most rigid economy in public expenditures—by Retrenchment on a large scale.

What would real estate on this island be worth if politicians could pledge the private property of the citizens to public creditors for visionary improvements? We answer, it would be utterly worthless.

The Constitution of the United States and of this State provide that private property shall not be taken for public use without just compensation. The exercise of judicial discretion cannot blot out this provision of the Constitution, although it may temporarily eclipse it.

The Expenditure of public money must be so decreased that there will be enough re-

main to maintain the Credit of the city, and this can only be done by the prompt payment of the interest on the bonds.

We speak with great plainness in these matters: it is a public duty so to speak—a duty to the tax-paying citizens, as well as the bond holders.

It is no wonder taxes are high—that Real Estate is depreciated: the wonder IS, that there is any thing left to tax, or that Real Estate is WORTH taxing! for it has been ASSESSED to destruction.

The case of the Estate of Sampson Benson is an illustration.

Ten and a half acres of this estate, which is a piece of salt meadow, has been assessed for "filling-in" the ENORMOUS sum of **$16,063.09!**

We find on reference to the Street Commissioner's Advertisement of 1840, this property advertised—For Sale—for this assessment for the lowest term of years that any person would take it in consideration of PAYING the assessment!

This land was advertised as 165 distinct lots: the charge for advertising was Two Dollars for each lot, which is $330.00 for the 10½ acres.

This large sum has been paid out of the city Treasury for *advertising* this small piece of Land, and NOW forms a part of the present Tax now collecting!

COMPTROLLER FLAGG would have charged for advertising this piece of land for sale for unpaid tax but—30 *cts.*

Gentle reader—Do you wonder that taxes are high?

In the Street Commissioner's advertisement of 1841 this same land is again advertised for sale for this *same* assessment. It is in this latter notice condensed.

This advertisement states that the assessment was confirmed May 31st, 1837.

The amount of the assessment is stated at $16,063.09 . Interest on this sum from that day to Dec. 31, 1842, being 5 years and 7 mo., at the rate of 7 per cent. per annum, will produce the large sum of $6277.95, and which, added to the cost of advertising and that of the assessment, produce an aggregate of $22,671.04.

We are informed by ISAAC ADRIANCE, Esq. who was one of the Executors of this estate, that this ten and a half acres was set down in the books of the Ward Collectors this year at $840.

The assessment is, therefore, rather less than *TWENTY-SEVEN times the Value of the land.*

The land formerly produced salt hay, and was for that purpose useful; but now it is covered with gravel, and is unproductive.

The Corporation applied to the Legislature last year for authority to purchase this land—with all other lands which might be advertised for sale for unpaid assessments for which no bids should be made—but the application found no favor with the Legislature.

The Corporation have no means to pay for land purchased except by a tax upon the real and personal estates of the citizens.

Citizens, are you in favor of being taxed for the purchase of this salt meadow?

What would the purchase money amount to at the end of the present century at 7 per cent. interest compounded?

Last year the Common Council paid to contractors large sums out of the proceeds of the county tax. The cause for this proceeding they state, is, that the assessments on the property of the citizens could not be collected for the reason that the amount of the assessment exceeded "the present market value of the land." (See Pro. Com. Council, Vol. 8, p. 121.) The reason assigned, although very extraordinary, is no less true; and they might have gone further and added, that in some of the cases the interest of the assessment alone exceeded the market value of land assessed.

Now suppose all these assessments should be included in the tax—what would be the consequence? surely a very great increase of the present rate. It is said that the contractors must be paid;—why then pay one contractor and not another?—if one is paid, all should be paid, and neither should have been paid a dollar until their claims had been first examined by a committee of the citizens interested in the property assessed.

We must diverge here to state that ALFRED A. SMITH, Esq. late City Comptroller, rendered to our citizens very important services by incorporating very important information in relation to assessment proceedings in detail in his annual reports. The information thus given is very important. The Anti-assessment Committee are under great obligations to Mr. Smith for most important aid in their operations, and they take pleasure in acknowledging the obligation. Mr. Smith, in the management of the fiscal concerns of the city at a period of great pecuniary embarrassment in our market, done himself credit and the public a good service: he was a faithful public officer, and is a most worthy citizen.

In the City Comptrollers's Report of 1841 we find in the same summary of Expenses of Street Openings, the Eighth avenue proceedings, and also those of the Seventh avenue which runs parallel with and about 1000 feet therefrom. These proceedings are worthy of special record here, as showing a mighty contrast.

The Eighth avenue, the report states, was opened *throughout* in 1811. See Comptroller's Report, p. 108.

In the Eighth Avenue Proceeding the FEES are stated as follows:

Counsel Fees, - - -	$ 745.45
Commissioners' Fees, -	760.68
Surveyor's Charges, - -	310.50
Appraisers' and Collectors' Charges, - - -	296.87
Incidental Expenses, -	178.37
	2,173.37

In the Seventh avenue, the Fees are stated as follows:

Counsel Fees, - -	$ 3976.77
Surveyor's Feees, - -	2801.00
Commissioners' Fees, - -	4920.00
Room hire, - - -	410.00
Clerk hire, - - -	250.00
Contingencies, - -	78.00
Collectors's Fees, - -	1115.00
	13,550.77

Difference in favor of Eighth avenue,....**$11,258.90**

The Seventh avenue—it is stated in same report, p. 122, was in 1839 opened from 21st to 129th street, a MUCH SHORTER DISTANCE than the 8th avenue.

The Commissioners' Fees in the Seventh avenue Proceeding amount to more than double all the fees and all the charges of all the officers in all the Eighth avenue proceedings!!

The *Counsel* FEES in the Seventh are ONE and TWO THIRDS more than ALL the fees and charges of all the Officers in the Eighth avenue!!

The Surveyor's Fees in the Seventh are near ONE AND ONE QUARTER more than all the charges of all the officers in the said Eighth avenue!

Here is the secret of the present high taxes.

We have another illustration—and it is well worth examining:—

In 1814 (see Comptroller's Report, p. 108) the Third av. was opened from the Bowery, corner of 7th st., to Harlem, which is also a greater distance than that of the noted Seventh avenue. The fees in this Proceeding are stated as follows:

Counsel Fees, - - -	$836.31
Commissioners' Fees, -	1187.50
Surveyor's Fees, - - -	213.00
Appraisers' and Collector's Charges, - - -	375.00
Contingent Charges, - -	350.00
	2,961.81

Difference in favor of 3d ave. compared with 7th in Expenses,.....**$10,588.86**

The Common Council claim to be Trustees of persons from whom money is received for assessments for opening streets—or that the Corporation, with the legislative power of which they are vested, is a trustee. If the position they take in this is correct, and an absolute trust is created by the act which authorizes these assessments; or a resulting trust arises by the operation of law; then in either case, the moneys arising from the assessment of every distinct improvement. is a separate and distinct trust, and should be so treated by the City Chamberlain, as well as all other public officers.

Had such a course been pursued how different would have been the state of things from what now unfortunately exists. It is well known that vast and immense sums have been paid out of the funds arising from county taxes to counsel, commissioners, surveyors, assessors, inspectors, appraisers and contractors for pretended services in assessment proceedings. Had these payments been made from each separate trust fund, the City Chamberlain would, of necessity, have been in the receipt of the money before he could have paid these claims: he would not have taken the responsibility of paying the money belonging to one trust, to satisfy claims on another.

These immense and vast sums have been paid before any collections were made from the persons assessed for the particular proceeding.

Take the Seventh Avenue assessment as an illustration :—

In February, 1839, (it is claimed) the Court confirmed the assessment—the very same month the City Chamberlain paid on the Warrants of the Mayor, Clerk of the Common Council, and Comptroller, in this single proceeding, **$3976.77** to Counsel, Surveyor **$2801.00**, and **$5643.00** to Commissioners of Estimate. By the last published statement of the Comptroller [See p. 102 of his Report of 1842] there was at that time uncollected of this extraordinary assessment $16,583.77.

The present City Chamberlain is a most excellent, most worthy citizen. The fault is not in him : it is mainly in the law that places these various funds all to the credit of the Corporation; and in our previous number the message of the Hon. Isaac L. Varian, refers to this very same matter, and was complained of by him.

The experiment now making of voluntary payment of taxes to the City Comptroller, clearly demonstrates a deep feeling of our influential citizens in the welfare of the city. They are ready and willing to come forward and support public credit by furnishing the means to discharge the public obligations, but they will require as a *sine qui non* that prudence and economy shall enter fully into the system of public expenditures.

The Anti-assessment Committee early in November addressed printed circulars to a large number of our influential citizens, informing them of the change in the collection of taxes, and that payment could be made directly to the City Comptroller without the intervention of a Collector. The first person that called at the Comptroller's office to embrace this new plan was that distinguished American Jurist the Venerable Chancellor Kent : before he had left the office, another distinguished citizen presented himself for the same purpose, the Hon. Stephen Allen, and he was followed by another, Saul Alley, Esq. The City Comptroller was not ready when the two first named gentlemen called, to receive the money for taxes, and therefore Mr. Alley was the first who paid taxes under the new system. Mr. Alley's tax was upwards of Eleven hundred dollars exclusive of the amount paid by his tenants : about $250 of this sum was for the Croton Interest.

John Targee, Esq., a democratic citizen of high standing in our community, in an hour after the circular from the Anti-assessment Committee reached his hands, presented himself at the Comptroller's office and paid his tax of near $800. James Boorman, Esq. Hon. Peter A. Jay, Wm. B. Crosby, Esq. and a great number of other citizens of high standing called and paid their taxes, which were very large in amonnt, to the Comptroller.

The acts of these gentlemen are an indication of their opinion of the new system, and we are very glad to see it sustained by the opinion of such good citizens.

We felt confident when, with the aid of the Hon. Solomon Townsend, we procured this important feature to be incorporated in the bill that the measure would be sustained hy the tax-paying citizens, but expected it would be found fault with by the Ward Collectors. The Legislature adopted this provision by a unanimous vote, on the ayes and noes being called.

The City Comptroller was at first not pleased with the change because he feared it would make him unpopular with the Collectors, but the opinions expressed by our influential citizens to him personally when paying their taxes, has induced his feelings to undergo a change, and now, we believe, he highly approves it.

We well know that Comptroller Smith was in favor of a change and in favor of the present system.

Our citizens are under great obligations to our late representative, Solomon Townsend, Esq., of the Assembiy, for valuable services in the passage of the provision of law changing the mode of collecting Taxes, and to the Hon. John B. Scott in the Senate.

In speaking of the retrenchment of City Expenses we deem it important to here give a copy of a communication published in the Evening Post recently, and remarks of the Editors of the Post thereupon. This communication was written by a citizen of high standing in this community, who was a member of the City Convention in 1829, convened for the purpose of framing a bill to amend the City Charter. The public expression of opinion by such men is a great public benefit: it is the mighty engine, mind influencing mind !

" The following communication has been sent us by a veteran democrat, who is sick of the party feuds which are mingled with our public affairs. When the charter of this city was amended, those who framed the amendment thought that they had remedied the mischief, by separating the municipal elections from the state and general elections. Since that time, however, the evil has grown worse.

' *To the Editors of the Evening Post :*

' Gentlemen—If you are not too much attached to party trammels, would you not do your subscribers and the tax-payers, some service by repeatedly calling their attention to their own vital interest, that of some different manner from the present, of the nominating the future members to our Corporation ? It cannot be but men of standing and tax-payers, might be found, to take charge of their own affairs, if it was but made general in every ward. As a beginning, I would suggest that some four or more persons from every ward, have an informal meeting, and agree on some general plan to be adopted without reference to party, to bring forward good men in each ward, and my firm conviction is, that at least one third of the present expenditures would be saved and the public infinitely benefitted. Served.' "

The means of reducing the Annual Taxes as recommended, is very easy. If our influential citizens of both political parties will meet together in a social conference and discuss these matters the result will be highly important. Many citizens feel that it is no use—that politicians will do as they please.

Not so : the intelligent citizens have an influence and a control which only needs to be exercised to be felt : it is they who can remedy the mischiefs and the evils complained of. The State Legislature is not governed by politicians—far otherwise ;—and the vote given the last three years on bills introduced into that body in relation to our city concerns fully show this.

Our city contains large numbers of citizens, whose opinions, publicly expressed, will have great influence on the public mind. These citizens must come forward and give the great public the benefit of their opinions upon our city affairs.

The time has now arrived to do this, and it should not be let pass without a united effort being made.

There are different views entertained by different persons as to the organization of our City Government. Some are in favor of departments, but we have had a lesson in these partitions which will be remembered while our city has a name. Our local assessments are a sad commentary on Departments.

The defects in our Amended Charter have now been seen and felt : its provisions which are peremptory, are sought to be deemed *directory.*

The members of our Common Council do not even regard these provisions of this law which were intended to restrain themselves from meddling with the public contracts, and hence a most severe enactment is necessary in this particular.

We will not here discuss this question, but will hereafter take it up as a distinct subject, and treat of it fully.

The sinking fund is a bubble that was counted upon to pay the city debt, the State of Illinois might with equally as much propriety create a sinking fund, and from that means satisfy the holders of the bonds of that State ; and they might say that the farms of the agriculturists of that State are holden for the payment of these bonds with as much propriety as our Corporation officers say citizens' property is holden for the payment of the Croton Bonds : *neither are holden.*

The Sinkiug fund is not what it was intended to be—its assets will not redeem the bonds due in 1850 ; the funds should only be invested in the stock they are specially to redeem, and not in other stock payable a quarter of a century afterwards.

We will refer to this portion of the subject again, and now proceed to the consideration of the next class of taxes before noticed.

Third—The County Taxes—In this class of taxes, there has been a great mistake by public officers. The Board of Supervisors of the County assess this tax, and to them alone belong the disbursement of the money so raised.

The Common Council have not the disposition of this money : the funds which the common council have the control of, is the City Revenue arising from wharves, markets, &c. &c., and that money when received by the City Chamberlain, should alone have been placed to the credit of the Corporation.

Had the various separate funds which have

been received been kept separate, this state of things now complained of, would not have happened; but so long as the fund raised for one specific purpose is applied to other purposes than that for which it was designed, there will be confusion and difficulties.

The tax act of the present year authorizes the supervisors of the city and county to assess upon the estates real and personal of the inhabitants and freeholders of the city and county of New-York the sum of $234,000 for city watch, $120,000 for lamps, and $746,000 for county contingencies, making in the aggregate One Million one Hundred Thousand Dollars.

The same act authorizes the delinquencies of the previous year, arising from either the defalcation of ward collectors or their sureties, to be assessed upon the respective wards in which the defalcation occurs.

Also the previous taxes remaining uncollected at the time the subsequent tax is imposed is included, and the amount is reassessed upon the delinquent ward, so that those who promptly pay their taxes must also pay the tax of the delinquent tax-payer.

We have in the City Comptroller's Annual Report of 1842, pages 51 to 56, under the head of "County Contingencies," some items which we will quote:—

"Refreshments for Members and Committees of the Common Council, - -	$3,941.97
"Carriage Hire, - - - - -	2,100.23
"Assistant Clerk for Contingent Expenses of Com. Council,	600.00
"Surveys for Street Commissioners Office, - - - - - -	1,131.73
"Cleaning City Hall, - - -	553.98
"Fuel for City Hall and Public Officers, - - - - - -	4,304.28
"Commissioners' and Surveyors' Fees in the matter of widening the Bloomingdale road, abandoned, - - - - - -	1,330.50
"Counsel Fees and COURT CHARGES, - - - - -	576-03
"Same in Cherry street, - - -	5,857.52
"Expenses of Deputy Comptroller and Finance Committee on a visit to Albany, - - -	364.25
"P. A. Cowdrey's Counsel Fees in quo warranto case, - - -	750.00
Under the head of "*Salaries*," p. 32.	
"Counsel of Corporation, including Clerk-hire, - - - -	4,712-72
On Page 32.	
"G. F. Tallman's taxed Counsel Fees, - - - - - - - -	3,060.76

We will continue these extracts in a future number.

These extraordinary expenditures create extraordinary taxes, and it is absolutely necessary that these expenses be retrenched: the people cannot pay them.

The interest on the permanent debt is payable quarterly, viz. on the 1st of February, May, August and November.

The interest on the public debt of the city, may for the year 1843, be set down at the round sum of One Million of Dollars. this will give quarterly payments of a quarter of a million each.

In 1820 the entire Annual Tax was but two hundred and fifty thousand dollars, a sum precisely equal to the estimated amount of the present city debt for a single quarter!

Citizens—have we come to this?—Yes! in the short space of twenty-two years, reckoning from 1820, we have reached this alarming crisis.

We find on looking back at the assessed valuation of the real and personal estate in the city of New-York, a great fluctuation during the last quarter of a century: as an illustration, we give the annual amount for several periods from 1816 to 1842, as follows:

	Population....	Real and Personal Estate.
In 1816,	95,519	$82,074,200
1821,	123,706	68,285,070
1826,	166,086	107,447,781
1831,	203,007	139,280,214
1836,	270,089	309,500,920
1842,	325,000	237,783,601

The greater or lesser assessed value has been occasioned by the speculative prices in most cases, but in some by the change, mode, manner and rate of assessment.

The price of property in this city will always be influenced more or less by general causes, but at the present time a local cause bears most heavily, viz.—the present oppressive amount of tax.

The rent of houses, stores &c. will be according to the rate of tax upon the property, or otherwise the value of the property must depreciate to correspond with the rate of taxes and price of rents.

As there are more buildings than tenants the consequence will be a decreased valuation, which of course will increase the rate of per cent of tax, and where is this to stop? —it cuts like a two-edged sword, *both ways*.

This question is one of very great importance and should at once receive the calm and deliberate consideration of our intelligent and public-spirited citizens.

New-York has passed through many chequered scenes. The great fire of 1835 devastated the lower section of the city to an extent that will be felt for a quarter of a century to come—and since that time, the local assessments for pretendod improvements, which have been equally as destructive to the unimproved part of the island--and thus, with the devouring flames on the one side, and mischievous assessments on the other, our proud city has been humbled to the dust.

The rich capitalist who reposed in confidence of the safety of his investment in stocks, was by this calamitous fire taught a lesson he little expected to learn.

The enterprising merchant who had by this disaster been reduced to poverty, was consoled by the sympathy of friends, and encouraged to hope for good luck to retrieve his losses,—but in a few short months this sympathy, like the changing of seasons, also changed. Many are the victims of a struggle to overcome what was beyond their reach: here then was a second calamity, worse to them than the first, for it was more trying, more exhausting to body—doubly so to mind, for there was no sympathy to sustain:—and thus it is, that we meet—in the same result, the wreck of fortune—what is worse, the wreck of mind.

While this delosation filled the minds of those whose estates were implicated in the consequences' another class of citizens who thought themselves in opulence, felt a double confidence in what they considered their greater security, their investments which were in lands—these the fire could not consume. Alas! six short years have passed, and—WHERE ARE THEY?—*where is their boasted security*—THEIR FAST PROPERTY?—GONE, GONE;—*swept*, as with the bosom of destruction, and buried in a heap of RUINS!—— Yes farms that had not changed hands, but have remained in the same family for near two centuries, have been wrested from the possession of the venerable proprietors with as little ceremony as the midnight robber takes the money from the pocket of his victim!!

A proceeding, called an Assessment--more destructive than a subterranean convulsion or a mountain avalanche—has poisoned the soil to its nether surface, and beyond it to the centre of gravity, and extended upward into space as far as any terrestrial habitation can reach, and left a cloud that an age will not remove.

Many of our citizens consider that the fault all lies in public officers: there is enough there, but it is not all there—far from it: the fault is in the system, and the GREAT defect is in the law.

Let the laws be repealed and new laws passed—let the system which has proved so ruinous be abandoned, and a new one arranged by our best men.

PENALTY IN THE TAX ACT.

A most extraordinary, most unexpected, most erroneous construction has been suddenly put upon the tax act of April 11th, 1842, by the learned counsel of the Corporation, and also by the worthy City Comptroller.

It is not however the first time that good men have given erroneous opinions nor is it the first time that a learned counsel thought his client right and his opponent wrong.

Erroneous opinions when they have the sanction of great names are always dangerous.

These public officers say the annual tax is due on the 31st OF DECEMBER, 1842. We say that it is not payable until the 31st day of January, 1843, and so says the law.

We are backed in this assertion by the written opinions of legal gentlemen of the highest standing.

The Comptroller has given notice that he will exact a penalty of ONE per cent. on all taxes remaining unpaid on the 1st of January: the LAW says the penalty only attaches to taxes remaining unpaid on the 1st day of February.

Which must prevail the Comptroller or the Law!——

Mr. Williamson as Receiver General of Taxes is a State officer, and he should have also consulted COMPTROLLER FLAGG and the Attorney General in this important matter of setting up so extraordinary a construction of the law. We will refer to this subject again.

N. Y. MUNICIPAL GAZETTE...Extra.

Published by the ANTI-ASSESSMENT COMMITTEE, and distributed gratuitously.----Edited by E. Meriam.

VOL. 1. NEW YORK, DECEMBER 24, 1842. No. —

LAWS OF THE STATE.

Taxes, &c.

We give in the present number the Provisions of the Revised Statutes, containing the "Regulations concerning the Assessment of Taxes on Incorporated Companies, and the Commutation and Collection thereof," together with three sections of other provisions of law applicable to this present subject. We ask of the Officers of Incorporated Companies a careful examination of these provisions.

The great change made by the great increase of Taxes makes this a matter of importance.

An Equitable assessment of Taxes should be the object of every good government, and therefore, if the operation of the present law is inequitable, it should be made Equitable by an amendment thereof.

We precede these by the Croton Tax Act of 1841 and the Tax Act of 1842, and the Act providing for Voluntary Payment to the City Comptroller instead of the Ward Collectors, and also a portion of the mill tax act.

CHAPTER 306.

AN ACT *to amend an act entitled "An act to provide for supplying the City of New York with pure and wholesome Water," passed May 2, 1834.*

[Passed May 26, 1841, by a two-third vote.]

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

The Sum of $3,500,000 may be Raised to be called Water Stock.

§ 1. It shall be lawful for the mayor, aldermen and commonalty of the city of New York to raise by loan, from time to time and in such amounts as they shall see fit, a further sum not exceeding three millions five hundred thousand dollars, by the creation of a public fund or stock, to be called "The Water Stock of the city of New York," which shall bear an interest not exceeding six per cent. per annum, and shall be redeemable at such periods as the said mayor, aldermen and commonalty shall from time to time direct, not to exceed forty years.

Certificates of Water Stock may be Issued.

§ 2. It shall be lawful for the said mayor, aldermen and commonalty to direct the issuing of certificates of the water stock of the city of New York, authorized by this act, in such nominal amounts, not less than one hundred dollars in each certificate, and in such manner and form as they may judge most expedient for the interest of the city; and they are hereby authorized to sell and dispose of such stock at public auction or at private sale, or by subscription, for such price and on such terms as they may think proper.

Bonds for Short Loans may be Issued.

§ 3. It shall be lawful for the said mayor, aldermen and commonalty, from time to time, to issue the obligations under this law in such sums as they shall deem proper, not less than two hundred and fifty dollars each; and therein expressed to be transferable only on the books of the office of the comptroller of said city, by the holder thereof in person or his attorney duly authorized in writing, for short periods, bearing an interest not exceeding seven per cent. per annum, and in anticipation of the proceeds to arise from the negotiation of the permanent stock anthorized by this law.

Moneys how to be Applied.

§ 4. The moneys to be raised by virtue of this act shall be applied and expended to and for the purpose of supplying the city with pure and wholesome water, according to the provisions of the act hereby amended; and no part of the funds created by this act, or any other fund raised for the purpose of constructing or completing the Croton aqueduct, and the works connected therewith, and distributing the water through the city, shall be diverted from such object.

Provisions of Former Laws Applicable.

§ 5. All the provisions of law heretofore passed on this subject, pledging the faith of the city of New York, and providing a sinking fund for the redemption of the stock issued by virtue thereof, are hereby made applicable to the stock issued in pursuance of this act.

Money to be Raised by Tax to Pay Interest.

§ 6. It shall be lawful for the mayor, recorder and aldermen of the city of New York, as the supervisors of the city and county of New York, of whom the mayor or recorder shall be one, from time to time and as often as they may deem it necessary, to order and cause to be raised by tax on the estates real and personal of the freeholders and inhabitants of, and situated within the said city, and to be collected, such amount of money as shall be requisite to defray the interest upon the water stock of the city of New York.

How to be Assessed and Collected.

§ 7. The said money shall be assessed and collected in the same manner as now provided by law for the assessment and collection of taxes in the city of New York.

Aqueduct to be Completed according to Plan.

§ 8. It shall be the duty of the water commissioners of the city of New York, to finish and complete the aqueduct for supplying the said city with water, down to and including the distributing reservoir at Murray's hill, according to the plan adopted by the said commissioners, and ratified by the common council of the said city, with such immaterial alterations as may be necessary, and as may be agreed upon by the said water commissioners and the said common council.

Plan of crossing Harlem river may be Changed.

§ 9. The said commissioners, by and with the consent of the said common council, shall have full power and authority to change the plan of crossing the Harlem river with arches and piers, and instead thereof to carry the water across the said river by means of inverted syphons of iron pipes, until otherwise directed by the legislature, so as not unnecessarily to interrupt the navigation of the said river. And the said commissioners are further authorized by and with the consent of the said common council, to alter the plan of constructing the reservoir at or near to Yorkville, and to complete so much of such reservoir as shall be deemed sufficient for the present purposes of such aqueduct.

All the Work necessary to Supply the City with Water to be Executed, and certain Contracts to be Assumed.

§ 10. It shall be the duty of the mayor, aldermen and commonalty of the city of New York, to execute all the work necessary for supplying the said city with water, and for distributing the same for the use of the inhabitants thereof, below the said distributing reservoir at Murray's hill; and the said mayor, aldermen and commonalty shall assume the execution and performance of the following contracts, made by the said water commissioners for work and materials to be supplied for the construction of the said aqueduct, below the said reservoir at Murray's hill; that is to say, their contract with Henry V. B. Barker, dated twentieth October, one thousand eight hundred and forty, for work to be done on the Fifth avenue, between Fortieth and Twenty-first streets; their contract with John B. Chollar and Ebenezer Jones, made the twenty-third of October, one thousand eight hundred and forty, for iron pipe; their contract with S. V. Merrick and John Town, for seven hundred tons of thirty-inch iron pipe; and also their contract with T. H. Wintersteen and David I. Myers, for five hundred tons of iron pipe; all which said contracts are deposited in the office of the comptroller of the city of New York.

REMARKS.

The above Act was passed at the close of the Session and was hurried through. We addressed to His Excellency Gov. SEWARD, a written communication on the subject of this bill before he approved it, in which we suggested that its provisions were not in accordance with those of the Constitution of the State. The lateness of the Session afforded no time for the examination of the bill by the Governor before the adjournment.

Chapter 83.

AN ACT *to enable the supervisors of the city and county of New York to raise money by tax.*—[Passed March 21, 1842.]

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

The Sum of $746,000 to be Raised by Tax—Common School Tax, &c.—Also $234,000, Watch district—Also $120,000, Lamp district—Taxes, how to be Assessed and Collected.

§ 1. The mayor, recorder and aldermen of the city and county of New York, as the supervisors of the city and county of New York, of whom the mayor or recorder shall be one, are hereby empowered, as soon as conveniently may be, after the passage of this act, to order and cause to be raised by tax on the estates real and personal, of the freeholders and inhabitants of and situate within the said city, and to be collected a sum not exceeding seven hundred and forty-six thousand dollars, to be applied towards defraying the various contingent expenses, properly chargeable to the said city and county, and such expenses as the mayor, aldermen and commonalty of the city of New York may, in any manner sustain or be put to by law; and also such further sum by a tax as aforesaid, as is required by law to be raised by tax in the said city for the support of common schools, and as may be necessary for supplying the deficiency of taxes upon any one and every one of the wards of the said city, imposed or laid during the year one thousand eight hundred and forty-one, owing to the insolvency of the collectors of the said wards, or any or either of them or their sureties, or their inability to collect the said tax; and also for defraying the whole of the expenses for assessing and collecting the taxes to be raised as aforesaid, (such deficiencies, however, to be assessed on the estates real and personal, of the freeholders and inhabitants of and situated within the wards respectively, where they shall happen, as aforesaid;) and also a further sum not exceeding two hundred and thirty-four thousand dollars by tax, on the estates real and personal, of the freeholders and inhabitants of and situated within that part of the city of New York, which may be designated by an ordinance or resolution of the common council of the said city, as the "Watch District," to be applied towards defraying the expenses of watching and guarding such part of said city; and also a further sum, not exceeding the sum of one hundred and twenty thousand dollars, by a tax on the estates, real and personal, of the freeholders and inhabitants of and situated within that part of the city of New York which may be designated by an ordinance or resolution of the said common council, as the "Lamp District," to be applied towards defraying the expenses of lighting such parts of the said city last mentioned; and also such further sum by tax as aforesaid, as may be necessary for supplying the deficiencies of taxes upon all that part of the city constituting the watch and lamp districts, during the year one thousand eight hundred and forty-one, owing to the insolvencies of the collectors of any of the wards of the said city, and their sureties, or their inability to collect the said tax; and also for defraying the expenses of assessing and collecting said taxes, such deficiencies, however, to be assessed upon the estates, real and personal, of the freeholders and inhabitants of and within the said wards respectively, where they shall happen as aforesaid, within the districts aforesaid.

§ 2. The said several sums of money shall be assessed and collected in the manner provided by law for the assessment and collection of taxes within this state, except so far as the same may be contrary to the provisions contained and referred to in the act entitled "An act respecting the collection of taxes in the city of New York," passed April 6th, 1825, and in the act to amend the same, passed April 20, 1830; also in the fourth section of the act entitled "An act to enable the mayor, aldermen and recorder of the city of New York, to raise money by tax," passed March 10th, 1820; also in the act entitled "An act authorizing a per centage to be added to unpaid taxes in the city of New York," passed the 13th of April, 1835; and also in the act entitled "An act to amend the act respecting the collection of taxes in the city of New York," passed April 13th, 1839, which said provisions, so far as they relate to the assessment and collection of all or any taxes in the city of New York, are hereby declared to be in full force and effect; and each person's tax in every separate ward of the said city shall be collected in one payment, and the money so collected, shall be paid into the hands of the treasurer or chamberlain of said city, at such times and in such manner as directed by law.—[*Laws of New York*, pages 55 and 56.]

Chapter 218.

"*An Act respecting the Collection of Taxes in the City and County of New York.*"—[Passed April 11, 1842.]

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The Assessors annually chosen in each ward of the city of New York, shall on or before the fifth day of June next, after being chosen, proceed to assess the property in their respective wards according to law, and shall complete the assessment according to law on or before the fifteenth day of August next following, and make out one fair copy thereof to be left with one of their number on or before the twentieth day of August next following, and shall thereupon according to law give notice of having completed such assessment, and that a copy thereof is left with one of such Assessors, (naming him,) where the same may be seen and examined by any of the inhabitants from the said twentieth day of August to the tenth day of September following, both inclusive; that they will meet a the expiration of the said tenth day of September at a place in said notice to be specified to review their assessment on the application of any person conceiving himself aggrieved, and such proceedings shall thereupon take place as is by law provided. And such assessors shall sign the said assessment roll, and deliver the same on or before the twentieth day of September next ensuing to the Comptroller of the said city, who shall deliver the same to the Supervisors of the said city at their next meeting, and that for any neglect, omission, or refusal to perform the requirements of this section, the parties offending shall be liable to the penalties mentioned in the eleventh section of the Act, April 23d, 1823, "Entitled An Act for the assessment and collection of Taxes."

§ 2. The first section of the act entitled an act authorising a per centage to be added to unpaid taxes in the city of New York, passed April 13, 1835, is hereby amended, so that the said section shall read as follows: Whenever any tax of any description of the estates, real or personal, of the freeholders and inhabitants of, and situated in the city of New York, shall remain unpaid on the *first day of February* next ensuing, the time prescribed by law for the delivery of the assessment roll to the collectors in said city, it shall be lawful for the collectors whose duty it may be to collect such tax, to charge, receive, and collect in addition to the amount of such tax, one per cent. on the amount thereof, and to charge, receive, and collect upon such tax so remaining unpaid on the last day of each month, between the month of November and the time prescribed by law for the collectors in the said city to make their returns to the chamberlain or treasurer thereof, a further addition or increase of one per cent. on the amount of such tax, and such increase or per centage shall be paid over and accounted for by such collector as a part of the tax collected by him.

§ 3. The act entitled "an act to amend the acts respecting the collection of taxes in the city of New York, passed April 3d, 1839, is hereby repealed."

§ 4. *Any person who may be desirous of paying his tax or taxes previous to the first of February, shall, on paying the amount thereof, to the Comptroller of the City of New York, be allowed a deduction therefrom at the rate of six per cent. per annum.*

Chapter 114.

AN ACT *to provide for paying the debt and preserving the credit of the State.*

[Passed March 29, 1842.]

Tax of One Mill on the dollar to be Levied and Collected.

§ 1. A state tax of one mill on the dollar of the valuation of real and personal estate within this state, shall, in each and every year, until the same shall cease as hereinafter provided, be raised, collected and paid in the manner prescribed in the Revised Statutes, Part first, Chapter thirteen, "Of the assessment and collection of taxes," which tax shall be paid by the county treasurers respectively, into the treasury of this state, and the same shall be received into the treasury and held by the Treasurer of this state, for the purposes following, that is to say:

HEADS OF SECTIONS.

Part to be applied to the use of the general fund—Part for the canal purposes—Comptroller to state revenue of general fund—Payments for general fund—Stock Debt, &c.—Surplus, how to be applied—Loan for general fund—Power of commissioners of canal fund to make loans—To pay interest on debt in 1842—For Chemung canal—To pay temporary loans—To pay arrearages due contractors, &c.—For preserving the works in progress, &c.—To replace unavailable funds—Interest chargeable on canal revenues—Loans—Temporary investments of loans—U. States deposits and common school funds—Further expenditures on public works in progress suspended—Report to be made—Of revenue of canals—Of expenditures on canals—Of canal debt—Tax imposed by this act pledged to the public creditors—Privileges of banks and banking associations—This act to be sent to boards of supervisors.

TAXES ON INCORPORATIONS.

TITLE IV.

REGULATIONS CONCERNING THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES, AND THE COMMUTATION OR COLLECTION THEREOF.

SEC. 1. Monied corporations, deriving income or profit, liable to taxation.
2. Officers of such company to deliver statement annually to assessors; contents.
3. A like statement to be delivered to comptroller.
4. Forfeiture of $250 for omitting to furnish such statements.
5. If company be prosecuted therefor, terms on which suit may be discontinued.
6. Assessors to enter such companies and their property in assessment roll.
7. Value of stock of certain companies, to be inserted in assessment roll.
8. Value of stock may be reduced by affidavit.
9. Company not in the receipt of any income, not to be taxed.
10. Stock of companies to be taxed as other property of the county.
11. Certain companies may commute for their taxes.
12. Certain companies to be exempted from taxes.
13. Officers of companies claiming exemption, to make affidavit as to income, &c.
14. Affidavit required from company electing to commute.
15. Assessments on companies to be set down in fifth column of corrected roll.
16. Supervisors to send names of companies liable to taxation, to comptroller, &c.
17. Taxes on companies to be demanded of president, &c.: if not paid, how collected.
18. To be paid out of the funds of the company.
19. If collector cannot collect tax, to return same to county treasurer, &c.
20. County treasurer to certify facts to comptroller; taxes how to be credited.
21. Duty of comptroller and attorney-general, as to companies neglecting to pay.
22. Chancellor to order sequestration of property, &c. to satisfy taxes and costs.
23. Attorney-general may also recover by action at law, such tax with costs.

Companies liable to Taxation.

§ 1. All monied or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital, in the manner herein after prescribed.

Officers to deliver Statements to Assessors.

§ 2. The president, cashier, secretary, treasurer, or other proper officer, of every such incorporated company, shall, on or before the first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second Title of this Chapter, a written statement, specifying,

1. The real estate, if any, owned by such company, the towns or wards in which the same is situated, and the sums actually paid therefor:

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the state, and by any incorporated literary or charitable institution: And,

3. The town or ward in which the principal office or place of transacting the financial business of such company, is situated; or if there *be [*415] no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed, under the provisions of this Chapter.

And to Comptroller.

§ 3. The president or other proper officer of every such company, shall also deliver to the comptroller, on or before the first day of July in each year, a written statement, containing the same matters required by the foregoing section, to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this Title, shall be certified under the oath of the said president or other proper officer, to be in all respects just and true.

Penalty.

§ 4. If the statements above required, or either of them, shall not be furnished by any company to the assessors and to the comptroller, within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this state, for each statement omitted to be furnished, the sum of two hundred and fifty dollars: and it shall be the duty of the comptroller to furnish the attorney general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties hereby imposed.

Suit Therefor.

§ 5. If any company, that shall be prosecuted for any such penalty, shall pay the costs of prosecution and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not wilful, may, in his discretion, discontinue such suit.

Companies how Assessed.

§ 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies, liable to taxation in their respective towns, in their assessment rolls, in the following manner:

1. They shall insert in the first column of their assessment rolls, the name of each incorporated company in their respective towns or wards, liable to taxation on its capital, or otherwise: and under its name, they shall specify the amount of its capital stock paid in, and secured to be paid in; the amount paid by such company for real estate, then belonging to such company, wherever the same may be situated; and the amount of its stock, if any, belonging to the state, and to incorporated literary and charitable institutions.—[4. Paige, 401.]

2. In the second column, they shall enter the quantity of real estate owned by such company, and situated within their town or ward; and in the third column, the actual value thereof, estimated as in other cases.—[4 Paige, 394.]

3. In the fourth column, they shall enter the capital stock of every incorporated company, (excepting manufacturing and turnpike corporations, and marine insurance companies,) paid in, and secured to be paid in; after deducting the sums paid out for all real estate of *such [*416] company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of this state, and to incorporated literary and charitable institutions.

Valuation of Stock.

§ 7. The assessors shall insert in the column mentioned in the preceding section, the cash value of the stock of all manufacturing and turnpike corporations, (to be ascertained by the assessor, by the sales of the stock, or in any other manner,) deducting therefrom the items mentioned in the preceding section; which value, thus ascertained, together with the value of the real estate of such corporations, shall constitute the amount on which the tax of such corporations shall be levied.

Preceding sections Extended.

§ 8. The provisions of the fifteenth section of the second Title of this Chapter, shall be, and are hereby extended to the incorporated companies in the two preceding sections named; and the president, secretary, or other proper officer, may make the affidavit required by said section.

The section referred to in Sec. 8, of this Chapter, which precedes this paragraph, is as follows:—

Affidavit of Value of Property.

*[§ 15. If any person whose real or personal estate is liable to taxation, shall at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit; or that the value of the personal estate owned by him, after deducting his just debts, and his property invested in the stock of incorporated companies, liable under this Chapter to taxation on their capital, does not exceed a certain sum, to be specified in the affidavit, it shall be the duty of the assessors to value such real or personal estate, or both, as the case may be, at the sums specified in such affidavit, and no more.†]

Company when to be Exempted.

§ 9. If the president or other proper officer

* Our attention has been called to this Section by R. A. READING, Esq. President of the City Fire Insurance Company, as a provision which will entitle Incorporated Companies to the same deduction as private persons from the assessors' valuation;—if the assessors have been ignorant of this Provision of the Law, the Companies who are overtaxed have an equitable claim for relief, notwithstanding a neglect on their part to avail themselves of its provisions from not knowing its existence. Our citizens expect—and have a clear right so to do—that public officers should know the law and act in accordance with it. It is not the duty of assessors to swell their assessment roll by inequitable assessment. It is not equitable to require Companies to pay a tax on the portion of capital which has been lost—it is like imposing a tax on a citizen for what HE HAS NOT. We believe it is a popular maxim that every citizen is presumed to know the law, and the doctrine may have the sanction of judicial officers high in authority; but if the doctrine is erroneous, which it surely is, the higher the authority which sanctions it the greater is the danger to flow from it. Great names oftentimes give currency to very erroneous doctrines.—ED.

† Deductions may also be made for debts owing by residents of any other states in certain cases. See post, Title 7, § 27. [See 3d column next page.]

of any incorporated company named in the assessment roll, shall show, to the satisfaction of the board of supervisors, at their annual meeting, within two days from the commencement thereof, by the affidavit of such officer, to be filed with the clerk of the board, that such company is not in the receipt of any profits or income, the name of such company shall be stricken out of the assessment roll, and no tax shall be imposed upon it. And the assessment of every monied or stock corporation, authorized to make dividends on its capital, from which no such affidavit shall be received, shall be conclusive evidence, that such corporation was liable to taxation, and was duly assessed.

Stock how Assessed—Commutation.

§ 10. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, and by the previous sections of this Title, shall be assessed and taxed in the same manner as the other real and personal estate of the county, unless such company shall be entitled to commute under the next section, and shall elect so to do; in which case, no tax shall be imposed by the board of supervisors on the property of such company.

Commutation.

§ 11. All companies employed wholly or principally in manufacturing, and all marine insurance companies, whose nett annual income shall not exceed five per cent. on the capital stock paid in, and secured to be paid in, shall be entitled to commute for their taxes, by paying directly to the treasurer of the county in which the business of the company is transacted, five per cent. upon all such nett income made by such company during the preceding year.

Certain companies Exempt.

§ 12. All turnpike, bridge, or canal companies, whose nett annual income shall not exceed five per cent. on the capital stock paid in, and secured to be paid in, shall be exempted from taxation.

Requisites to Exemption.

*§13.[*417] To entitle any such company to the exemption aforesaid, the president and secretary, or some two officers of the company, shall make affidavit, stating the capital stock paid in, and secured to be paid in, together with the income and profits, and the total expenditures, during the preceding year, of such company; which affidavit shall be delivered to the assessors of the town, at the time of making their assessments.

§ 14. The president, or other proper officer of each company electing to commute, shall make affidavit before some officer authorized to take affidavits, stating the amount of such nett income; and on filing the same with the clerk of the board of supervisors, at their annual meeting, within two days from the commencement thereof, accompanied by the receipt of the county treasurer, acknowledging the payment of the proper commutation, such board of supervisors shall impose no tax on the property of such company.

Taxes to be Stated and Collected.

§ 15. The amount of taxes assessed on all incorporated companies liable to taxation, and not electing to commute, shall be set down by the board of supervisors, in the fifth column of the corrected assessment roll, and shall form a part of the monies to be collected by the collector.

Duty of Supervisors.

§ 16. The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuations of the real and personal estate in their county, a statement, showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in, and secured to be paid in, by each; the amount of real and personal property of each, as put down by the assessors, or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the board of supervisors shall certify such fact to the comptroller, with their returns of the aggregate valuations of real and personal estate.

Duty of Collector.

§ 17. The collector shall demand payment of all taxes assessed on incorporated companies, from the president, or other proper officer of such companies, and if not paid, shall proceed in the collection and payment thereof, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of monies collected by him. And the collector's receipt shall be evidence of the payment of such tax.

Taxes how Paid.

§ 18. Such taxes shall be paid out of the funds of the company, and shall be rateably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

Proceedings if Taxes cannot be Collected.

§ 19. If the collector shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county treasurer, and at the same time, make affidavit before the county *treasurer [*418], or some other officer authorized to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the company, and that such officer had refused to pay the same, or that he had not been able to make such demand, as the case may be; and that such company had no personal property, from which he could levy such tax.

§ 20. The county treasurer shall thereupon certify such facts to the comptroller, who shall pass to the credit of such county treasurer the amount of all taxes so returned and certified, as in the cases of taxes on the lands of non-residents.

Attorney-general to file Bill in Chancery.

§ 21. The comptroller shall furnish the attorney-general, with the names of all companies refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively; and the attorney-general shall thereupon file a bill in the court of chancery, against every such company, for the discovery and sequestration of its property.

Powers of Chancellor.

§ 22. The chancellor on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company, and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings, as he shall deem necessary, to compel the payment of such tax and costs.

Further Remedy.

§ 23. The attorney-general may also recover such tax, with costs, from such delinquent company, by action in any court of record in this state.—(*Revised Statutes, Vol. 1, new edition, pages* 402 *to* 406.)

The following Sections are Provisions of the Law referred to in the reference in the clause of the 15th Section of Title 2, herein before set forth—

When Inhabitants are Exempt from Assessment on Debts taxed in other States.

§ 27. Whenever it shall satisfactorily appear to the assessors of any town or ward, by the oath of any inhabitant of this state, or by other proofs, that any debts due to such inhabitant, by residents in any other state, are by the laws of such state subject to taxation, and have been actually taxed in such state within twelve months preceding, it shall be the duty of such assessors to deduct the amount of such debts from the personal estate of such inhabitant.

Duty of Comptroller.

§ 28. The comptroller shall prepare instructions and forms for the execution of this act, and shall cause a sufficient number of copies thereof and of this act to be printed and distributed to the assessors, county treasurers and clerks of the boards of supervisors of the state.*

REMARKS.

The cases referred to in the Note appended to the first and second subdivisions of the Sixth Section we have examined: one is the case of the Bank of Utica *vs.* the Corporation of Utica, the other is that of the Mohawk Rail Road Company. In neither of these cases was the 8th in connection with the 15th Section referred to, or noticed: nor was there any question involved in either of these cases which made the provisions of either of these sections applicable in either case.

The question before the Chancellor, as we understood the case in which the Bank of Utica was a party, was, as to the right to tax Surplus Capital: any thing in this Opinion of the Chancellor in this case in addition to deciding the question at issue, is mere dicta, and His Honor might change this on full argument.—Ed.

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* Laws of 1833, Chap. 250.

NEW YORK MUNICIPAL GAZETTE.

Published by the ANTI-ASSESSMENT COMMITTEE, and Distributed Gratuitously---Edited by E. Meriam.

VOL. I.] NEW-YORK, NOVEMBER 17, 1843. [No. 16.

The present number of our paper is *larger* than any of the previous numbers. It embodies Matter of great Public Interest, and an EXTRA NUMBER of Copies have been published, for extensive circulation among public men both at home and abroad.

Our City Government is—in theory, most beautiful; but in its practical operations—the most Despotic, and the most Corrupt, of any government on the face of the globe.

It is a Municipality created by Statute, the same as a Village Corporation; but, in its operations, usurps the Powers of Sovereignty, and actually EXERCISES THEM in defiance of the Constitution and Laws of the State.

CITY CONVENTION.

In the month of May, 1829, the Citizens of New York, at an election held in the different Wards, elected by ballot Seventy Delegates (five from each ward) to form a convention to AMEND the City Charter. These delegates MET in convention in June, 1829. From the "Journal of their Proceedings," as published with the notes of CHANCELLOR KENT, are the following DOINGS:

"IN CONVENTION, JULY 23, 1829.

"Mr. John Duer offered the following additional section to come in between sections 9 and 10, as reported by the committee.

"Every law, ordinance or resolution, which shall be introduced in either Board, and also every report of a committee recommending any public improvement, or any appropriation of public monies, *shall be Published without delay in all the Newspapers employed by the Corporation.*

"Mr. M. M. Noah offered the following Amendment:

"And all Reports of committees which shall recommend any specific improvement, involving the Appropriation of Public Monies, or taxing or assessing the Citizens of said city, shall be PUBLISHED IMMEDIATELY after the adjournment of the Board, under the authority of the Common Council, in the Daily Newspapers.

"Mr. Whiting moved that the further consideration of the 9th section be, for the present, postponed.

"The Chairman having put the question on the motion for postponement, it was determined in the negative.

"Mr. Duer then moved, that the consideration of the additional section offered by him, and also of the amendment thereto, offered by Mr. Noah, be postponed.

"The Chairman having put the question on Mr. Duer's motion for postponement, the same was determined in the affirmative."

"JULY 29, 1829.

"Mr. Noah made a motion, that the committee of the whole do re-consider the 7th section of the report of the committee of fourteen; and the chairman having put the question on Mr. Noah's motion, the same was determined in the affirmative.

"On motion of Mr. Noah, the committee of the whole then proceeded to consider the the amendments of the said seventh section offered by him in convention on the 23d instant.

"Mr. Hedley made a motion to amend the amendment of Mr. Noah, by adding after the word 'Board' in the third line thereof, the words '*in one or more of the daily newspapers*,' and to strike out in the last line the words '*in the daily newspapers.*' Whereupon Mr. Noah assented to the said amendment for striking out.

"Mr. Stephen Allen made a motion to amend the amendment offered by Mr. Noah, by adding after the word '*all*' in the first line, the words '*resolutions and.*'

"And the Chairman having put the question on Mr. Allen's amendment, the same was determined in the affirmative.

"Mr. Van Buren made a motion to amend the amendment of Mr. Noah, by adding at the end thereof the words 'IN ALL THE NEWSPAPERS EMPLOYED BY THE CORPORATION.'

"Whereupon Mr. Hedley withdrew his amendment.

'Mr. John Hone made a motion to amend the said amendment of Mr. Noah, by adding at the end thereof the words '*and whenever a VOTE is taken in relation thereto*, THE AYES AND NOES SHALL BE CALLED AND PUBLISHED IN THE SAME MANNER.'

"The Chairman having put the question on Mr. Van Buren's amendment, the same was determined in the affirmative.

"The Chairman having put the Question on Mr. J. Hone's Amendment, the same was determined in the affirmative.

"The Chairman then read the 7th section as Amended, in the following words:

"SEC. 7. *The Boards shall meet in separate chambers*, and a majority of each *shall* be a quorum to do business. Each Board *shall* appoint a president from its own body, and *shall* also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board *shall* KEEP A JOURNAL OF ITS PROCEEDINGS, and the doors of each *shall* be kept open, except when the public welfare shall require secrecy; AND ALL RESOLUTIONS AND REPORTS OF COMMITTEES WHICH SHALL RECOMMEND ANY SPECIFIC IMPROVEMENT INVOLVING THE APPROPRIATION OF PUBLIC MONIES, OR TAXING OR ASSESSING THE CITIZENS OF SAID CITY, *SHALL* BE PUBLISHED IMMEDIATELY, AFTER THE ADJOURNMENT OF THE BOARD, UNDER THE AUTHORITY OF THE COMMON COUNCIL, IN ALL THE NEWSPAPERS EMPLOYED BY THE CORPORATION; AND WHENEVER A VOTE IS TAKEN IN RELATION THERETO THE AYES AND NOES SHALL BE CALLED AND PUBLISHED IN THE SAME MANNER."

"And the Chairman having put the question on the said section as amended, the same was determined in the affirmative."

"IN CONVENTION—JULY 23D, 1829.

"MR. STEPHEN ALLEN offered to the consideration of the Convention the following Amendments to the Report of the Committee of Fourteen:

"§ Unless by virtue of a Special Act of the Legislature for that purpose, the Common Council shall not have authority to borrow, in any one year, on the credit of the Corporation, a sum exceeding * * * thousand dollars; nor for a longer period than * * * months: nor shall any loan so made be Renewed, or its Time of Payment be extended, unless the same be *funded* under an Act of the Legislature.

"Ordered, That the same do lie on the table, and be printed for the use of the members."—Page 260.

"JULY 27, 1829.

"MR. STEPHEN ALLEN made a motion that the Committee now proceed to consider the *two* additional Sections offered by him in Convention, in the sitting on the 23d inst.

"And the Chairman having put the Question on considering the said *two* Additional Sections, the same was determined in the affirmative.

"Mr. Allen moved that the blank in the third line of the first of the said section be filled with the words 'ONE HUNDRED,' and the Chairman having put the question thereon, the same was determined in the affirmative.

"Mr. Allen then moved that the blank in the 4th line be filled with the word 'TWELVE,' and the Chairman having put the question thereon, the same was determined in the affirmative.

"The Chairman then read the section in the following words:

"SEC. 23. Unless by a Special Act of the Legislature for that purpose, the Common Council shall not have authority to borrow, in any one year, on the Credit of the Corporation, a SUM exceeding One Hundred Thousand Dollars, nor for a longer period than Twelve Months; nor shall any Loan so made be renewed, or its time of payment be extended, unless the same be funded under an Act of the Legislature."

"And having put the question—Shall this Section pass? The same was determined in the affirmative."

We will not, however, give our own comments, but present the "Record" of the sad mistake in not retaining the above section in

the shape in which Mr. Allen made it; and also, of wholly disregarding the substitute—embodied in the law. *Here it is, under the Corporation* SEAL:

Official Comment!!!

"To the Honorable the Legislature of the State of New York.

"The memorial of the Mayor, Aldermen and Commonality of the City of New York, *respectfully represent*,

"That by reason of the great expenses which they have incurred in consequence of the various improvements in the said city, they have found the ordinary revenues of the Corporation altogether inadequate to meet the demands which those expenses have produced, and that they have therefore, from time to time, been obliged to issue their bonds under their Corporate Seals, to defray some of those expenses, as a mere means of temporary relief. The amount of this floating debt on the 31st of December last, amounted to **ONE MILLION SEVEN HUNDRED THOUSAND FOUR HUNDRED AND SIXTY DOLLARS**, and can probably be reduced from anticipated sources of revenue to *One Million Three Hundred Thousand.*

"The amount to be raised by the Annual Tax Bill will be required for the ordinary expenses that will accrue pending its collection, and will therefore furnish no relief in liquidation of this floating debt.

"Your memorialists therefore pray your honorable body will grant *to them authority* to fund such amount of the said floating debt as they may deem expedient, not exceeding *One million three hundred thousand dollars*, by the creation of a Six Per Cent. Stock, redeemable in annual instalments of One hundred thousand dollars each.

"And your memorialists will ever pray, &c.
"ISAAC L. VARIAN, Mayor.

"**Thomas Bolton**, Clerk of the Common Council."

[SEAL]

Endorsed, "Board of Aldermen, January 13th, 1840.

"The within memorial and act approved.

"**Thomas Bolton**, Cl'k C. C.

"Board of Assistants, Jan. 13, 1840.

"The within memorial and act unanimously approved.

"Edw. Patterson, Clerk.

"Approved. ISAAC L. VARIAN.

"January 14th, 1840.

"Presented in Senate, Jan. 17th, 1840."

—

"September 28, 1829.

"Mr. Philip Hone offered the following resolution:

"Resolved, That the committee appointed under the third resolution of the proceedings of this day, be instructed to prepare an Address to the People, explaining the provisions of the act now to be adopted, and urging their sanction to the same.

"Mr. President put the question—Shall this resolution pass? and it was determined in the affirmative."

The 30th day of October, 1829, the President and fifty-seven members of the Convention signed and published the following Address to the people, in pursuance of the foregoing resolution, explaining the provisions of the proposed new Charter, and recommending its acceptance by the people to whom it was submitted, at the then pending election:—

From the New York American of October 30, 1829.

ADDRESS

of the Convention called to amend the Charter of the City of New York.

The Convention chosen by the Electors of the city and county of New York, for the purpose of considering and proposing such Amendments to the City Charter as might seem necessary and proper, now submit to their fellow-citizens the result of their deliberations.

Elected as the Members of this Convention were, in their several wards, without reference to the former or present divisions of party, or to any local or individual interests; deeply sensible of the importance of their duties, as affecting themselves, their constituents, and their posterity, they have endeavored, to the best of their ability, faithfully to discharge the trust confided to them, by a deliberate and dispassionate investigation of the Evils actually arising from the defects of our present form of City Goverment; of the Abuses to which, in improper hands, it may be subject; and of the guards and remedies most likely to serve as efficient and permanent checks.

In the course of this examination they have become more and more impressed with the magnitude of our city interests and concerns, and of the urgent necessity of providing by every means which experience or foresight could suggest for an honest and economical administration of our large and constantly increasing city expenditures, and for a municipal government, deliberate, careful and impartial in its legislation, and firm and prudent in its executive administration. They were fully satisfied that it was unwise and dangerous to leave the whole legislative, financial, and the greater part of the executive functions of the present city government to a single board, *uniting the most incongruous powers and duties*, originally formed for the use of a small colonial city, and organised under a state of political government, of opinions, habits, and manners widely different from our own. The extent of the power and influence of our city government is manifested in the fact that their Ordinances may affect, to an unlimited extent, Real Estate to the amount of at least eighty millions of dollars, and Personal Property to the assessed value of about fifty millions; that they control an Annual Tax of about five hundred thousand dollars, paid directly or indirectly by all the Citizens, *exclusive of Local Assessments to the amount of from two to four hundred thousand more*, together with an annual aggregate expenditure of from one million to twelve hundred thousand dollars.

Of the existence of many evils of great magnitude, and of the constant danger of other and *flagrant abuses, little doubt was found to prevail in the Convention*, although, in relation to the most efficient and salutary remedies, various views and plans of reform were entertained and proposed. These were discussed and decided upon in a spirit of compromise, and, it is trusted, of candor, with a single eye to the finally agreeing upon such amendments of our Charter as might prove acceptable to a majority of our constituents, and when adopted, would *protect private rights* and promote the general prosperity.

The amendments thus agreed upon have received the final sanction and approbation of *fifty-seven members of the Convention* out of the seventy who compose it; and they now concur in recommending them to your adoption. In doing this, they have thought it proper to accompany their recommendation with a brief statement of the grounds and reasons of the several more prominent alterations of the present Charter.

The first and most fundamental of these amendments is that which proposes to divide the Common Council *into two boards*, with concurrent powers—*meeting separately*—each having a negative upon the propositions of the other—the one to consist of the Aldermen, the other of the Assistants—each to be chosen by the several wards, in the same manner, and with the same qualifications of electors and elected, as at present. The intention of this change is apparent. It is for the same reason which has dictated a similar division of power into two branches, each checking and controlling the other, in our General Government, in that of this State, and those of the other united States, as well as in the charters of the cities of Philadelphia, Baltimore, Boston, and Washington. *It is designed to prevent the hasty or careless hurrying through of measures involving important interests of the city, of individuals, upon partial representations and imperfect information, before either those Citizens interested in the subject, or the public, know that such measures were in contemplation. This has heretofore repeatedly occurred; and been a well grounded cause of serious complaint.* By requiring the successive sanctions of two separate boards, public opinion will have time to operate upon every measure, *private interest will be deliberately weighed and protected*, information will be communicated, and the careless or ignorant decisions to which all legislation is subject, if they occur in either body, may be corrected on maturer deliberation in the other.

As a still further guard against such evils, it is proposed to exclude the Mayor from the ordinary deliberations of either branch, but that *all acts of the Common Council*, when passed by both boards, shall be presented to him for his approval, which, if he does not sign, he shall return with his objections in

writing; and after an interval sufficient for the consideration not only of the Corporation but the Citizens at large, on the validity of his objections, the act or ordinance is to be reconsidered, and cannot become a law unless a majority of all the members elected to each board *shall record their names publicly in its favor.* Thus the Mayor may become a most useful sentinel, not only against corruptions and private views (should such at any time infest our city councils), but against, what is of more frequent occurrence, the inconsiderate adoption of ill-advised measures, on the authority of a Committee, or on the partial representation of interested individuals. Checks of the same or a similar nature have been provided in many of our constitutions, and experience has shown their effect to be most salutary.

In order to give greater efficiency and independence to this part of the Mayor's duty, as well as in conformity to the general spirit of our republican institutions, the Convention have passed a vote that in their opinion the Mayor ought to be elected directly by the people. The present mode of appointment, however, being fixed by the state constitution, can only be changed by constitutional amendment, ratified by the People of the state.

Under the Amended Charter, the Recorder also will cease to be a member of the Common Council. The sitting in any representative body, of a member not chosen by the people, but appointed by another power, is a relict of our colonial government wholly without parallel in this country, and not justified by any sufficient motive of utility or public policy.

To prevent Abuses which may grow out of the Personal Interest of members of the Corporation, a provision borrowed from our national and state constitutions is recommended—That no member shall, during the period for which he is elected, be appointed to any office the emoluments of which are paid by the City Treasury, or under any act of the Corporation, *or be interested directly or indirectly in any Contract the expenses of which are to be paid under such ordinance.*

When the extent and cost of our public works, and the number of Lucrative Places held under our Corporation, are considered, it is presumed no discreet Citizen will object to this precaution of wholesome jealousy.

Another guard of the City Treasury is provided by recommending that all bills or resolutions involving the appropriation of public monies or imposing burdens on the Citizens, either by general tax or local assessment, shall be immediately published in the newspapers; and whenever a vote shall be taken thereon, the Ayes and Noes shall be called, and the Names of the members, with their Votes, shall be Published.

This, it is trusted, will secure at once due publicity and notice to all concerned, and the strong influence of personal responsibility on the vote of every individual member.

The Convention believing the constant and vigilant inspection of the Citizens over all the acts and disbursements of their public servants to be by far the most efficient Safeguard of the public revenue, have, in pursuance of this principle, proposed that it be made the duty of the Common Council, to publish annually a Full and Detailed Statement of the receipts and expenditures of the year, detailing the several sources of income, and the particular heads of expense; together with the amount and terms of the loans made on the credit of the Corporation.—Thus, before the Election of every Board, there will be regularly submitted to all who contribute to the public burdens, a clear and intelligible Statement of the manner in which their money has been spent: at once affording an opportunity to correct profusion, and to withdraw confidence from injudicious or extravagant representatives.

To this, as a necessary part of the system of official accountability, it is proposed to add a provision requiring that Annual and Specific Appropriations shall be made for each distinct Branch of City Expenditure, and enjoining that no money shall be drawn out of the Treasury, except under such an authority.

The propriety and prudence of such a rule seems self-evident.

It will bring the whole Disbursements of the City annually before the corporation and their Constituents, and by showing the several Heads of Expense distinctly, will indicate the proper place and mode of reform and retrenchment, whenever they may be necessary. It will prevent the engaging in great and costly projects without duly counting the cost before-hand. Besides, every man's experience will teach him that when a limited sum of money, esteemed adequate to any given object, is set apart for it, the sum is much more likely to be used discreetly, and made to go as far as possible in effecting its end, than if it were allowed, without limit, under a general order to complete the work, or make the necessary purchases, whatever they might cost. A contrary practice, under our present system of appointing committees "with power" to carry into effect Resolutions of the Board, without any previous specific appropriation, is believed to be a source of no small part of our city debt and taxes.

The facility of contracting Debts on Long Credit, and of Borrowing Money, has been proved, by long and unvarying experience, to be the great bane not only of states and nations, but much more so, of corruptions, private and public. It is always a strong temptation to lavish expenses, and it enables the advocates of any such measure to avoid their immediate responsibility to the Taxpaying Citizens, and even, for a time, totally to conceal their profusion by throwing off the Time of Payment from year to year.

Some evidence of this may be found in our present City Debt, a considerable part of which was accumulated by corporation bonds, bearing interest, issued to meet the deficiencies of past years. To check this evil without too much shackling the financial operations of the City, it has appeared to the Convention that no more effectual mode can be adopted than the *prohibiting the Common Council from borrowing any money beyond what may be repaid from the* REGULAR *revenue during the current year*, except especially authorised by the Legislature.

Thus, accumulation of debt and interest will be prevented, and at all times the Corporation and the Citizens will know what the city owes and what it can afford.

To complete this system of economical precaution, one more measure has been thought necessary, and in the opinion of those of our body who have had most experience in our city affairs it is more essential than any other.

At present, most of the revenues of the city are expended, and its most important executive business in relation to public works, building, improvements, repairs, &c., are performed by committees of the same board which orders the work or the expenditure.

By separating these duties, by expressly confining the Corporation to the legislation of the city, the appropriation of monies, the appointment of officers, and the supervision of their accounts, and by entrusting all duties purely executive to officers arranged in proper departments, responsible to the Corporation, and liable to censure, removal, or heavier punishment for neglect or misconduct, it seems certain that greater responsibility will be ensured: for such business will be transacted by an officer *responsible to the Board, who appoint* and can remove him, and not as at present, by a Committee of the Board, responsible only to the other members, who in turns constitute other committees. Greater system and experience will generally be ensured, and that loose manner in which business is commonly transacted by men who have little or no personal interest at stake, and no risk of gain or loss of reputation by the prudent or negligent discharge of their duties, will be wholly avoided. The same reasons which so strongly recommend the old and safe republican doctrine of Specific Appropriation, also apply with equal strength to this provision.

It will be the duty of the Corporation to know before-hand how much of the public funds can be spared for any particular object: and it will be the duty of the proper officer to expend that money to the best of his ability, and under the strictest scrutiny, with fidelity and economy.

In connexion with this last separation of the Executive from the ordinary Legislative Duties, it has been judged on all accounts advisable to remove the Mayor from the meetings of the Board, and to entrust him with a Qualified Negative *on their proceedings*, the supervision of other officers, and the general executive duties of the city.

The same desire to make the management of our city concerns open and public, and to attract the general attention of our Citizens to the Official Management of their own Interests, has induced the Convention to impose on the Mayor the duty of making statements, by Message to the Corporation, of the situation of the city affairs, revenues, and property, and to recommend to them any measures for the police, health, security,

comfort, or ornament of the City, which he may deem expedient. It is needless to insist upon the incalculable value of such periodical Statements from a high public officer, on his official responsibility, (stript as they must be) of all those details which otherwise prevent the attention of all but politicians and men of leisure, and bringing the subject of public consideration immediately and clearly before every intelligent Citizen. The great attention which the speeches and messages of our governors always excite, and the important information they contain, attest the value of such a provision.

It may be added, that by making it the especial duty of the Mayor, publicly to express his Opinion upon the chief matters of city regulation, a new responsibility is imposed upon that important officer, exciting him, and almost compelling him to a minute acquaintance with all our municipal interests and concerns.

It has further been deemed necessary to separate the time of election of members of the Common Council, from that of the general election.

This is in conformity with the ancient usage of this city until within a few years, and with the present uniform practice of the rest of the state, where the supervisors and local officers are chosen by the towns early in the spring. The great respectability and popularity of the supervisors and other local officers generally, afford a strong testimony to the probable advantage of this arrangement.

Such, with some minor provisions, tending to the same ends, are the Amendments submitted to the consideration of the people of this City.

In all other respects, the Charter will remain unaltered, leaving the corporate privileges and the property of the city, and the rights of the electors and of the wards in the choice of officers, precisely as they now are.

Thus, should those amendments be accepted, all laws and ordinances must successively pass the Board of Aldermen and that of Assistants, and then receive the consideration of the Mayor. All matters of executive administration and disbursement of public monies, will be managed by experienced and responsible officers, specially charged with such business, *acting under the direction and supervision of the Mayor and Common Council. All propositions involving assessments or burdens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard.* All other expenditures and appropriations of the common funds and property of the city, or to be met by city taxes, will be guarded against abuse, and regularly made public, by all the precautions which the experience of this and other cities, and the example of our state and that of the federal government could suggest.

If, therefore, these amendments are attentively and candidly considered, they will be found to be simple and consistent, keeping always in view one great object—that of preserving the principle of republican representation pure and unimpaired by excluding from the city councils all inducement to the adoption of any measure for personal objects; all temptations to waste or profusion, or abuse of power. The aim at imposing strict accountability on all officers, at preventing hasty or ill-informed decisions, and above all, at continually bringing all the measures of the city government, its management of the city revenues, and of the various interests, private and public, within its control, under the constant inspection of the people themselves. Careful and deliberate legislation, strict accountability, judicious economy, *and perfect publicity*—these are the remedies which the Convention have sought against the evils and abuses to which all wealthy city governments are subject, *of which this City has felt its share, and of which the public voice has, at different times, loudly complained.*

In the trust that the proposed amendments will accomplish these desirable ends, they are now respectfully and earnestly recommended to the adoption of the people.

On all foregoing points, the Convention were nearly unanimous; but upon the question of the term of service of the Aldermen, the members were much divided in opinion. They therefore considered it proper to submit that question to the people for their decision, on the separate vote of "one year" or "two years."

The Convention respectfully recommend to the Citizens to hold meetings in their respective wards, before the approaching election, to express their views in regard to the proposed amendments, and to take such measures as may be expedient for their adoption.

IN CONVENTION—SEPTEMBER 28, 1829.

RESOLVED, That the Members of this Convention who are present, and also those who are absent, who approve the Amendments to the City Charter, sign the same as engrossed.

Done in Convention, at the City Hall, in the city of New York, the twenty-eighth day of September, in the year One thousand eight hundred and twenty-nine, and of the independence of the United States of America, the fifty-third.

In Witness Whereof, We have hereunto subscribed our names.

WILLIAM PAULDING, President,
and Delegate from the Fifth Ward.

N. DEAN, } Secretaries.
RICHARD HATFIELD, }

First Ward.
Thomas Bolton,
Elisha Tibbets,
John Hone,
Joseph Meeks.

Second Ward.
Saul Alley,
John Leonard,
Thomas H. Legget,
Benjamin De Milt,
Samuel Guilford jun.

Third Ward.
Philip Hone,
Dudley Selden,
Garret Storm,
Peter Stagg.

Fourth Ward.
Peter McCartee,
H. Van Wagener.
Eldad Holmes,
Richard E. Mount,
Richard S. Williams,

Fifth Ward.
G. C. Verplanck,
William Paulding,
Gideon Tucker,
John Van Beuren.

Sixth Ward.
Peter A. Jay,
John M. Bradhurst,
Henry H. Schieffelin,
Dennis McCarthy,
P. S. Townsend.

Seventh Ward.
Effingham Schieffelin,

Eighth Ward.
John Duer,
John Morss,
James Burling.

Ninth Ward.
Thomas Morris,
N. T. Arnold,
Michael Burnham,
Thomas Miller,
Francis Cooper.

Tenth Ward.
Stephen Allen,
Samuel Stillwell.

Eleventh Ward.
Reuben Munson,
Charles Mills,
Samuel Andreas,
Wm. Thompson.

Twelfth Ward.
Alpheus Sherman,
Charles Henry Hall,
John R. Hedley,
W. M. Johnson,
Nathaniel Reynolds.

Thirteenth Ward.
Nathaniel Boyd,
E. D. Comstock,
Charles Oakford,
Joseph Johnson,
Evart A. Bancker.

Fourteenth Ward.
Lambert Suydam,
W. J. MacNeven,
Isaac Emmons,
Abraham Bloodgood.

Approved by the People, by their ballots at the November Election—excepting the term of two years for the Aldermen, which exception was most judicious, as experience has since shown—and the Bill agreed upon, was subsequently passed into a Law by the STATE LEGISLATURE.—Ed.

High OFFICIAL COMMENT on the foregoing SEVENTH SECTION!!

"BD. OF ASSISTANT ALDERMEN, } "DECEMBER 9TH, 1839. }

"The following resolution was offered by Mr. Graham:

"Whereas, It is provided among other things, by the SEVENTH SECTION *of the Amended Charter of the City of New York*, that 'all resolutions and reports of committees, which shall recommend any speeific improvement involving the appropriation of public monies, or taxing or assessing the Citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the Common Council, in all the newspapers employed by the Corporation, and whenever a vote is taken in relation thereto, the Ayes and Noes shall be called and published in the same manner."

"And Whereas the Essential Interests of the City require a strict adherence to this salutary Resolution, Therefore

"Resolved, (if the Board of Aldermen concur,) That the Clerks of the respective Boards cause to be PUBLISHED in the Papers employed by the Corporation, as soon as possible after the Meeting at which such proceedings shall take place, all Reports and Resolutions which shall be presented, as well as ALL VOTES which shall be taken by Ayes and Noes, whereby the Appropriation of Public Monies is to be effected, or the Citizens are to be taxed or ASSESSED.

"Mr. West moved that the Resolution be laid upon the table, and the question being taken thereon, the Motion was lost by the following vote:—**Affirmative**—Messrs. Potter, West, Vandervoort, Spader, Pollock—5. **Negative**—Balis, Deming, Anderson, Howe, and Graham—5.

The Question recurring on the adoption of the resolution, the Ayes and Noes were called, and the members voted as follows: AFFIRMATIVE—Messrs. Balis, Deming, Anderson, Howe and Graham—5. NEGATIVE—Messrs. Potter, West, Vandervoort, Spader, and Pollock—5. Five voting in the affirmative and five negative, the Resolution was lost.—Vol. 15 Pro. Bd. Ass's, p. 60.

☞ We shall comment upon these matters in the subsequent pages of this number, in which we shall also give the Opinion of the learned Mr. JUSTICE BRONSON upon the Seventh Section of the Amended Charter.

ASSESSMENTS AND TAX BILLS.

PUBLIC MEETING.

The citizens are requested to attend a public meeting at the Merchants' Exchange, on Monday, March 6th, at a quarter past 2 o'clock, P. M., to take into consideration the bills recently adopted by the Common Council of the city of New York, in relation to TAXES AND ASSESSMENTS, and the collection thereof.

The provisions of the said bills are believed to be objectionable, and as far as these provisions are known, are disapproved by business men.

The object of the meeting is to remonstrate to the Legislature, against the said bills becoming laws. All persons who are opposed to the proposed bills of the Common Council becoming a law, are requested to attend.

Jonathan Thompson	Nath & Geo Griswold
Peter Schemerhorn	Joseph Foulke & Sons
Jonathan Goodhue	John Haggerty & Sons
Peter I Nevius	Howland & Aspinwall
James McBride	Brown, Brothers & Co
H. W. Field	C. & L. Denison & Co
John Anthon	Robert Jaffrey & Co
Elisha Riggs	James Lee & Co
John H. Tallman	Wm & John James
James Fellows	C. H. Russell & Co
Frederick Bronson	Ketchum, Rogers, & Bement
Peter Embury	Abraham G Thompson
Horace Holden	John Onthank Fay
Samuel Thomson	John R. Peters
John Allen	William Gale
Tonnelle & Hall	James A. Burtis.

MAYOR'S OFFICE, FEB. 27, 1843.

To the Honorable, the Common Council of the city of New York:

Gentlemen: I have received from your honorable body, for approval, a proposed Law to be presented to the Legislature of this State, for them to enact, entitled, "An act to revise and amend the several existing Laws relative to the assessments, and collection of taxes in the city of New York, and to reduce the same into one act.

This proceeding of the Common Council *is not such Legislative Act* on their part as can either require or justify the Mayor to return it with written objections, should he disapprove of any of the features of the proposed Law. Your proceedings are merely an application to the Legislature to pass a law upon the subject referred to, with a suggestion of what a majority of your honorable body deems to be required. The Legislature are not bound to adopt the draft law proposed by your body. They will, in their wisdom, make such alterations as an examination of the subject, and a sense of duty may prompt. Consequently, any citizen who may not approve of all the details of your plan, or may question the propriety of some of the principles involved in it, may present his views upon the subject to the Legislature.

Although I differ in opinion with the majority of your Honorable Body IN MANY OF THE DETAILS, AND SOME OF THE PRINCIPLES CONTAINED IN YOUR PROPOSED LAW, still, to expedite your application to the Legislature upon the subject, I have signed *your proceedings*, reserving to myself the performance of the duty to forward to the members of the Legislature such suggestions as seem to me necessary for the interest of our constituents, and for the preservation of individual rights. Respectfully,

ROBERT H. MORRIS.

PUBLIC MEETING.

A public meeting of citizens, opposed to the passage of an Act entitled "an Act to revise and amend the several existing Laws relative to the assessments, and collection of taxes in the City of New York, and to reduce the same into effect," was held pursuant to notice, at the Merchants' Exchange, in the city of New York, at half past 2 P.M.

The meeting was called to order by Chas. A. Jackson, Esq., who nominated the following gentlemen as officers:

PRESERVED FISH, Chairman,

GEORGE GRISWOLD, ABRAHAM G. THOMPSON, PETER COOPER, JONATHAN GOODHUE, PETER EMBURY, JOHN HAGGERTY, ABRAHAM VAN NEST, PETER I. NEVIUS, WILLIAM B. CROSBY, CHARLES H. RUSSELL, PETER SCHEMERHORN, SAMUEL THOMPSON, PETER LORILLARD, Jr., Vice Presidents.

WM. BILLINGS MEECH, Secretary.

The meeting having been duly organized, the call of the same was read by the Secretary.

The object of the meeting was then explained, and the objectionable features of the law commented on by B. Skidmore, Esq., who presented the following resolution, which was carried.

1st, Resolved, That this meeting remonstrate to the Legislature of the State of New York against the objectionable features of the tax and assessment bills, and that a memorial asking for amendments and further and for other provisions of the law in the premises, be coupled therewith.

Wm. Gale, Esq., then offered a memorial and remonstrance for the consideration of the meeting, and the same having been read by the Secretary, the following resolutions relative thereto were proposed, and carried unanimously.

Resolved, That the Memorial and Remonstrance be signed by the officers of this meeting, that the proceedings be published, and that a copy thereof be sent to his Excellency the Governor, the Hon. the President of the Senate, the Hon. the Speaker of the House of Assembly, and to each of the Honorable members of the Senate and Assembly from the City and County of New York.

Resolved, That a Committee proceed to Albany, and present the Remonstrance and Memorial to the Honorable the President of the Senate, or to the Honorable the Speaker of the House of Assembly, and request the presiding officer to whom the same is delivered to present the same and call for its reading, and move that it be referred to the Committee to which the tax and assessment bills from the Common Council shall have been referred, and that the Committee delegated by the meeting ask to be heard before the Honorable Committee to whom these matters shall be referred.

Resolved, That the Committee of Delegates be appointed by the President and Vice Presidents of this meeting, and such Committee to have power to add to their numbers.

The meeting then adjourned.

PRESERVED FISH, Chairman.

WM. BILLINGS MEECH, Secretary.

To the Honorable, the Legislature of the State of New York:

The undersigned take leave most respectfully to represent to your honorable body, that the Finance Committee of the Board of Aldermen on Monday, Feb. 9th, reported to that Board the printed copies of drafts of several Bills relative to Taxes and Assessments in the City and County of New-York, and to the collection thereof, which were, with slight alterations, agreed upon by a majority of the members of that Board, as the printed proceedings therewith will show; and that subsequently the said Bills were agreed to by a majority of the members of the Board of Assistants, with some amendments, as will be seen by the printed proceedings therewith; after this, the last named amendments were concurred in by the Board of Aldermen, and the said proceedings sent to His Honor the Mayor of the City, for approval; who, after an examination of the same, assented thereto conditionally, accompanying the said assent with a written message, a duplicate of which is hereto annexed, and is from under his own hand. These said bills were not published in the newspapers employed by the Corporation previous to being submitted to the two Boards, nor since, and the principles and provisions thereof are not generally known by those who are to be extensively and suddenly affected thereby.

Several influential and highly respectable citizens, who have seen the printed copies of the drafts of the bills herein before-mentioned, and examined the provisions thereof, state in their call for a public meeting, which is hereto annexed, (and which was printed in the newspapers) that some of the provisions of the said bills are believed to be objectionable, and, as far as they are known, are disapproved of by business men; they, therefore, invited citizens opposed to the provisions of the bills recently adopted by the Common Council to meet at the Merchants' Exchange for the purpose of remonstrating to the Legislature of the State against the said bills becoming laws.

In answer to said published call, citizens, irrespective of party, assembled at the Merchants' Exchange, this sixth day of March, 1843, and organised a public meeting, the proceedings of which are hereto annexed, and resolved, That this Remonstrance and Memorial to your Honorable Body, after having been read, should be signed by the officers of the meeting, and that two or more citizens, as a Committee, proceed to Albany

and deliver the said Memorial to the Honorable the President of the Senate, or to the Honorable the Speaker of the House of Assembly, and request that the same may be presented to the Legislature, read, and referred to the Committee to whom the said tax and assessment bills from the Common Council may have been referred.

The Remonstrants represent, that the real estate, situate in the City of New-York, the principal Seaport of this great and growing State, is valuable mostly in consequence of the commercial advantages which said City possesses; and whatever laws are, or shall be enacted, which impose restrictions or burdens upon trade and commerce in said City, alone and distinct from the rest of the State, is an indirect tax upon such real estate, operating in a two-fold degree, depreciating the value thereof, in the same ratio as commerce and trade are affected—also, hindering improvements and decreasing its population. The provision of one of the said bills of the said Common Council, is, that persons doing business in said City, and residing beyond its limits, shall be taxed in the said City, and not elsewhere in this State, or if they live without the bounds of this State, such citizens must pay taxes on their personal property in the State in which they reside, and also in that in which they do business, making a double tax.

This provision involves principles which are of great importance; and if it is to become a law, may lead to the passage of retaliatory laws by other States, and thus the harmony of the Union be disturbed, very much to the injury of trade and commerce as well as the manifest detriment of the public welfare.

The provision of the said bills, which requires every inhabitant, or person doing business in the City of New-York, to make an inventory or schedule of his personal property, belonging to him, or held by him as agent for others, and to return the same under oath to the assessors within a limited time, is disapproved, considered inquisitorial, arbitrary and oppressive, and will, in many cases be difficult, and in some almost impossible to comply with.

It is suggested that the present law of the State is sufficiently ample in this particular, and that it affords the assessors as much opportunity or means of ascertaining what persons are liable to be assessed for personal property as is needed. By the present law, they are authorised to assess any, and every inhabitant, for personal property, as great an amount as they believe him to be worth; and if they cannot satisfy themselves as to the amount, they can set down so large an amount as to compel the person thus assessed to reduce the same under oath, or otherwise pay the tax on the assessed property.

It is said by public officers, as the Remonstrants are informed, that many persons escape taxation on personal property who are liable to taxation; this, it is suggested, is the neglect of the assessors, and not the inadequacy of the present provisions of the law.

The provision which authorises the imposing a tax upon the personal property, merchandise, produce, funds, &c., &c., in the hand of an agent, is a new feature sought to be incorporated into the laws of the State and made applicable to this city only, involving principles of very great importance. Should this provision become a law, the effect will be *to drive business away from this City* as well money as funds, and hereafter the interest on public and other pecuniary obligations will be made payable without the bounds of the tax district.

The provision which authorises the assessors to examine any person being the head of a family, owner, clerk, servant, &c., &c., is one which seeks to establish a new Court with extraordinary powers, and such powers as are, as your Remonstrants suggest, inconsistent with the rights of a free people.

The provision which authorises the assessors to impose a *treble* tax on any arbitrary amount for a neglect to return the printed blank referred to in the section containing such provisions, is a power of an alarming character to vest in ward assessors, and such a power as would, if authorised lead, as your Remonstrants suggest, to alarming abuses.

The provision which authorises an assessment upon incorporated companies, and upon the amount of their nominal, instead of their actual capital, the Remonstrants believe is inequitable and unjust, the effect and operation being to compel monied incorporations to pay a tax upon money which they have lost.

The provision which authorises the creation of new offices, and the appointment of new officers, by the Common Council, is objectionable, and as a substitute the remonstrants suggest that the President of the Board of Water Commissioners shall be made by virtue of his said office Treasurer of the County, and authorised to receive all taxes paid voluntarily by any citizen, desirous of paying his taxes without the intervention of a Collector, and the number of Ward Collectors may be reduced from seventeen to one, and that Collector should, as the remonstrants suggest be elected by general ticket, and that the office of Collector of Arrears be abolished.

The provision which authorises the Reassessment of the delinquent tax of the previous year, which had been assessed upon real estate, and the collection of both, is objectionable, and the remonstrants suggest that a more speedy, and a more economical mode should be provided, for a collection of such tax, by a sale of so much of the property of the delinquent, as will be sufficient to produce the amount of such tax, and that the charges on such sales be no greater than those made by the State Comptroller in selling lands for State taxes.

The provision which authorises the Mayor, Aldermen, and Commonalty, to use the money raised by tax, for any purpose they may in a manner sustain, the remonstrants suggest, should be stricken out, and a provision inserted, that the monies so raised, shall be applied to the specific purposes, for which the same are authorised, and for no other purpose whatever.

It is suggested, that as the tax to pay the interest of the Croton Water debt is a large item in the annual tax bill, and being a local assessment, that the members of the Board of Water Commissioners appointed by the Governor and Senate, who are experienced public officers, of high standing, should by virtue of their said offices, be made members of the Board of Supervisors.

The remonstrants suggest that the amount of the tax asked for, should be reduced, that the Salaries and fees of public officers to be paid therefrom, should be fixed by law, that the number of public officers should be lessened, and that the duties of the Croton Water Board should be performed by the Board of Water Commissioners. The remonstrants suggest that the public work, of whatever kind it may be, should be let out by public contract, publicly advertised, and that no contract should be executed until it shall be first submitted to a board composed of the Mayor, Recorder, and Members of the Board of Water Commissioners, and approved by such Board, or a majority thereof, whose duty it may be to convene on the first Monday of every month for that purpose.

The Memoralists ask that public officers, and Members of the Common Council, may be expressly prohibited from being interested in any manner in public Contracts, express or implied either directly, or indirectly, and that if such contract be made, that the same shall be declared null and void.

The Memoralists ask that Owners, Lessees and Mortgagees may be protected from surprise and loss by assessment and tax sales and that the purchaser at such sales shall be required to give personal notice of such sale and purchase, and that such owner, lessee or mortgagee may have the same right to redeem the premises from such sale, as is now allowed by law, to owners of land sold by the State Comptroller for taxes, and that unoccupied lands may be included.

The Memorialists, ask that the Common Conncil may be expressly prohibited from borrowing money on the credit of the corporation, except to pay the interest of the public debt.

The Memorialists ask that the laws now in force, which authorise assessments upon private property, for public improvements, may be repealed.

The remonstrants suggest that the application of the Common Council for a law to authorise the Corporation to become purchasers at assessment and tax sales ought not to be granted, that it is bad as a principle, and will be worse in practice. That the Corporation have not the means of paying for such purchases except by taxing the citizens for the amount of the purchase money, that the Corporation should not be allowed to hold any real estate not required for public use, that it will be a wrong done to the owners of such lands, will lead to expensive litigation, for which the citizens must also be again taxed, and thus indirectly sanction assessment abuses of an aggravated character, and give to contractors, at exorbitant and improper prices the public money, and to public officers fees and charges for services never rendered.

The Memorialists herewith present a copy of the proceedings of the Common Council

in 1818, in relation to the cleaning of the streets, and the mode then practised in making public contracts, also a copy of resolutions for a detailed report of the contracts during the years 1836, 7, 8, 9, 40, and the copy of a resolution and the report thereupon, also of four printed notices of commissioners of estimate and assessment in the matter of opening four streets and avenues, which reports are now brought forward after a lapse of near seven years.

Your Memorialists ask that the said tax and assessment bills, may receive a full and careful examination, and the objectionable provisions may be stricken out, and that the amendments here suggested may be made, and that such other and further provisions in the premises may be also made by the Legislature as will have a tendency to lessen the county taxes, prevent abuses, decrease the patronage of the common council, define the duties of the public officers of the city, and such as the Legislature in their wisdom shall deem meet.

PRESERVED FISH, Chairman.

Abraham Van Nest	John Haggerty
Peter Schemerhorn	A. G. Thompson
Peter Cooper	George Griswold
Peter Embury	Jonathan Goodhue
Peter Lorillard, jr.	Charles H. Russell
Wm. B. Crosby	Peter J. Nevius

Samuel Thomson—Vice Presidents,
WM. BILLINGS MEECH, Secretary.

Minutes of the Common Council, Vol. 34—*from Nov.* 3, 1817, *to May* 17, 1818.

In Common Council, Feb. 2, 1818.

It is also recommended, that sealed proposals should be advertised for, and received till 16th inst., for the street manure of the City, for one year from 1st May next.

(Signed) G. N. BLEECKER,
Comptroller.

Feb. 16, 1818—*page* 341.

The Street Committee, to whom was referred that part of the Comptroller's Report which relates to the disposal of the street manure of this city, reported,

That they have had the subject under consideration, and propose the following resolutions:

"Resolved, That the Comptroller be directed to advertise for sealed proposals, to be received till the 2d of March, for the street manure of the Eastern and Western Districts, as at present established by a law of the corporation for two years, from the 1st of May next.

"Resolved, That he also advertise for sealed proposals, to be received as above mentioned, for the street manure of the city, for one and for two years, from 1st May next, the contractors to sweep and remove the dirt at their own expense from all the streets and public places.

For this purpose the city to be divided into six sub-districts, three in the Eastern and three in the Western, as designated by law, each sub-district to be swept and cleaned one day in the week, at the time designated by the act aforesaid.

Your committee think that a better decision can be made as to the propriety of agreeing to either of these plans, after proposals are received.

(Signed) ELDAD HOLMES,
JOHN REMMEY,
LEONARD KIP.

which was approved, and the Comptroller was directed to advertise agreeably thereto, for contracts for one or two years.

March 2, 1818—*page* 398.

The sealed proposals for the street manure received by the Comptroller were presented by him, whereupon, on motion, the lobby was cleared and the doors closed.

The sealed proposals having been opened by the President, and the propositions therein stated having been made known, it appeared that the propositions of Edward Hitchcock for the Western district, and that of William M. Hitchcock for the Eastern district were the highest, whereupon it was resolved that a lease of the street manure, for the Western district, for the period of two years, from the 1st May next be made out to Edward Hitchcock, on condition of his securing to be paid the sum of four thousand eight hundred and seventy-five dollars per annum, the streets to be swept by him, the dirt of the streets collected together and removed by him, at his own expense, agreeably to the proposals issued by the Comptroller.

It was also resolved that a lease of the street manure, for the Eastern district, for the period of two years, from 1st May next, be given to William M. Hitchcock upon the same condition as to cleaning the streets, and on his securing the payment of the sum of Four thousand Eight hundred and twenty-five dollars per annum.

The contracts were directed to be prepared and executed under the direction of the Comptroller, and the sureties to be approved by his Honor the Mayor and the Comptroller.

April 13, 1818—*Vol.* 35, *page* 150.

The Comptroller reported that the contract for the street manure had not yet been executed, owing to the necessity of an amendment to the law respecting the cleaning of streets, to embrace the regulations lately made by the Board on that subject, whereupon the same was referred to the Street committee and counsel.

May 4th, 1818.—*Page* 220.

A Member stating that he had something to communicate, which required secrecy, the lobby was cleared and the doors closed.

"The Street Committee and Counsel of the Board, to whom had been referred on 13th April last, a report of the Comptroller relative to a Contract for the Street Manure, Reported,

"That they have had a conference with Messrs. Hitchcocks, on the nature of the Law to be passed by the Corporation, and the contract to be entered into by them.

"It appears to the Committee that the Contractors formed their calculations different in some measure from that contemplated by the members of the Committee: and under all circumstances considering the price offered, the arduous duties to be performed, the convenience to the citizens from the adoption of the new mode of cleaning the streets, and the expenses which will accrue to the contractors by a faithful discharge of their duties, they would recommend to the Board, that a deduction be made of twelve hundred dollars, leaving the amount to be paid 8,500 dollars per annum.

They would also recommend that the Street Commissioner be authorised to accommodate the contractors with a suitable place or places (provided such can be furnished without expense or inconvenience to the public), for the deposit of Street manure only, from time to time, where he thinks will be suitable."

(Signed) ELDAD HOLMES,
OGDEN EDWARDS,
LEONARD KIP,
JOHN REMMEY.

Which report was agreed to.

The Counsel then presented a Law entitled "A Law to amend a Law to regulate the removal of filth and dirt from the streets in the city of New York," which was passed and the publication thereof was directed to be delayed until the 3d Monday in May inst.

The Counsel also presented the draught of a Contract with the Messrs Hitchcocks, on the subject of the Street manure, which was directed be duly executed, and the Counsel was instructed to attend to the execution of the contract on the part of the Messrs. Hitchcocks.

May 11th, 1818—*page* 227.

The Counsels presented the Contracts for the Street Manure with the Messrs Hitchcocks, agreeably to the term of their proposal, which was directed to be duly executed.

City and County of New York, *ss.*—Samuel Bodle being duly sworn, doth depose and say, that he copied the above stated proceedings from the Manuscript Book of Minutes of the Common Council in the office of the clerk of the said common council and the same is a true copy thereof as this deponent verily believes.

SAMUEL BODLE

Sworn to this 3d day of March 1843.

Before me, ROBERT H. MORRIS.
Mayor of the City of New York.

Document No. 16.

Board of Assistant Aldermen, Nov. 23, 1840.

Report of the Street Commissioner, in reply to a resolution of information required relative to contracts, expenses of street opening, counsel fees, &c. Ordered on file.

EDWARD PATTERSON, *Clerk.*

Street Commissioner's Office,
November 23d, 1840.

The undersigned, in reply to a resolution of the Board of the 9th instant, directing him to report to the Board at its next meeting a list of all the contracts made by him from May 10th, 1836, to November 1st,

1840, specifying the names of the contractors, the dates of the contracts, the prices of the various materials and work; and also, whether any other person or persons are or have been interested in any, and which of the contracts, either directly or indirectly, to the best of his knowledge, information, or belief, respectfully

REPORT:

That immediately upon the receipt of the resolution, he placed the same in the hands of the first Clerk in the department, with instructions to devote himself exclusively to the preparing of such of the information called for, as could be obtained from documents in the office. The said Clerk has proceeded in the work, but has not yet accomplished it; and judging from the progress that has been made, compared with what is yet to be done, the undersigned is of opinion that he will not have canvassed all the matter committed to him for a month to come.

The various important business of the department preclude the undersigned from detailing the services of either of the other Clerks, without vital sacrifice to important interests which admit of no delay. If, therefore, immediate possession of the information be deemed essential by the Board, the undersigned respectfully suggests the expediency of appropriating an additional Clerk to the Department.

Respectfully submitted,

JOHN EWEN,
Street Commissioner.

City and County of New York, *ss.*

Samuel Bodle, being duly sworn, doth depose and say, that the above and foregoing is a true copy of the printed proceedings in the office of the Clerk of the Board of Assistants, and that he transcribed the same therefrom. SAMUEL BODLE.

Sworn before me this 6th day of March, 1843.

ROBERT H. MORRIS,
Mayor of the City of New York.

The minutes of the Board of Assistants have been carefully examined, and no further report appears to have yet been made.

NOTICE.

The undersigned, Commissioners appointed to make an estimate and Assessment for opening Thirty-seventh street from the Hudson river to the East River, in the Sixteenth Ward of the City of New York, do hereby give notice to the owners and occupants of all houses and lots, and improved or unimproved lands, affected by the said improvement, that they have completed their estimate and assessment in the premises, which assessment embraces all the lands and premises lying between the East river and the Hudson river, and between a line running from the East river and the Hudson river, at half the distance between Thirty-sixth street and Thirty-seventh street, and a line running from the East river to the Hudson river, at half the distance between Thirty-seventh street and Thirty-eighth street; and that they have deposited a true copy or transcript of such estimate and assessment in the Clerk's office of the city of New York, for the inspection of whomsoever it may concern; and that their report of the said estimate and assessment will be presented to the Supreme Court of Judicature of this State, at the capitol in the city of Albany, on the first Tuesday in April next. And they request all persons whose interest may be effected thereby, and who may be opposed to the same, to present their objections in writing, to Abraham Dally, their Chairman, at No. 105 Monroe street, in the city of New-York, within thirty days from the date of this notice.

New York, March 1st, 1843.

ABRAHAM DALLY,
TIGHE DAVY,
ANDREW WARNER,
Commissioners.

NOTICE.

The undersigned, Commissioners appointed to make an estimate and assessment for opening the Eleventh avenue, from Thirty-third street to Forty-seventh street, in the Twelfth and Sixteenth Wards of the city of New York, do hereby give notice to the owners and occupants of all houses and lots, and improved and unimproved lands, affected by the said improvement, that they have completed their estimate and assessment in the premises, which assessment embraces all the lands and premises lying between the following limits, viz., between Thirty-second and Forty-seventh street, and a line drawn at the half distance between the Eleventh avenue and the Tenth avenue, and a line drawn at the half distance between the Eleventh avenue and the Twelfth avenue,—and that they have deposited a true copy or transcript of such estimate and assessment in the Clerk's office of the city of New York, for the inspection of whomsoever it may concern; and that their report of the said estimate and assessment will be presented to the Supreme Court of Judicature of this State, at the Capitol in the city of Albany, on the first Tuesday in April next; and they request all persons whose interest may be affected thereby, and who may be opposed to the same, to present their objections in writing to Forsyth Labah, their Chairman, at No. 14 Grand street, in the city of New-York, within thirty days from the date of this notice.

New York, March 1st, 1843.

FORSYTH LABAH,
JAMES J. MAPES,
Commissioners.

NOTICE.

The undersigned, Commissioners appointed to make an Estimate and Assessment for opening Thirty-ninth street, from the East River to the Hudson River, in the Sixteenth Ward of the city of New York, do hereby give notice that the owners and occupants of all the houses and lots, and improved or unimproved lands affected by the said improvement, that they have completed their estimate and assessment in the premises, which assessment embraces all the lands and premises lying between the East River and the Hudson River, and between a line running from the East River to the Hudson River, at half the distance between Thirty-eighth street and Thirty-ninth street, and a line running from the East River to the Hudson River, at half the distance between Thirty-ninth street and Fortieth street: And that they have deposited a true copy or transcript of such estimate and assessment in the Clerk's office of the city of New York, for the inspection of whomsoever it may concern, and that their report of the said estimate and assessment will be presented to the Supreme Court of Judicature of this State, at the capitol in the city of Albany, on the first Tuesday in April next. And they request all persons whose interests may be affected thereby, or who may be opposed to the same, to present their objections in writing to Anthony A. Jacobus, their chairman, at the office of R. Emmett, Esq., No. 45 William street, in the city of New York, within thirty days from the date of this notice.

New-York, February 28th, 1843.

ANTHONY A. JACOBUS,
AZARIAH ROSS,
OBEDIAH NEWCOMB, JR.,
Commissioners.

NOTICE.

The undersigned, Commissioners; appointed to make an estimate and assessment for opening a new street, between the Fourth and Fifth avenues, from Twenty-third street to Forty-second street, in the Twelfth and Sixteenth wards of the city of New York, do hereby give notice, to the owners and occupants of all houses and lots, and improved or unimproved lands, affected by the said improvement, that they have completed their estimate and assessment in the premises; which assessment embraces all the lands and premises lying between the following limits, viz:—a line drawn at half the distance between Twenty-second and Twenty-third streets; a line drawn at half the distance between Forty-second and Forty-third streets; a line drawn at half the distance between the said new street and the Fourth avenue, and a line drawn at half the distance between the said new street and the Fifth avenue, and that they have deposited a true copy or transcript of such estimate and assessment in the Clerk's office of the city of New York, for the inspection of whomsoever it may concern; and that their report of the said estimate and assessment will be presented to the uSpreme Court of Judicature of this State, at the Capitol, in the city of Albany, on the first Tuesday in April next. And they request all persons whose interests may be affected thereby, and who may be opposed to the same, to present their objections in writing, to Samuel Guilford, Jr., their Chairman, at No. 126 William-street, in the city of New York, within thirty days from the date of this notice.

New York, February 28th, 1843.

S. GUILFORD, Jr.,
THOMAS BUSSING,
JOSEPH N. LORD,
Commissioners.

SUPREME COURT.

Sharp and others, vs. Spier. } Opinion of the Court.

BRONSON J. As the Plaintiffs made out a perfect title to the property it is only necessary to examine the claim set up by the defendant under the assessment and sale for making a well and pump in Willow-street. The first inquiry will be whether assuming all the proceedings to have been regular, there was any legal authority for selling the land. It has become so common of late to take private property in one form or another without the consent of the owner, that Corporations are not always very careful to look at their charters, or if they are examined, the powers conferred are construed very liberally. But the right to take private property in any form without the consent of the owner is a high prerogative of sovereignty which no individual or corporation can exercise without an express grant. The power may be delegated but the delegation must plainly appear. It cannot be made out by doubtful inferences from powers relating to other subjects. Nothing short of express words or necessary implication will answer the purpose.

The village of Brooklyn was incorporated in 1816, the Charter was amended in 1824, and these laws were with some modifications reduced into one act in 1827. (Stat. 1816, p. 90—1824 p. 224—1827, p. 127.) The act of 1816 provided for levying taxes upon the freeholders and inhabitants of the whole village, but not for making assessments within any more limited district. The act of 1824 authorized the trustees to order and direct the pitching, paving, altering, amending, and cleansing of streets within the village and to cause the expense of conforming to such regulations to be assessed among the owners and occupants of the houses and lots intended to be benefitted thereby: and the trustees were authorized, by warrant under their hands and seals to levy the assessment by distress and sale of the goods and chattels of the owner or occupant who should make default in payment. (§3.) By the eighth section of that act the trustees were authorized to divide the village into well and pump districts, to provide wells and pumps, and to assess and collect the expenses of these works in the same manner as was provided in relation to street assessments by the third section of the act. Thus far it is quite clear that there is no power to sell lands for making wells and pumps. The assessments are to be collected by distress and sale of the goods and chattels of the persons assessed.

But it is said that the power to sell lands for these assessments may be found in the 7th Section of the act which provides "that whenever any tax of any description on *lands and tenements*, in the said village, shall remain unpaid," and the collector shall make affidavit "that the owners of *the premises on which the same is imposed* cannot be found, or that he has not sufficient personal estate in the village whereon the tax can be levied, the trustees may take order for advertising in a newspaper for the space of three months," thereby requiring the owners of *such lands and tenements respectively* "to pay the tax, and that in case of default," such lands and tenements will be sold: "and if, notwithstanding such notice," the tax shall not be paid, "then it shall and may be lawful for the said trustees to cause *such* lands and tenements to be sold at auction for a term of years." Now the first remark upon this section is, that it only authorizes the sale of lands for the payment of a *tax* and although it extends to a tax "of any description" still it includes nothing but a tax of some kind. Our laws have made a plain distinction between taxes, which are burdens or charges imposed upon persons or property to raise money for public purposes, and *assessments* for city and village improvements, which are not regarded as burdens, but as an equivalent or compensation for the enhanced value, which the property of the person assessed has derived from the improvement. This distinction had been made in several statutes long before Brooklyn was incorporated and was fully exemplified in the *Matter of the Mayor of New-York*, (11 *John.* 77.)—Three several churches in the City of New-York had been assessed for the supposed benefit which they would derive from enlarging Nassau-street, and they denied the legality of assessment because it had been expressly enacted that no church or place of public worship "shall be *taxed* by any laws of this state." But the objection was overruled and the exemption claimed by the churches was denied, on the ground that the assessment could not properly be regarded as a tax. This case apparently goes the whole length of deciding the one now before us. The authority is to sell for a *tax*, and the defendant shows nothing but an *assessment* for a village improvement.

In *Blecker vs. Bullon*, 3 Wend. 263, the question was upon an assessment for pitching and paving a street, and SAVAGE, C. J., said, "there is no doubt that the assessment in question was not a *tax*, that being a sum imposed, as is supposed for some public object."

I may remark here that the Charter provides in terms for laying *taxes* for various purposes and there is therefore no necessary implication that assessments were intended to be included in the word "*tax*," which is the only word in the seventh section from which the power can be inferred.

A Corporation must show a grant either in terms or by necessary implication, for all the powers which it attempts to exercise, and especially must this be done when it claims the right by taxing or otherwise to divest individuals of their property without their consent. In *Beatty vs. Knowle*, 4 Peters, 152, which was the case of a corporation sale of land for taxes, Mr. Justice MCLEAN remarked, "that a corporation is strictly limited to this exercise of those powers which are specially conferred upon it. The exercise of the corporation franchise being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation." And, he subsequently adds, "the power to impose a tax on real estate and to sell it where there is a failure to pay the tax, is a high prerogative and should never be exercised when the right is doubtful." The justice of the remark is obvious. Every statute derogatory to the rights of property or that takes away the estate of a citizen ought to be construed strictly. It should never have an equitable construction. Van Horne's lessee, *vs.* Dorrance, 3 Dall. 316.

The act of 1824 was drawn and passed long after the distinction had been taken between assessments and taxes, and those who drew and those who passed it must be supposed to know that an assessment for the benefit conferred by a village improvement was not included in the word "tax." Had the legislature intended that lands should be sold to satisfy assessments it cannot be doubted that they would have said so.

A further examination of the statute will go to confirm what has already been said. The Corporation is not empowered to sell lands in those cases where there is in fact a tax, unless it be a tax on lands and not a mere personal charge.—The words are, "whenever any tax of any description, *on lands or tenements* in the said village shall remain unpaid, the Trustees may cause such *lands and tenements* to be sold."

§ 7.—On looking at the eighth section, which authorizes an assessment for wells and pumps in connection with the third section to which the 8th refers, it will be seen that the assessment is not upon the lands, but upon "*the owners or occupants* of the houses and lots intended to be benefitted thereby, and the money is to be levied by distress and sale of the *goods and chattles* of such owner or occupant." This language does not go beyond the creation of a debt or duty upon the owner in respect of the land, which he must satisfy at the peril of losing his goods. It does not create a charge on the land.

I have not overlooked the fact that *street* assessments are by the third section of the act, made a lien or charge on the land. Whether that fact, taken in connection with the power conferred by the 7th section, will authorize a sale of land for *street* assessment we are not now called upon to determine. If the power be conceded, it does not follow that there may be a sale of lands for a *well and pump* assessment. The eighth section which relates to wells and pumps, makes no mention of the seventh which provides for a sale of lands, and it only refers to the third for the purpose of avoiding the repetition of details in relation to the mode of collecting the assessment. The substance of the provision is that assessments for wells and pumps, may be made and collected "in the same manner as is provided for assessing and collecting "street expenses" by the third section of this act." That "manner" as we have already seen, is by distress and sale of the goods and chattles of the person assessed.

These assessment sales for real or fancied improvements, sometimes fall very heavily upon the owners of city and village property. The lots which are sold are usually vacant, and consequently produce no revenue. If there were an occupant, there would of course be a person to discharge the burden. The loss resulting from a sale most commonly falls upon absent owners, who have no notice until it is too late,—upon women, who are not accustomed to watch the movements of a corporation and its officers,—and upon children, who want discretion to defend and protect their rights.

And altho' the power to sell lands without regard to age, sex or condition, has been very liberally conferred by our city and village charters, it may well be that the legislature did not in this instance deem it expedient to make such a grant. They supposed it enough that owners and occupants were made liable when they could be reached by distress and sale of their goods, and did not regard it as a very great evil if the absent owner of an unoccupied lot should escape the payment of an assessment for a well and pump which could not then and might never be of any importance to him. But whatever reason may have influenced the legislature, we feel no difficulty in saying that this land has been sold without legal authority.

The act of 1827 was in force at the time the sale was made. But as the 22d section of that act is substantially the same as the 7th section of the act of 1824, it requires no separate consideration.

We might stop here: But there are other questions in the cause which like the one already considered, were elaborately discussed at the bar, and both parties appeared to wish that we should pass upon them. I will now assume what has just been denied. That this charter confers authority to sell lands for a well and pump assessment, and then the inquiry will be whether the defendant has made out such an execution of the power as is necessary to establish his title under the sale.

In the solution of this question, it will be proper at the outset to lay down a few principles which must have an important bearing upon the result. Every statute authority in derogation of the common law to divest the title of one and convey it to another, must be strictly pursued or the title will not pass. This is a mere naked power in the corporation, and its due execution is not to be made out by intendment, it must be proved. It is not a case for presuming that public officers have done their duty; but what they have in fact done must be shewn. The recitals in the conveyance are not evidence against the owners of the property, but the fact recited, must be established by proofs *aliunde*. As the statute has not made the conveyance *primae facii* evidence of the regularity of the proceedings, the fact that they were regular must be proved, and the *onus* rests on the purchaser. He must show step by step that every thing has been done which the statute makes essential to the due execution of the power. It matters not, that it may be difficult for the purchaser to comply with such a rule. It is his business to collect and preserve all the facts and muniments upon which the validity of his title depends. (*Rex vs. Croke, Crop*, 26; *Williams vs. Peyton*, 4 *Wheaton*, 77; *Ronkendorf vs. Taylor*, 4 *Peters*, 349; *Jackson vs Shepherd*, 7 *Cowen*,

88; *Atkins vs Kinnan*, 20 *Wend*, 241; *Thatcher vs. Powell*, 6 *Wheaton*, 119; *J ckson vs. Esty*, 7 *Wend*, 148; *The People vs. The Mayor of New York*, 2 *Hill*, 9; *Matter of Mount Morris Square*, 2 *Hill*, 14.) These cases and those to which they refer, will be sufficient to justify all that has been said concerning the necessary requisite for making out a title in the defendant.

Let us now recur once more to the power. The 8th section of the act of 1824, provides that it shall be lawful for the trustees "on the application in writing of a majority of the persons owning property intended to be benefitted thereby, or whose property shall be assessed for the payment of the expenses attending the s me to divide the said village into well and pump districts." The defendant produced a petiti n having seven names subscribed to it, but he gave no evidence to show that the signatures were genuine, nor did he prove that they were owners of property within the proposed dist ict. But this is not all: The petition was signed by only *seven* individuals, and *fourteen* were assessed for the improvement. The petitioners were not a *majority* of the persons owning property intended to be benefitted. In an answer to this, it is said, that some persons were assessed whose property lay beyond the permanent district. But an as essment up n their property was expressly directed by the trustees and the inference is irresistible that they were persons "intended to be benefitted" by the improvement. Again the petition was for a well in W l low between Clark and *Pierpont* streets, and that petition was granted, but when the trustees ordered an assessment, the district was altered and bounded on one side by *Lovelane*, instead of Pierpont street. How many persons would have been assessed if the district on wh ch the petition was based had remained unaltered, we are not informed.

The fact that a majority petitioned for the improvement lies at the foundation of the whole proceeding, and unless that fac can be established, the whole is void from beginning to end. The *onus* was upon the defendant, and he has failed to furnish the proof.

The defendant insists that the petition conferred jurisdiction on the Trustees to lay out a well and pump district, &c. provided they should judge that a majority of the persons to be benefitted had signed; that by granting the pet tion and proceeding with the work, the trustees adjudicated upon the question, and determine l that a majority had petitioned, and th t this judgment of the trustees is conclusive upon all persons, so long as it remains unreversed. It is impossible to maintain that in this matter the Trustees were sitting as a court of justice with power to conclude any one by their determination. True, they were called upon to decide for themselves, whether a case had arisen in which it was proper for them to act.—But they acted upon their peril. They could not make the occasion by resolving that it existed.—They had power to proceed if a major ty petitioned, but without such a petition they had no authority wh tever. They could not create the power by resolving that they had it. In *Graves v. Otis* 2 *Hill* 466, the trustees had the necessary petition in point of numbers, and so far as any one could see on looking at the paper, all was regular. But it turned out that a material alteration had been made in the petition after two persons had signed it, and without their consent.—And as these two names were necessary to make out the requisite number, it was held that the trustees had no ju isdiction. This seems to be a hard case, and so it was, but it stands upon a principle that cannot be given up with safety to the public.

Corporations and their officers, when they interfere with the rights of individuals, and especially when they attempt to divest and transfer the title to real estate, must show that the very case has arisen in whic they were authorized to proceed. Showing that they have been misled by forgery will not aid them. Honest error cannot confer power. If the petition had been sufficient and the trustees had thus acquired jurisdiction to act, then, whether they would proceed or not, was a question addressed to their discretion, and their decision upon that question could not be reviewed in this action, nor indeed in any ot er. But without a sufficient petition they had no authority to act. There is little if any thing of a judicial nature in the proceedings of corporations to take lands, either by way of as essments or for public use. (*The People v. Mayor of New York*, 2 *Hill* 9. *Matter of Mount Morris Square*, 2 *Hill* 14.—It is the mere execution of a power.

I will now assume that the trustees acquired jurisdiction, and then the inquiry will be whether all the necessary steps have been taken to transfer the plaintiff's title to the defendant. I will not stop to inquire whether the district was properly laid out, but proceed at once to the consideration of the assessment. The expenses of the improvement were to be assessed "among the owners and occupants of all the *houses and lots* intended to be benefitted thereby." (Act of '24, §8, 3.) And there is no authority to sell except where a tax [or an assessment, as has been conceded for the purposes of this branch of the a gument] of any description on *lands* or *tenements* in the said village shall remain unpaid. In order to lay a tax on "lands or tenements," it is necessary that the particul r lands should be described. Now what was done here? Without noticing any other defects in this extraordinary document which is called an assessment, it is sufficient to say that the assessors have not even mentioned or alluded to an. "lands or tenements" from beginning to end. In several instances enough was not done to create even a personal charge. Take for example the following: "Sharp, 19.76."—What "Sharp" was intended? After the trustees had directed the assessors to aid the collector in describing the lands, in other words, to do what should have been done when the assessment was made—the trustees passed a resolution reciting that a tax was due from "Mrs. Sharpe;" but what particular lady by that name was intended was not explained. If they meant Mrs. *Mary* Sharp, who once owned the land, she died in 1823, two years before the well and pump had been thought of. At the time these proceedings were commenced, the land belonged to the seven minor grand children of Mary Sharpe, who are plaintiffs in this action. The fact that Mrs. Sharpe had been long dead, enabled the collector, to make the necessary affidavit that she could not, "upon diligent enquiry, be found in said village." Had the plaintiffs, the owners of the land been named in the assessment, there is no reason to suppose that the affidavit could have been made, or that the tax would not have been paid and the land saved. The assessment neither created a charge on the land, nor a debt or duty upon the plaintiffs.

If the defect in the assessment could be afterwards supplied it was never done. After the assessors had been required to aid the collector in describing the lands, and after the collector had made his affidavit, the trustees only made a slight approximation towards describing the land which they intended to sell. They stated that an assessment was due "from Mrs. Sharp on property in *Willow street*." In what part of Willow street, or on which side of it? and how much property? Was it one lot or ten, and what were the dimensions? It is impossible to call this a description of any property in particular. There was no description of the lot in question until we get down to the conveyance made on the sale. The owners were left in the dark until it was too late to save the land.

This leads to the mention of the last defect in the proceedings which I shall notice, to wit: that the land was not sufficiently described in the advertisement. When a tax on *lands or tenements* remains unpaid, the trustees may take order for advertising *the same*, requiring the owner of *such lands* to pay the tax, or in default, that *such lands* will be sold, and if such tax is not paid within the specified time, *such lands* may be sold (§7. The principal object in requiring the advertisement was to bring home notice to the owner that his land was to be sold if he did not pay the charge upon it. And only *such* land can be sold as has been advertised. Now what was this notice? It neither named the plaintiffs, nor did it describe the property. Among the unpaid assessments for various improvements in the village, it mentions that there was due "from Mrs. Sharpe, assessed on land in Willow street, near Clark street, containing on said Willow street thirty five feet, $19 76." The notice does not state in what part of Willow street the property was situate, except that it was "near Clark street," nor does it mention the side of the street. The plaintiffs owned property on both sides. Again, it was thirty five feet on Willow street, but the notice does not state how long the lot was the other way, or whether it was in the form of a square, a parallelogram, or a triangle. And besides, there is not only a want of description, but the notice was directly calculated to mislead the owners. It speaks of a lot thirty five feet on Willow street, and the lot sold was thirty eight feet front on that street. It mentions land "*near* Clark street," and the lot sold was *on* Clark street, by which one side of 113 feet was bounded. No one who owned this lot would imagine that he was in danger from seeing that the corporation proposed to sell a lot *near* Clark street, especially as there was nothing else in the advertisement to correct the error. It was so natural and easy to describe this as a corner lot, or a lot bounded on two sides by two streets, that it is difficult to resist the inference that the corporation either did not know what land would be sold, at the time the notice was given, or that pains were taken to mislead the owners, and throw them off their guard. But however that may be, the notice was insufficient.

On each and all of these grounds we are of opinion that the sale was void, and conferred no title on the purchaser.

We were told by the defendant's counsel that the conclusion at which we have arrived would disturb many titles. If that be so, we cannot help it. If there have been many sales for making wells and pumps in Brooklyn, I can only say that there have been many wrongs, and we have no choice but to redress such injuries when they are judicially brought before us.

New trial denied.

(Copy.) N. HILL, Jr. Reporter.
By SID. J. COWEN.

SUPREME COURT.

Sharp, vs. Johnson. } Opinion of the Court.

Bronson J. For some of the principles which must guide our determination, it will be sufficient to refer to the case of Sharp *vs.* Spier just decided. Although the Corporation has not been very explicit in telling us how much they intended to do, it sufficiently appears from the case that North Third Street had been previously laid out upon the village map and that at this time the Corporation attempted to accomplish two things: first to acquire the necessary lands for the purpose of opening the Street and then to assess the price of the land taken, and the other necessary expenses of opening, pitching, and regulating the Street upon other lands. A portion of the land belonging to the children and heirs of John Sharpe of whom the plaintiff is one, was taken for the Street and the residue was assessed and sold for the benefit which they were supposed to derive from the improvement. The children have thus lost all, at least for a long term of years; but if the proceedings were authorized by law, and have been properly conducted they must bear the misfortune. On the other hand it was the business of the purchaser and those claiming under him, to examine the power and regularity of the proceedings, and if their title is found defective, they will have no ground of complaint, unless it be against the Corporation.

The first question will be upon the proceedings for taking that portion of the plaintiff's land which is occupied by the Street. The Village of Williamsburgh was incorporated in April, 1827. (Stat. of 1827, p. 270.) The 24th Section of the Act provides that "the trustees of said village shall, or may, *on an application in writing of a*

majority of the persons owning the property described in any such application, and who are intended to be benefitted thereby or whose property shall be assessed for the payment of the expense attending the same, and *upon such application*, they are hereby authorized and empowered to widen and alter all public roads, streets, and highways *already laid out* in said village," "and also *to lay out and make such other roads and streets conformable to the map of said village*, as they shall think necessary or convenient for the inhabitants."

The section then goes on to provide for acquiring the necessary lands "through which such new roads or streets are to run." The section is rather a clumsy performance in the way of legislation, but from this and other provisions in the act, taken in connection with the facts disclosed by the case, I infer that a map had been made of the village prior to 1827, on which the streets had been laid down, some of which were then open, while others only appeared upon paper.—The section was intended to provide for altering the streets already made and for opening others conformable to the Map. North Third-Street had been laid out on the Map and it was now proposed to open it. That could only be done on such an application in writing as has already been mentioned. Let us now see what authority the trustees had to proceed. They had a paper signed by fourteen persons in which they '*suggest the propriety* of having the street opened.'—If this can be called an application to have the street opened, there are other difficulties which are insuperable. Although the petitioners say they are "inhabitants in and about North Third Street" they do not "suggest" that they own a single foot of land in the street or elsewhere; nor is any land described in the application as the statute requires. And then there are only fourteen petitioners while there are forty-four different assessments. And although some names appear more than once in the assessment nearly thirteen hundred feet of front on the street is set down as belonging to "unknown owners," and how many there may have been of that unfortunate class of citizens, it is impossible to say. The burden lay on the defendant of showing that the application came from "a *majority* of the persons owning the property," and he has not only failed to show it, but the evidence is nearly or quite conclusive that a majority did not apply. The trustees therefore had no authority whatever to open the street, and the plaintiff's land in the site of the street has not been taken according to law. She owns it still.

There is a further difficulty about the taking of land for the street; the 24th section provides that when the trustees shall require any land for that purpose, "*they shall give notice thereof* to the owners or proprietors of such lands or his or their agent or legal representative, to the end that reasonable satisfaction may be made for all such lands as shall be taken and employed for the use or uses aforesaid, and the said trustees may *and are required to treat* and endeavor to agree with the owners and persons interested therein, or his, or her, or their agent or legal representative; *and if* in case any such owners or proprietors, *shall refuse to treat* for a reasonable compensation for manner aforesaid, *then and in such case* the true value of the land, and damages shall be set and appraised by two Justices of the Peace of the County of Kings, by the oath of twelve freeholders," and the payment or tender of the money "shall be a full authority to the said trustees to cause the said lands to be converted for the purposes aforesaid." There is no pretence that the trusteess gave notice to the plaintiff, or to any of the other heirs of John Sharpe, or to any agent or representative of theirs, that the land was required, nor that the trustees made any attemp to treat or agree with the owners or any of them: and until that had been done, there was no authority for calling a jury. (*Rex vs Croke, Coup* 26; *Rex vs Manning*, 1 *Burr* 377; *Rex vs Mayor of Liverpool*, 4 *Burr* 2244).

But it is said that the plaintiff and the other heirs of John Sharpe, were "unknown owners," and therefore the trustess could neither give notice nor treat with them. I answer, it was the business of the trustees to find out the owners, and there is no reason to suppose that it could not have been done, and that too, with very little trouble. John Sharpe died in the City of New York, only two years before these proceedings were instituted, and he was in possession of the property at the time of his death. If it had been thought a matter of the slightest importance to follow the statute and regard the rights of owners, these heirs would have been found, instead of resolving that "notice be put upon the lands of all unknown owners." Whether a white wand was actually put upon these lands to let the owners know that they were in danger, does not appear, nor is it a matter of any importance.—When the statute says, you shall give notice to and treat with the owner, it cannot be satisfied by sticking up a notice on the land. That is not a sufficient ambassador; let it be granted that these "unknown owners" could not have been found, even if a dilligent enquiry had been instituted—and what then? It does not follow that their land might be taken: the difficulty of complying with a statute does not repeal it: the trustees were acting under a naked power; if the power was too strait for practical utility they should have asked a new grant; or, if they did not choose to do that, they should have answered the petitioners "we have no authority to take any man's land for a street until after we have given him notice, and endeavored to treat with him."

Whether an application to these heirs would have been likely to result in a treaty or not, can be a matter of no importance. It would at least have served the purpose of giving them notice, and then their land might have been saved.—When lands are to be taken under a statute authority in derogation of the common law, every requisite of the statute having the semblance of benefit to the owner must be strictly complied with. (*Atkins vs. Kinnan*, 20 *Wend*, 241.) Although this doctrine may have been often disregarded by city and village corporations, we think it both good law and good morals. The legislature has not been careful in protecting the rights of the land owner: on the contrary, a wide door has been opened for taking private property without the consent of the owner, whenever his neighbors happen to think that the public interest required him to sell, none of the barriers which remain ought to be thrown down.

Williamsburgh is a road district, and the trustees have all the power within the village which formerly belonged to the commissioners of highways of the town of Bushwick. (§ 17.) But that does not bring the case within the decision in *Graves vs. Otis*, 2 *Hill*, 466, for the street was not laid out, nor the damages ascertained in the manner prescribed by the act relating to the highways on Long-Island. (Stat. 1830, p. 5., § 47—53.) The trustees evidently proceeded or rather professed to proceed under the 24th section of their charter.

There is still another difficulty with this attempt to take land for the street. The justices and jury valued the land and damages by *blocks*, one of 420 feet front, the second 460 feet, the third 510 feet, the fourth 460 feet, and the fifth without saying how many feet front "running measure" there was in it. The first block was valued at three dollars per foot, the second at $2 75, the third at $2 50, and the fourth and fifth at two dollars per foot front. Now as the land decreased in value from the starting point to the other end of the street, it is morally certain that all of the *lots* in the same block were not of equal value, and consequently the owner of one lot either got too much, or the owner of another lot got too little. We do not understand the case of *Coles vs. The Trustees of Williamsburgh*, (10 *Wend*, 659) as sanctioning this valuation. The justices and the jury should have proceeded by *lots* instead of blocks.

We come now to the assessments which were made to pay the expenses of opening, pitching and regulating the street, and under which the lot in question was sold.

The trustees of the village have authority to direct "the pitching, regulating and paving the streets thereof, and also the "altering, amending and cleansing of any street." (§21.)—But "no street" shall be pitched, paved, altered or amended, *unless the same shall be requested in writing by a majority of the persons owning the property intended to be benefitted thereby*, or whose property shall be assessed for the payment of the expenses attending the same." (§22.) And the 24th section, which gives authority to "lay out and make" streets, contains, as we have already seen, a like restriction upon the powers of the trustees. The petition, such as it was, on which the trustees acted, has already been noticed on another branch of the case. There is no evidence that a majority of the land owners requested this improvement, and it is enough that the fact was not proved. But there is in addition very satisfactory evidence that the fact did not exist. The trustees acted without authority, and their proceedings were consequently void.

Although this is enough to dispose of the case, some of the other questions discussed at the bar ought perhaps to be briefly noticed. As to the lands taken for the street, the expenses were to be "assessed *among and upon the owners* and occupants of the *several houses and lots* intended to be benefitted." (§25.) And the other expenses were to be assessed "*among the owners* or occupants *of all the houses and lots* to be benefitted thereby." The two provisions are substantially alike, though there is a slight difference in words. The property on the street had been surveyed and divided into lots of twenty feet front long before, and the lots were undoubtedly owned by different individuals. It appears at least that the plaintiff owned one such lot in a block of 429 feet front on the street. Now what was done? The assessors were not furnished with a map or any information concerning who was to be assessed; but they were sent out with a tape line to discover as well as they could both lands and owners. They measured and assessed by blocks, instead of lots, though as to some of the blocks, they put down the names of several individuals as the owners of separate parcels. But when they came to the plaintiff's land, her lot of twenty five feet front was lumped with other lands amounting in all to 4 09 feet front, and the whole set down to "unknow owners." The Clerk of the Corporation testifies that the assessment was not made in the usual mode, which was to assess by *lots* instead of blocks, which were specified in the assessment. But independently of this departure from the usage it is impossible to maintain such an assessment as was made here. Where the lands in a city or village have been surveyed and laid out into lots, the owners should be assessed by lots, and each owner should be assessed by himself, and in respect of his particular land. (*The King v. the Trustees of Norwich*, 5 *Ad. & Ellis*, 563.) It may well be that every lot in the same block is not of equal value. And besides, the assessment must be so made that each owner may know what is his particular burden, and be able to discharge it, without calling in the aid of others. If this 429 feet front was properly assessed in one body, the corporation was not obliged to receive less than the whole charge imposed upon it, and thus the plaintiff might have been compelled to pay the assessment upon other persons or lose her own land.—The statute does not authorise an assessment upowners generally, but says it shall be made "among" the owners; and to make the matter still more clear, it provides that the assessment shall be among the owners of "the *several* houses and lots." The assessors might just as well have put down all the land in the street in one lump as to do what they have done. There was an utter failure to comply with the requirement of the statute in this particular. The power has not been pursued, and the sale consequently conferred no title on the purchaser.

The assessment was vicious in another respect. The only authority to sell is where there is a tax "on lands or tenements." (§26.) If the word "tax" includes a street assessment, it must still be an assessment on "*lands* or tenements.'—

Here we have nothing but one line of the boundary of any land. The assessors have assessed certain sums on a given number of feet front, without saying whether the land extended back one foot or a hundred—whether it goes quite through to the next street or only part of the way. If they had referred to the map, and mentioned lots as there laid down, that would have answered. But neither map nor lots are mentioned. I do not mean to censure the assessors. They did perhaps the best they could with a tape line, and they had no other guide.

When the assessment is completed, the trustees are required to give fourteen days' notice that the same will be ratified and confirmed within one month, unless satisfactory objections are made, (§21, 25.) It does not appear that any notice was given. And here I will repeat that the burden of showing that the power has been duly executed lies on the purchaser, and without proving it his title is good for nothing.

The trustees are not authorised to sell any land until the collector has made the affidavit that the owner cannot be found; or if found, that he has not sufficient personal estate in the village to pay the tax. (§26.) No such affidavit was produced, nor was its absence accounted for, even if it ever existed. If every thing else had been regular, the absence of an affidavit would have been fatal to the sale.

I am weary with pointing out defects in these proceedings, and will go no further. I ought, however, to say, that by assuming, as has been done, that the corporation might under any circumstances sell lands for the payment of an assessment, it must not be inferred that we are of opinion that the power exists. There is no power to sell lands except for a *tax*, (§26) and although these street assessments are made a lien on the land, (§21, 25) it does not follow that the corporation can sell the land without first going into chancery and obtaining the aid of that court to enforce the lien. My impression is that the lien cannot be enforced at law, but upon that point we give no opinion, either one way or the other.

The lot was unoccupied at the time the suit was commenced, and the defendant claimed title to it by virtue of the Corporation Sale. The action was therefore well brought against him. 2 R. S., 304 §4. *Edwards vs. the Farmer's Loan Company*, 21 *Wend*, 467. The school children found the lot vacant and used it for a play-ground, but that neither made them nor the lady who kept the school occupants of the lot, so that an action of ejectment could have been brought against them. It is therefore a matter of no importance to enquire whether the Judge was right or wrong in his charge upon this branch of the case. He was charging upon a mere abstract proposition, when the facts of the case did not make it necessary to say anything, and if he was wrong it would be no ground for granting a new trial.

A part of the outside stair case of the school-house was on this lot but the attention of the Judge was not called to that fact. And besides, the exception only goes to the charge in which the Judge spoke of the whole lot. The question was whether Miss Lapelye was to be deemed the occupant, not because she used the stair case, but because the children she instructed used the lot as a play-ground.

New trial denied.

(Copy.) N. HILL, Jr., Reporter.
By SID. J. COWEN.

ASSESSMENT CASES.

Opinions of the Supreme Court.

We have here given the opinions of the Supreme Court in two Assessment cases. These opinions are of great and vital importance, and will go far to relieve the apprehensions of our citizens in relation to the safety of the title to landed estates. These views are in accordance with the opinions of Henry Brougham, who recently in the House of Lords moved an address to the Queen on the subject of the too great exercise of power by the Corporation of London. Lord Brougham (who is an honor to the House of Peers instead of the seat in that body being an honor to Henry Brougham) will press this subject on the other side of the atlantic. The Supreme Court of the United States have held the same doctrine, as also has every independent judiciary. The force given to the Statutes by Mr. Justice Bronson is that which governs the true construction of the Constitution of the United States. The construction set up by some of the officers of the Corporation of New-York, that a Statute *which says a thing shall be done*, is "Directory" and not mandatory, has been a source of great mischief. If the law means anything it means what it says and a common sense construction is the true construction. We know that our citizens will take great pleasure in perusing these opinions and we have published an extra number in order to give them a wide circulation among our own citizens, Governors of States, Mayors of Cities, Judicial Officers in our own country and abroad.

We sent a copy of these opinions to that most excellent and best worthy citizen, the venerable Jonathan Thompson, formerly Collector of the port of New-York, for perusal, after which we called upon that distinguished individual to ascertain his opinion of the decision of the Court.—Mr. Thompson expressed himself highly pleased with the decision of the Court, and remarked that it would be highly approved by the good men of our State—it would be a great safeguard to fast property and give confidence to the people.

These opinions are in the two causes which were tried in the Circuit Court of Kings County in 1841. Judge Kent, the son of the distinguished ex-chancellor of that name, presiding.

In the hand-bill issued by the Anti-Assessment Committee at the sale for sham assessments in October and November, 1841, it was stated as follows:—

"Two causes have been tried in the Circuit Court held in Kings County, in September, in relation to assessments; one was an assessment sale in Williamsburgh in 1827, and the other was an assessment sale in Brooklyn in 1829. The purchasers were in possession of the property under an assessment lease. The owners brought ejectmen suits against the purchasers; the purchasers were unable to show regularity of proceedings on the part of the Corporation, and the suits were decided against the purchasers and in favor of the owners, although the property had been improved by the purchasers, Judge Kent, who tried these causes, gave a charge in the following words:—

'The proceedings given in evidence on the part of the defendant do not show any authority in the Trustees of Williamsburgh to execute the Certificates of Sale or lease, and these papers do not, nor does either of them, operate to vest out of the Plaintiffs any interest in the premises in question, or any right of possession thereof as against the plaintiff.'

"The Chancellor stated in his Court, on Monday the 1st inst., that purchasers at assessment sales, in order to establish a title under a corporation lease for assessments, must show that the proceedings of the Corporation have been regular throughout, that the ayes and noes have been taken in the Common Council, and added, that the lease is only evidence of the regularity of the sale *and not of the other proceedings*, and that unless the Corporation in all respects complied with the law, the lease is void.

"This information is given by the Anti-Assessment Committee for the good of the purchasers as well as the assessed."

This hand-bill was laid before the Legislature by the Majestie of the Corporation of New-York as a sort of a Bill of Impeachment against the Anti-Assessment Committee, but it was of no avail, for that committee were under the protection of the Constitution in this necessary act and duty.

These views of Chancellor Walworth with regard to the ayes and noes, are sustained by the Supreme Court in a recent opinion given by Judge Bronson, which we shall publish in full in our next sheet, we here make an extract from it as follows:—

SUPREME COURT.

In the matter of the opening 37th and 39th streets, and Madison Avenue and Eleventh Avenue in the city of New-York:—

"The report and resolution of the Committee recommending the opening of these Streets were not published pursuant to the act of 1830, nor were the ayes and noes called when the resolution to open the Streets was adopted by the Common Council, Stat. 1830, p. 226 and 7. **These are plain violations of the amended Charter,** and it is not improbable that they in some form affect the proceedings of the Corporation. (*See matter of Mount Morris Square, 2 Hill 20. Sharp vs. Spear and Sharp vs. Johnson, 4 Hill 76 and 92.*)" The Mount Morris case was published in a previous number of this volume and the two other cases above referred to will be found in this sheet. This decision is in conformity with that of that great equity judge, the Hon. Murray Hoffman, assistant Vice Chancellor.

The two first of these opinions were delivered at the January term of the Supreme Court, and the last at the May term.

A check is here given to the land piracy and the street robbery system, which has for some time disgraced the city of New-York.

Memorials have been presented in the Board of Aldermen, by Alderman Tillou, a distinguished member of the Common Council of New York, asking that body to postpone the Sale of Assessments until 1844, on the ground that most of the improvements for which these odious assessments have been imposed, are not made, and that the assessments include a large amount costs &c., (about $160,000, including interest.) for services not rendered, and suggested that the Common Council should discountenance proceedings of such aggravated character. These memorials are signed by Jonathan Thompson, William B. Crosby, Peter Schermerhorn, Robert C. Cornell, Peter Cooper, John Haggerty, James McBride, Abraham G. Thompson, William W. Fox, John Morss, Gerardus Clark, Bustis Skidmore, John H. Tallman, Joseph Tucker, Martin E. Thompson, John M. Dodd, James Fellows, John R. Livingston, Lawrence Ackerman, Thomas Riley, Samuel Thomson, Jacob Drake, Jno. M. Bradhirst, Chairman of the Citizens' Committee delegated by the meeting at the Merchants' Exchange to attend upon the Legislature, and by Robert Smith, Chairman of the Anti-Assessment Committe, and great numbers of others.

ASSESSMENTS.

1814.

The following memorial, we copy from the New York Evening Post, of February 1st, 1814, which paper was sent us by ARTHUR BRONSON Esq. It points out the assessment mischiefs which have since been experienced with great accuracy, and it is a matter of astonishment that the Legislature did not, on the presentation of this memorial, repeal the law!!! Had they done so, millions in money, and more in morals, would have been saved. We introduce this memorial here as a sort of Preamble to what follows it.

"TO THE HON. THE LEGISLATURE OF THE STATE OF NEW YORK, IN SENATE AND ASSEMBLY CONVENED.

"THE MEMORIAL

"Of the Subscribers, inhabitants of the city of New York, respectfully showeth,

"That many of the provisions contained in that part of an act passed by your honorable body, on the 9th April, 1813, entitled 'an Act to Reduce several Laws relating particularly to the City of New York, into one act' authorising the 'Opening and Laying Out Streets, &c.' are in the opinion of your memorialists, dangerous to the security of real estate in the said city, subversive of Constitutional and Legal Rights, which are secured to every Citizen in the enjoyment of his Property, and alarming in the highest degree, on account of the PRECEDENT thereby established of the possibility of wresting by force of law, the hitherto well ascertained privileges of the individual, and placing them at the disposal of any person or persons without his consent.

"These positions, your memorialists hope to convince your honorable body, are but too well founded, and will appear but too evidently to result from an examination of the Provisions contained in the said law, relative to the opening and laying out streets, &c. in the city of New York.

"By the 178th section, the corporation of the city are authorised, upon their own mere motion, to direct and order any street, or public place to be laid out and opened, or extended, enlarged, or improved, &c. and to apply to the Supreme court for the appointment of Commissioners of Estimate and Assessment, for the purpose of valuing the property required, and of estimating the benefit, and advantage, or loss and damage to the respective parties interested, to a certain extent, who are to report their proceeding to the said supreme court without unnecessary delay, and who are to state in such report the names of the owners, and a description of their ground as far as the same shall be ascertained by them, and when the owners and parties, or their respective estates and interests are not known, or not fully known to the said commissioners, they are not bound to make the Necessary Inquiries, but to report in *general terms*, without specifying the names or estates or interests of the Owners in such cases. This Report, when made, is to be confirmed by the said supreme court, unless upon hearing objections it shall be *referred back* to the said *commissioners;* and when confirmed, is to be final and conclusive upon all persons whomsoever, and when so confirmed, the Corporation are to be seized in fee of all the lands mentioned in the said report, and may take possession of the same for the purpose of opening streets, &c. To the said Regulations and Provisions, your memorialists do object, as most unreasonable, and as liable to the greatest ABUSE and VIOLATION of the Rights of Property. Your memorialists would humbly suppose, that before the corporation ought to have the power of commencing proceedings for opening a street, whereby Private Property is to be INVADED, the owners of that property ought, at least, to be apprised of the measure, that they might have an opportunity of defending their just rights, in regard to matter so immediately interesting to themselves. But the contrary of this is the case, and the corporation are vested with an absolute, unqualified, and irresponsible control, in the origination of measures so vitally affecting the rights of their constituents.

"But if the manner of originating these measures is objectionable, the prosecution of them as regulated by the law in question, is, if possible, infinitely more so. The commissioners, when appointed, are vested with the power of reporting the names of owners, the extent and description of their estates, and the value of the property to be taken. *How* and in *what manner* their inquiries are to be conducted, is not specified. No time or place of meeting is pointed out. The Parties interested have not the privilege of appearing before them to give proof, by the testimony of witnesses, of the extent and value of their property; but the commissioners may, in the most absolute and arbitrary manner, reject ALL evidence (for they are not required nor authorised to hear; nor even to administer an oath) and make their report upon the most Partial and Limited View and examination of the business confided to them. Your memorialists do respectfully contend and urge upon the consideration of your honorable body, that in conferring powers so extensive, and involving questions so interesting, there ought to be the utmost caution and circumspection, to guard the powers thus conferred from being liable to abuse. Suppose, for instance, a Wrong Name should be reported as the Owner—suppose Erroneous Limits should be assigned to a particular Lot (and in how many cases may not mistakes of this kind happen, from the view above given of the operation of the Commissioners) where is to be the Remedy? The report is to be final and conclusive, and the corporation are to be absolutely seized in fee of the premises. The Rightful Owner is dispossessed and ousted of his Title, a wrongful claimant may become entitled to and receive the sum reported as the value of the premises.

"The said Section further directs, that the said Commissioners shall not allow anything for Buildings erected on any street, avenue, public square, or place laid out by the commissioners of roads, subsequently to the filling of the maps of the said commissioners. Against this provision your memorialists object, because no Time is pointed out, wherein the Lands so laid out shall be improved for the above purposes; from which it follows that the individual is placed altogether at the mercy of the corporation for the enjoyment of property thus situated; a consequence little short of practical sequestration, since the owner cannot USE his property, unless it shall suit their pleasure.

"By the 131st Section, it is enacted, that in all cases where the premises shall be under lease, or other contract, upon the confirmation of the report of the commissioners, ALL *the Covenants, Contracts, and Engagements between Landlord and Tenant, or other contracting Parties, shall* CEASE, *determine, and be* ACTUALLY DISCHARGED.

"This provision, your memorialists are of opinion is Unconstitutional, and contrary to one of the first principles of the Social Compact. By an Article in the Constitution of the United States, it is expressly declared, that no State shall pass any Law which may *impair the Obligation of Contracts.* But what is the effect of this provision? We answer, emphatically, not *only* to impair, but to discharge absolutely, in the *terms* of the law, all the Covenants, Contracts, and Engagements of the contracting parties relative to the Premises. Under the operation of this clause, let it be inquired for a moment, what is to become of the Security of the Mortgagee or Judgment Creditor? What injustice and fraud may not be practised, not only with impunity, but with the sanction of the law? since it will be perfectly easy for the owner of such ground which may be required for such purpose, to borrow money, or incur debts, which may be prosecuted to judgment; and when the creditor feels himself perfectly safe, his Security is taken out of his hands, and the fraudulent Debtor effectually triumphs over the dupe of his intrigue and fraudulent designs. This provision may be further, and with truth, considered as ex post facto, in regard to all existing engagements of the sort last described, and therefore flagrantly unjust, and altogether inadmissible.

"But it may be contended that a Remedy for the evils and grievances above stated, is contained in the 182d Section, by which it is enacted, that the commissioners shall deposit a Transcript of their estimate and assessment, in the clerk's office of the city of New York, and shall give notice of such deposit in two newspapers printed in the said city; and that every person objecting, may within ten days after such publication, state their objections. But this, upon examination, will be found to be a very inadequate remedy. The owner of the ground required, may be absent from the city; or he may reside at a distance from the city; or he may not take either of the newspapers; or from a great variety of causes he may never hear of the publication: and as to depositing the estimate and assessment in the clerk's office of

the city of New York, it might as well, in regard to nineteen-twentieths of the inhabitants, be deposited in the capitol, in the city of Albany. It would appear to your memorialists, that the very cautious and restricted manner in which the commissioners are to act in publishing in two newspapers only, and in depositing their estimate in the clerk's office, and the short period allowed for these purposes, viz. fourteen days, afford at most but a very limited and inadequate opportunity for the parties interested, to receive any notice whatever on the subject.

"But by the 183d Section of the said Law, the corporation are allowed a term of four months within which to pay the money, although they are previously invested with the absolute ownership of the property. Your memorialists would for one moment inquire, why the corporation, any more than an individual, should acquire an absolute Title to Property before the payment of the consideration? Your memorialists are persuaded that no satisfactory answer can be given to this question.

"But as great, if not the greatest evil of which your memorialists have to complain, consists in at least the strong probability, that under the necessary and inevitable consequences of the law in question, the rightful owner will be divested of his property; and that he will be driven to the unsatisfactory remedy of suing the receiver of the money at which it was valued, by which he may incur the disappointment, in addition to the loss of his property, of having to pay the costs of a tedious and expensive law suit: for the man who would receive money *that did not belong to him*, would not hesitate at the means, however unprincipled, of securing his booty.

"The Undersigned cannot sufficiently express the injustice of such consequences as these. The corporation, who originate the measures and proceedings in question, are, in the mean time, to be secure in the Title; whereas your memorialists do apprehend that the persons who are instrumental in effecting the Transfer of Title, and for whose use it is made, ought to be held answerable, according to every principle of justice, to the real owner, for the Value of the Property; and if they pay it to a WRONG person, *it ought to be their loss*—not that of the person rightfully entitled.

"For these reasons, your memorialists do earnestly solicit that your honorable body will be pleased altogether to repeal the said law, so far as it relates to the Opening of Streets, &c. in the city of New York, and to substitute another in its stead, which shall be free from the objections above stated, or that its provisions may be so modified and amended, as to be more consonant with the rights of the individual, more calculated to restrain the possibility of injustice and hardship, and which, while it may promote the best interests of the corporation of this city, may not unduly encroach upon the most valuable interests of those whom it is liable to affect. And your memorialists will, &c."

"NEW YORK, JANUARY 20TH, 1814."

ASSESSMENTS AND TAXES.

MEMORIAL

TO THE STATE LEGISLATURE.

The following is a Copy of one of the **Sixty Memorials** which were Signed by several **thousands** of our most influential Citizens. FORTY of them were transmitted to the Hon. John B. Scott; ELEVEN to the Hon. E. Rhoades; and TWO to the Hon. A. Dixon—all of the Senate—to be presented to that body;—and the residue, to the Hon. Robert Smith, to be presented in the House of Assembly.

In order that gentlemen at a distance, to whom this publication is sent, may form an opinion of the Standing of the Memorialists in the community in which they live, we have appended a note, stating their official character, profession, &c.

"TO THE HONORABLE THE LEGISLATURE OF THE STATE OE NEW YORK:

"YOUR Memorialists, citizens of the City of New York, most respectfully REPRESENT to your Honorable Body that the great and arbitrary Power now and heretofore exercised by the Corporation of the City of New York, their officers and servants, in the imposition of fictitious and ruinous Assessments upon private property for what are miscalled public improvements, has had the effect to lessen and depreciate the Value of Real Estate; and the loose and reckless manner in which these extraordinary proceedings have been carried on has had the effect to impair Real Estate Securities, and to render Titles doubtful and insecure.

"Your Memorialists complain to your Honorable Body that the Annual Taxes imposed upon the real and personal property in the City of New York have been increased to such an extent as to have become oppressive and burdensome to the People, and will have the effect to drive men of capital out of the city, will retard its prosperity, and be a check to its improvement.

"Your Memorialists ask that such of the Public Property belonging to the Corporation of the city of New York as is not required for public use may be vested in a Select Deliberate Board of Control to be composed of judicious, experienced business men, to be selected in equal numbers from both political parties; and that such Board shall be authorised to sell and dispose of the said public property, and apply the proceeds to the payment of public debt, and thereby lessen the annual Taxes.

"Your Memorialists ask that the amount of the Annual Tax may be greatly reduced; that the Salaries of the public officers to be paid therefrom may be lessened, and the number of such officers may be decreased; and the Corporation may be prohibited from borrowing Money except on temporary loans in anticipation of the annual tax authorised specially for the payment of the interest of the public debt.

"Your Memorialists ask that the Office of Ward Collectors may be abolished, and that the Taxes may be collected at a Central Office to be established by law for that purpose.

"Your Memorialists ask that the Board of Supervisors may be constituted of persons other than the Members of the Board of Aldermen, that an additional check may be provided against the extravagant expenditure of public money by a greater distribution of political power.

"Your Memorialists ask that more adequate Restrictions may be provided to prevent Members of the Common Council from engaging either directly or indirectly in Public Contracts.

"Your Memorialists ask that all the Memorials heretofore presented to the Legislature touching the premises, and the Report and Documents of the Select Committee from the Senate appointed to investigate Assessment Abuses in the city of New York, together with the Memorials presented at the extra session, may be referred to a Special Committee; and that the Legislature may pass a law to remedy the evils complained of, and such as they in their wisdom may deem meet.—*New York, January* 1843.

"And in duty bound, &c."

Gulian C. Verplanck.

NOTE.—Mr. V. was a member of the Select Committee appointed to investigate Assessment Abuses in the City of New York in 1841.

Jonathan Thompson, John I. Morgan.

NOTE.—Formerly Collectors of the Port of New York.

Stephen Allen, Philip Hone.

NOTE.—Formerly Mayors of the City of New York.

Peter A. Jay, Fred'k A. Tallmadge.

NOTE.—Formerly Recorder of the City of New York. | Now Recorder of the City of New York.

Peter Cooper,	Abraham Van Nest,
Thos. T. Woodruff,	Eldad Holmes,
James Monroe,	Thomas Lawrence,
Anthony Lamb,	John Morse,
Peter I. Nevius,	John R. Peters,
Lambert Suydam,	Joseph Tucker,
Shivers Parker,	Edward S. Innes,
W. D. Murphy,	B. Deming,
Benjamin Townsend,	P. W. Engs,
John Delamater,	James N. Wells,
Horace Holden,	Henry Breevort,
Stephen Connover,	Myndert Van Schaick,
Abel T. Anderson,	Joseph N. Barnes.

NOTE.—Ex-members of the Common Council.

John M. Bradhurst, William W. Todd.

NOTE.—Ex-commissioners of the Alms House.

George B. Smith, Ex-Street Commissioner. | Edward Doughty, Ex-Dep. Street Commissioner.

Samuel I. Willis,	**John Newhouse,**
Ex-Clerk Common Council.	Ex-Clerk Board of Assistants.
D. B. Tallmadge,	**Charles A. Clinton.**
NOTE.—Judge of the Superior Court.	NOTE.—Clerk of the Superior Court.
Hiram Walworth,	**William P. Hallet.**
NOTE.—Assistant Register of the Court of Chancery.	NOTE.—Clerk of the Supreme Court.

Presidents of Banks.

George Newbould,	John J. Palmer,
Preserved Fish,	Jacob Aims,
Isaac Jones,	Nathaniel Weed,
Effingh'm Scheiffelin,	James Van Nostrand,
Benj. F. Wheelwright,	John Wurtz,
Fanning C. Tucker,	John Gouthout,
Thomas Bloodgood,	James Gallatin,
Thomas Tileston,	Shepherd Knapp,
F. Deming,	David Leavitt,
President of the New York Gas Company.	President of the Farmers' Trust Company.
William W. Fox,	**Robert C. Cornell.**

Presidents of Insurance Companies.

Jonathan Lawrence,	James Lovett,
J. Smyth Rogers,	Jacob Drake,
George Ireland,	Ben Havens,
S. Baldwin,	Zebedee Cook, jun.
Abraham Ogden,	T. W. Thorne,
Jacob Brouwer,	J. L. Bowne,
Charles Town,	John Brouwer,
J. R. Hurd,	John H. Hurtin,
E. G. Drake,	R. A. Reading,
Robert Ainslee,	Oliver H. Jones,
John Van Nostrand,	Richard Whiley,
Timothy Whittemore,	T. B. Satherwaite,
Alfred Pell,	Samuel F. Mott.

Cashiers of Banks.

David Thompson,	A. B. Hays,
O. I. Cammann,	F. W. Edmonds,
W. H. Falls,	John Q. Jones,
G. A. Worth,	W. H. Johnson,
J. M. Morrison,	Daniel Ebbets,
N. G. Ogden,	John H. Cornell,
Eben. Platt,	D. W. Townsend.

Secretaries of Insurance Companies.

A. B. McDonald,	A. M. Merchant,
Thomas Glover,	R. W. Martin,
James Wilkie,	George T. Hope,
A. H. Muller,	Henry Lott.
J. McBrair,	Peter Pinckney,
A. S. Depeyster,	Joseph W. Savage,
Joseph Greenleaf,	L. Chapman.

Large Land Owners, Merchants, and Bankers.

William B. Crossby,	Peter Lorillard,
James Lenox,	Peter Schemerhorn,
James Boorman,	W. C. Rhinlander,
Maturin Livingston,	James McBride,
James I. Jones,	Peter Lorrillard, jun.,
E. H. Pendleton,	Abra'm G. Thompson,
James G King,	James Brown,
Samuel Ward,	Stewart Brown,
Edward Prime,	R. H. Nevins,
Jonathan Goodhue,	George Griswold,
G. G. Howland,	Samuel S. Howland,
John G. Coster,	Charles H. Russell,
John Johnston,	C. V. S. Roosevelt,
John D. Wolfe,	Hickson W. Field,
Matthew Morgan,	Lyman Denison
David Lee,	Daniel S. Miller,
Robert Center,	Robert Buloid,
John B. Lawrence,	John H. Hicks,
Joseph Sampson,	John Haggerty,
David Austin,	William Adee,
A. Norrie,	John Steward,
John D. Keese,	Anson G. Phelps,
John H. Howland,	John R. Murray,
W. W. Chester,	Elisha Riggs,
Saul Alley,	William Banks,
David Hadden,	David S. Kenedy,
David L. Haight,	Benjamin L. Swan,
Peteliah Perrit,	D. A. Cushman,
John H. Tallman,	Nathaniel Griswold,
Adam Treadwell,	Henry Andrew,
James Fellows,	John Wadsworth,
Joseph Walker,	Richard Kingsland,
Philip Milldollar,	James A. Burtis,
James W. Beekman,	Jonathan Hunt,
Daniel Parish,	Joseph Kernochan,
James Donaldson,	Robert Jaffray,
Joseph Bouchaud,	Hugh Anchinclass,
William James,	Peter G. Arcularius,
Garrett Storms,	Isaac L. Platt,
John Ferguson,	Irad Hawley,
Nathaniel Paulding,	James McCall,
Francis Olmstead,	F. Sheldon,
J. Bishop,	Silas Brown,
Christopher Wolfe,	Josiah Macy,
Eben Cauldwell,	Cyrus Hitchcock,
Samuel J. Hunt,	Jas. W. Corlies,
Edmund Moorewood,	Martin W. Brett,
Robert Hyslop,	Henry Young,
Henry Sheldon,	John Leonard,
John J. Codington,	R. V. S. Schuyler,
Burtis Skidmore,	R. E. Skidmore,
Philip Dater,	Edwin Hoyt,
John R. Leavitt,	George W. Blunt,
Edward Penfold,	Harvey Weed,
Gideon Ostrander,	John Wood,
William Scott,	A. A. Alvord,
Isaac T. Storms,	David Demaray,
Asa Fitch,	Richard Mortimer,
Eli Hart,	James Gillispie,
S. W. Anderson,	A. T. Stewart,
David C. Colden,	Thomas Riley,
Lawrence Ackerman,	Isaac Adriance,
John C. Hamilton,	Peter Embury,
Garret Van Doren,	Fisher Howe,
John Targee,	Philip Henry,
Stacey B. Collins.	John S. Norton,
Brown, Brothers & Co.,	John Haggerty & Sons,
Jo. Foulke & Sons,	Woolsey & Woolsey,
Dav. Hadden & Sons,	Peter Harmony & Co.
Center & Co.,	R. Lenox Maitland "
Phelps, Dodge & Co.	Grinnels Minturn "
Davis, Brooks & Co.	Wood, Johnston &
Barclay & Livingston,	Burrett,
Robt. Wardell & Son,	Young, Smith & Co.
Young, Smith & Co.	Wm. & Jno. James,
Havens, Suydam "	R. Hyslop & Son,
L. & V. Kirby,	F. T. Luqueer & Sons,
Sands, Fox & Co.,	B. De Forest & Co.
John Johnson's Son,	Samuel Judd's Sons,
Charles H. Russel & Co.	A. Binninger & Co.
R. L. & A. Stuart,	Fellows, Wadsworth & Co.
A. W. Spres & Co.	Seth Grosvenor & Co.
S. B. Reeves & Co.	C. & U. J. Smith,
Newbould & Cruft,	Dickerson Churchill & Co.
Corlies, Stanton & Barnes,	Hicks & Co.
Francis Tomes & Sons,	Tonnelle & Hall,
	Tiffany, Young & Ellis

Mechanics and Members of the Bar.

John Anthon,	Francis B. Cutting,
Gerardus Clark,	C. V. S. Kane,
F. R. Tillou,	Thatcher T. Payne,
Lewis H. Sandford,	Rich'd L. Schieffelin,
Horace F. Clark,	Hamilton Fish,
Leonard W. Kipp,	John L. Mason,
Isaac A. Johnson,	Cornelius Bogert,
Isaac Young,	Richard Mott,
Griffin & Havens,	Samuel G. Raymond,
William Jay,	Augustus Schell;
Orsamus Bushell,	Arthur Bronson,
Samuel Thomson,	David Codwise,
James Harriot,	John M. Dodd,
Richard Wight,	Andrew Lockwood,
Adoniram Chandler,	Martin E. Thomson,
James Riker,	David Harriot,
Samuel Demilt,	C. De Bevoise,
William Gale,	John Johnson,
John Horspool,	William Colegate,
Joseph Meeks,	E. B. Clayton,
Asa Hall,	Wm. Dean,
Mahlon Day,	John T. White,
Theodore Sedgewick,	M. Y. Beach,

AND SEVERAL THOUSANDS OF OTHER CITIZENS OF THE CITY OF NEW YORK.

OTHER MEMORIALS AND REMONSTRANCES.

THIRTY-TWO Memorials and Remonstrances, signed by **2,700** Citizens of the City of New York, were presented to the Senate by Mr. Dixon.

Thirty of these Memorials and Remonstrances were presented on the 5th of April, signed by 2,500 Citizens; and, on motion of Mr. Dixon, were read and referred to the Judiciary Committee. Instead of being placed on the Journals as Thirty Distinct Memorials and Remonstrances against the passage of a Bill which was in a few minutes after acted upon, viz., "the bill to authorise the Corporation to purchase Lands at their own Assessment Sales," they are all set down as One Memorial, signed by "Phelps, Dodge & Co. and 312 others, in relation to lands sold for taxes and assessments in the city of New York, &c." (See Senate Journal, page 415, in contrast with the files of the Albany Argus and Daily Advertiser of April 6th, 1843.

The Thirty-two Remonstrances contain this Section.

"The Undersigned remonstrate against the conferring of any Authority on the Corporation of the City of New York, or any of its Officers, to become Purchasers at Assessment or Tax Sales."

When this bill was reported, which was in a few minutes after the presentation of these remonstrances, Mr. PORTER, a distinguished Senator, stated, in his seat, that he for one was unwilling to act upon a bill, while so many remonstrances, and so numerously signed, would by such means, be given the go-by.

Mr. Franklin stated that the Senators from the City of New York would take the responsibility of passing this bill.

These Thirty Memorials and Remonstrances, were each and every of them, endorsed as distinct, and separate, remonstrances, and the names of one or more of the signers, and others, naming the number of others, distinctly endorsed on each, in writing. In addition to which, was stated also in writing, that the remonstrances were against the passage of the Act to authorise the Corporation to purchase lands for assessments.

On these thirty-two memorials, the names of some of our most distinguished Citizens were signed, viz.: Jonathan Thompson, Geo. Griswold, Peter Schemerhorn; Brown, Brothers & Co.; John Haggerty & Co., Joseph Sampson, Abraham G. Thompson, Abraham Van Nest, John M. Bradhurst, Goodhue & Co., Hicks & Co.; Grinnell, Minturn & Co.; Phelps, Dodge & Co.; John H. Howland, Howlands & Aspinwall, and numerous others of the highest standing and respectability, without distinction of party.

Mr. Varian was very ambitious for the passage of the Act authorising the Corporation to purchase Lands for Assessments, and he appeared to be very much opposed to the mission of the New York Committee, as soon as he was aware that the delegates were opposed to the longer continuance of the Compulsory Inspection Law.

A brother-in-law of Mr. Varian, had but a short time previous, been appointed by the Senate of which Mr. V. is a member, on the nomination of the Governor, Inspector of Pot and Pearl Ash in the City of New York—a very lucrative office. Our State Constitution provides that members of the State Legislature shall not be appointed to office during the term for which such member shall have been elected, but the appointment of a *near relative* of a member is not prohibited by the restrictive clause.

We have no objection to the gentleman appointed Inspector of Pot and Pearl Ash—we believe he is a worthy Citizen, but like many of his predecessors he had no practiaal knowledge of the *quality* of the article he was appointed to inspect;—such, at least, is the information we obtained, and as much is indicated in his letter to the Editors of the Journal of Commerce, which is stated in full in the subsequent pages of this volume.

Another clause in the Thirty-two Memorials is in the words following:

"The Undersigned ask that the Members of the Board of Water Commissioners may be made, by virtue of their said office, members of the Board of Supervisors of the County, and the President of the said Board of Water Commissioners may be made, by virtue of his said office, County Treasurer, and may be authorised to receive all taxes paid voluntarily without the intervention of a Collector."

This is also a matter of very great importance. The pioneer memorial was presented by Mr. Dixon in the Senate on the 2d March, was then read and laid on the table. This was signed by JONATHAN THOMPSON and others. On the 7th of March, Mr. Varian moved a reference of the memorial to the Judiciary Committee, which we considered an indication of his being in favor of the measure, and we cannot conceive how he could be otherwise, for the members of the Board of Water Commissioners are some of our very best Citizens. Stephen Allen, William W. Fox, Saul Alley, and Thomas T. Woodruff—gentlemen in whom the good men of both political parties have entire confidence. Had the Legislature placed these gentlemen in the Board of Supervisors, no member of that body would have attempted to place the Assessmeat Rolls in the hands of the Ward Collectors, and the payment of the tax money into the hands of the President of the Water Board, as County Treasurer, would have been the beginning of a new era of such vast importance as to have added Twenty Million of Dollars to the intrinsic value of the Real Estates of the City of New York. If such men as the Water Commissioners could have CONTROL of the Public Funds, we venture to say that no such sum as **ELEVEN HUNDRED AND SEVEN DOLLARS AND SEVENTY-FIVE CENTS**, for printing a City Comptroller's Report for 1841 of 131 pages, which was ONLY WORTH $153..75, would have been allowed; nor **FOUR HUNDRED DOLLARS** for printing the Tax Bill of 1843, which IS LESS MATTER THAN IS CONTAINED IN SIXTEEN OF THESE PAGES, and costs—with Paper, Composition and Press-work—*but sixty-eight dollars!!!* In the one case, seven prices, and in the other, six prices was paid for the job, and by officers who are continually talking about economy, but never practise it—at least, if this is a fair illustration of it, it is a very bad specimen.

SPECIAL MEETING.

TUESDAY EVENING, MARCH 7, 1843.

The OFFICERS of the PUBLIC MEETING—convened by public notice at the Merchants' Exchange, in the City of New York, on the 6th of March instant, in relation to the ASSESSMENTS AND TAX BILLS, in pursuance of a Resolution of said Meeting, empowering them to appoint a COMMITTEE OF DELEGATES to proceed to Albany,—have convened this 7th day of March, to carry said resolution into effect.

Preserved Fish, Esq., in the Chair, and William Billings Meech, Esq., appointed Secretary.

On motion of Abraham G. Thompson, Esq.—Resolved, That the proceedings of the public meeting held at the Merchant's Exchange yesterday, be read, and also the Remonstrance and Memorial of the said meeting to the Hon. the Legislature; whereupon the Secretary read the said proceedings, and also the said memorial and remonstrance, and the said memorial and remonstrance was UNANIMOUSLY approved.

On motion of Abraham G. Thompson, Esq. Resolved, That—Whereas, at a Public Meeting held at the Merchants' Exchange on the 6th of March instant, it was resolved that a Committee proceed to Albany and present the remonstrance and memorial to the Honorable the President of the Senate, or to the Hon. the Speaker of the House of Assembly, and request the presiding officer to whom the same is delivered to present the same, and to call for its reading, and move that it be referred to the Committee to which the Tax and Assessment bills from the Common Council shall have been referred, and that the Committee delegated by this meeting ask to be heard before the Honorable the Committee to whom these matters shall be referred; and resolved, "That the Committee of Delegates be appointed by the President and Vice Presidents of the Meeting, and such Committee to have power to add to their numbers"—Therefore this Meeting, in pursuance of the foregoing recited authority, appoint John M. Bradhurst, Eben Meriam, Burtis Skidmore, H. W. Field, and Peter Cooper, delegates to proceed to the City of Albany, with full power in the premises.

The motion having been seconded by Peter Embury, Esq.—The Chairman put the question, "shall the Resolution pass?" and the same was unanimously determined in the affirmative.

On motion of George Griswold, Esq., seconded by Peter Cooper, Esq.—Resolved, That Abraham G. Thompson and Peter Embury, be added to the Committee. The Chairman put the question, and the resolution was unanimously adopted.

On motion of Abraham G. Thompson, seconded by Peter Embury—Resolved, That George Griswold, William Gale, and W. B. Meech, be also added to the Committee of Delegates. The Chairman put the question, and the resolution was adopted unanimously.

On motion of Peter Embury, Esq.—

Resolved, That this meeting do now adjourn.

W. BILLINGS MEECH,
Secretary.

NOTE.—Mr. Meech set out for Albany on Wednesday morning, March 8th; Mr. Bradhuret, Mr. Cooper, Mr. Skidmore, and Mr. Meriam, followed on the 22d March.

Mr. Meech arrived in Albany on the 9th of March, and remained at the Capitol until the following Monday.

Alderman Cooper, remained in Albany one week; Messrs. Bradhuret and Skidmore, ten days; and Mr. Meriam, until five days after the Session of the Legislature had terminated.

The Committee of Delegates, on the evening of their arrival at Albany, in a body, waited upon Mr. STRONG, Chairman of the Committee on the Judiciary of the Senate; and also upon Mr. FOSTER, a member of that Committee. They also, the same evening, waited upon Mr. VARIAN, and Mr. SCOTT; and also, upon His Honor the LIEUT. GOVERNOR. The next day they waited upon Mr. DIXON, a Member of the Senate Committee on the Judiciary, whose lodgings were at some distance from the house at which the Committee took rooms. The same day they called upon HIS EXCELLENCY GOV. POUCK; upon the Secretary of State, COL. YOUNG; and upon the State Comptroller, Mr. FLAGG, with a view to make the object of their mission generally known. They also called upon Senator HUNTER, Judge BOCKEE, and several other SENATORS. A Bill, which was committed to the Committee on Finance, of the Senate, on the Memorial of the CHAIRMAN OF THE CITIZENS' COMMITTEE, Mr. BRADHURST, Judge Bockee (the Chairman of that Committee) at once called the Finance Committee together. Before this Committee, consisting of JUDGE BOCKEE and Judge PORTER, two very intelligent members of the Senate, the New York Citizens' Committee appeared, and had two hearings. The Finance Committee adopted the suggestions of the New York Citizens' Committee, and reported to the Senate two Bills in accordance therewith, which will be noticed in the next number of this volume. The Committee of Finance is one of the most important committees, and the Lieut. Governor, in selecting the Members of this, did himself great credit, and the public essential service. Judge Bockee, the Chairman, is a a Citizen of the old school order.

TAXES.

The Anti-assessment Committee call the attention of Incorporated Companies and tax-paying Citizens to the recent extraordinary proceedings in the Board of Supervisors of the County of New York. These are as follows :—

BOARD OF SUPERVISORS..OCTOBER 3, 1843.

His Honor, ROBERT H. MORRIS, Mayor of the City of New York, offered the following resolution :

"RESOLVED, That the Receiver of Taxes be requested to receive the Taxes named in the last column of the assessment-roll, from all such persons who may desire to pay their taxes before the first day of January next, and to deduct therefrom at the rate of Seven Per Cent. per annum between the day of such payment and the first day of February next, until the further order of the Board."

"Alderman WOODHULL of the second ward offered the following resolution as a substitute :

"RESOLVED, That the Comptroller cause the assessment-rolls annexed to be placed in the hands of the Collectors with all possible dispatch, and the warrants be issued to each Collector with *all possible dispatch*, and that as soon as they respectively give their bonds to be approved by the Chamberlain of the City."

On the substitute offered by Alderman WOODHULL of the 2d Ward, the following is the vote :

Affirmative—RECORDER; Aldermen CLAYTON, WOODHULL, MARTIN, EMMONS, VANDEVOORT, PURDY, BRIGGS, RAWSON, and LEE —10.

Negative—MAYOR ; Aldermen DUNNING, TILLOU, NASH, WATERMAN, BREEVOORT, SCOLES and BRADY—8.

The GENTLEMEN, who voted in the NEGATIVE, deserve thanks.

The first section of Art. 2 of the Tax Law passed April 18, 1843, is as follows :—

"ARTICLE II.

"OF THE MODE OF THE COLLECTION OF TAXES.

"SECTION 1.—The Board of Supervisors of the city and county of New York shall cause the corrected assessment-roll of each ward of the said city, *or a fair copy thereof*, to be delivered to the receiver of taxes, in the said city, on or before the 25th day of September in each year."

In the official letter of ALFRED A. SMITH Esq., City Comptroller, dated "Comptroller's Office, Sept. 27th, A. D., 1843," is the following :

"To the Hon. the Board of Supervisors—

"Gentlemen : I respectfully submit the new assessment-rolls for confirmation. *I have been unable to do so at an earlier period by the delay of several of the Assessors.*"

The Comptroller should have stated who these Assessors were, which delayed the proceedings. These Officers were *required by law* to deliver their respective assessment-rolls to the Comptroller on or before the 20th of September. The following is the provision of law :

"And such assessors shall sign the said assessment-roll, and deliver the same, on or before the twentieth day of September next ensuing, to the Comptroller of the said city, who shall deliver the same to the Supervisors at their next meeting."—Tax Act, 1842, §1.

The late Board of Supervisors, previous to the termination of the term of office of its members, and subsequent to the passage of the Tax Act, a part of which is above recited, repealed the resolution of that body giving compensation to Ward Collectors, and the late Common Council, previous to the term of office of the members expiring, created an office of Receiver of Taxes.

The section of the Tax Act of 1842, which we have quoted above, implies a meeting of the Board of Supervisors prior to Sept. 25, 1843, and the provision of the 5th subdivision of Sec. 3, Art. 1, of Chapter 12 of the Revised Statutes, in connexion with Section 17 of the same act, are thus reconcilable. See Vol. 1 R. S. and Session Laws of 1842, and Tax act of 1843 above quoted.

AN ORDINANCE

TO ESTABLISH AN OFFICE FOR THE COLLECTION OF TAXES IN THE CITY OF NEW YORK.

The Mayor, Aldermen and Commonalty in Common Council convened, do ordain as follows, viz.:

§ 1. An office is hereby established for the collection of Taxes in the City of New York pursuant to the provision of an act entitled "An Act for the Collection of Taxes in the City of New York," passed April 18th, 1843.

§ 2. The said office shall be kept in a building known as the Hall of Records.

§ 3. The Receiver of Taxes shall receive an annual Salary of Two thousand dollars, and the Deputy an annual Salary of Fifteen hundred dollars, to be paid to them respectively by the Mayor, Aldermen and Commonalty of the City of New York, by a warrant upon the Treasury of the said City on the usual quarter days.

§ 4. The receivers of taxes shall immediately after they shall have entered upon the duties of their office, appoint three clerks, who shall receive an annual Salary of Six hundred dollars each, payable on the usual quarter days.

§ 5. The receiver shall provide such books, forms and other things, as shall be necessary for conducting the business of said office, the expense of which shall, upon being allowed by the Finance Committee of both boards, be paid out of the City Treasury.

Passed Board of Aldermen, April 23d, 1843.

Passed Board of Assistants, April 27th, 1843.

Received from His Honor the Mayor, June 17th, 1843.

Without his approval, or objections thereto, the same, under the provisions of the amended charter, became *adopted*.

"BOARD OF SUPERVISORS.

"MAY 1ST, 1843.

"The Supervisor of the 15th Ward presented the following *Preamble* and Resolution, viz.:

"Whereas, by an Act of the Legislature of this State passed April 18th, 1843, *the duties* of the Collector of Taxes of the several Wards *have been abrogated*, and have devolved upon the *Receiver of Taxes* to be appointed by the Common Council, therefore

"Resolved, That the compensation allowed the Collector of Taxes of the several Wards, by virtue of a resolution of the Board of Supervisors, adopted Nov. 21st, 1840, be abolished, and the said resolution is hereby rescinded. *Referred to the Committee on the Annual Taxes.*".

"BOARD OF SUPERVISORS.

"MAY 5TH, 1843.

"The Committee on Annual Taxes to whom was referred the *Preamble* and Resolution in relation to rescinding the resolution fixing the compensation to the Collectors of the Wards, passed Nov. 21st, 1840, presented the following report in favor thereof, which was adopted, on a division, viz. ;

"*Affirmative*—The RECORDER, CHAIRMAN and SUPERVISORS of the 2d, 3d, 5th, 6th, 7th, 8th, 9th, 12th, 14th, 15th and 16th Wards—13.

"*Negative*—The MAYOR and Supervisors of the 4th, 10th, 11th and 13th Wards—5.

We copy from a valuable publication, entitled "The Manual of the Corporation of the City of New York for 1841 and 1842," compiled and published by DAVID T. VALENTINE Esq. Deputy Clerk of the Board of Aldermen. The Resolution of the Board of Supervisors passed Nov. 21st, 1840, and its repeal, referred to above, is as follows :

"At a meeting of the Board of Supervisors, Nov. 21st, 1840, the following resolutions were adopted, viz :

"*Resolved*, That from and after the passage of the resolution, the amount of compensation or Fees of the Collectors of the different Wards be fixed at the following rates—

1st	Ward	$3000	10th	Ward	$1600
2d	"	1600	11th	"	2000
3d	"	1600	12th	"	2000
4th	"	1600	13th	"	1600
5th	"	1600	14th	"	1600
6th	"	1750	15th	"	1900
7th	"	1600	16th	"	2000
8th	"	1750	17th	"	1800
9th	"	1700			

"*Resolved*, That a deduction of One hundred dollars be made for each five per cent of the amount on the Book of each Collector not paid to the City Chamberlain on the first Saturday succeeding the first day of April in each year, and in like proportion on less sums. Samuel J. Willis, Clerk."

"*Proceedings of the Joint Ballot of Board of Aldermen and Assistants.*—May 3d, 1843.

"By Alderman Balis—Resolved, That Thomas Jeremiah be and is hereby appointed receiver of taxes, pursuant to the Statute

of this State, passed April 18th, 1843, which was adopted.

"*By the same*—Resolved, That Dow D. Williamson be and is hereby appointed deputy receiver of taxes pursuant to a law of this State passed April 18th, 1843, which was adopted.

"August 2d, 1843.

"By Aldermen Hatfield—Resolved, That Henry T. Keirsted be and is hereby appointed to the office of receiver of taxes, which was adopted.

"*By the same*—Resolved, That Dow D. Williamson be and is hereby removed from the office of deputy receiver of taxes, which was adopted on a division, viz.:

"*In the affirmative*—Aldermen Martin, Tillou, Emmons, Nash, Vandevoort, Waterman, Hatfield, Brevoort, Rawson, Lee; Assistants Charlick, Williams, Pattison, Henry, Dougherty, Brown, Smith, Ward, C. I. Dodge, Jackson, Boggs, Nichols, Seaman, Pettigrew—22.

"*In the negative*—Aldermen Clayton, Dunning, Scoles, Brady; Assistants Nesbit, W. Dodge, and Oliver—7.

"*By the same*—Resolved, That Clement Guion be and is hereby appointed to the office of deputy receiver of taxes in place of Dow D. Williamson removed, which was adopted."

REMARKS.

It will be seen by the above recited proceedings in the Board of Supervisors, in the Board of Aldermen, and also in the Board of Assistants, that the members of two successive common councils, including the present, have voted upon proceedings which recognised the Tax Act of April 18th, 1843, to have been in force from the date of its passage—not by recitals, indirectly recognising it, but by particular and distinct acts in which no other question or matter was intermixed.

In the vote recorded in the Board of Supervisors on the 5th May, the Recorder; the Supervisor of the Second Ward, Alderman Woodhull; and the Supervisor of the 15th, Alderman Davies; voted in the affirmative. Here are three gentlemen of the legal profession, and one a judge, deliberately putting their opinion on record, stating distinctly and expressly that the State Legislature had abrogated *the duties* of the office of Ward Collectors of Taxes. The Mayor, on this occasion, recorded his vote on the other side: he is a member of the legal profession. The vote, it will be seen, was very strong, 13 to to 5, and not a political vote.

When the Resolution of Alderman Woodhull, Supervisor of the 2d Ward, in the Board of Supervisors, on the 3d of October, directing the Comptroller to deliver the assessment rolls to the Ward Collectors instead of the Officer designated by Law, was voted upon, the Mayor, Mr. Tillou, Mr. Waterman, and Mr. Scoles, four gentlemen of the legal profession, voted to sustain the law of April, 1843. In the meeting, in joint ballot on the 2d August, 1843, Mr. Wm. Dodge of the Third Ward and Mr. Dougherty, both gentlemen of the legal profession and members of the Board of Assistants, voted on provisions recognising the Act of April 18th, 1843, as a law in full force.

Thus we have counted up *nine lawyers*, all expressing, by their votes, their opinions as to the true construction of the law; but three of them—one on a single occasion, and two on another occasion—allowed a vote to vibrate, and to get upon the wrong side, and against the law.

The lay members of the two boards, have, with perhaps one or two exceptions, recorded their votes in full recognition of the law in force.

Gentlemen who claim to be City Lords, and who exercise more than autocratic powers, should be consistent in their public acts, as well as their votes.

We have heard it remarked, as having been stated by a Supervisor, that the provision of the Constitution which requires all officers theretofore elective, to continue to be elected, precludes the Legislature from abolishing the office of Ward Collectors. When the present Constitution was adopted, there were but ten wards in the city of New York, and ten Ward Collectors. The wards were subsequently increased to 17, and the Collectors to the same number. No person disputed the right of the Legislature to increase the number, and they can decrease the number, or they can give the right to perform the duties to any other elective officer. This they have done in Section 9, Art. 2, of the Act in question, as below, to the Sheriff and Constables, who are elective officers.

The Constitution does not, in its provisions expressed or implied, debar the tax-payer from voluntarily carrying the amount of his taxes to the City Hall and depositing it in the hands of a public officer required by law to receive the same.

The Chancellor of the State, recently, in an elaborate Opinion which he gave, referred to a Decision in the Court for the Correction of Errors, upon a question somewhat analagous to that he had in hand, and remarked that the members of the legal profession, who were members of that court, had, by their vote, expressed an opinion in favor of the construction he advocated, which he considered as an indication of the opinion of the court, from the ability and qualification of the law members, to form a correct opinion, as contrasted with the lay members.—We have here nine lawyers, all concurring in the construction we insist upon, and expressing this opinion by their vote, and we therefore may quote such high authority as the Chancellor to sustain a principle of construction. We will not, however, go with the Chancellor in this, as a sound discrimination. We remember the time when that distinguished citizen, STEPHEN ALLEN, was a member of the Court for the Correction of Errors. His opinion we valued greatly, superior, certainly, to that of many men who had been admitted to practise law. We could name another, MYNDERT VAN SCHAICK, a most worthy and excellent man. This gentleman was also a member of that court some years ago, and the resignation of his seat, for the reasons known, ought to have been emblazoned in letters of gold.

We have some worthy citizens in the Board of Supervisors, and we are very sorry to see their votes given, at the meeting of that Board on the 3d of October, on what we are sure is the wrong side. Still we are not disposed to question the motives of these gentlemen. The best men err, and differ in opinion in matters of the greatest clearness. The gentleman of the first ward, who voted hesitatingly on this question when the vote was taken, says now, that he feels that he voted right, having since examined the law. This gentleman is one of our best citizens, but we cannot agree with him in the conclusion he feels it his duty to come to, and we hope that a further examination, and a careful reading of the *whole law*, will yet convince him that he erred in his vote, and if he becomes convinced, we are confident he will act in accordance with that convincement. This is an important matter to the people—important that the majesty of the law should be sustained—important to the City Treasury. Citizens, in great numbers, have the money ready to pay their taxes, as soon as the Books are in the hands of the Receiver, and we doubt not that near a million of dollars will be paid voluntarily before the 1st of January. Last year the amount paid voluntarily prior to the 1st January, was, according to the Comptroller's report of 1843, page 82, $759,324..68. The previous year, the Collectors, during the same time, gathered but $193,283..80; and it may here be remarked, that the Collectors were stimulated by the Comptroller, for this money, collected before the 1st of January:—he allowed them a bonus of $837..31, for prompt collection, as appears by the Comptroller's report of 1843, page 33. Now for a moment look at the matter. That most excellent man, as well as most worthy public officer, OLIVER COBB Esq., Collector of the First Ward, for the time he was engaged in the performance of the duties of his office, received a compensation, as daily pay, second only to that of the President of the United States. It was more than double the pay of the Governor of this State, and treble that of the Mayor of this city, for the time being. We do not mention this with an unkind feeling toward Mr. Cobb—far otherwise;—but merely for illustration. As we observed, Mr. Cobb is a most worthy officer, and we wish all our public officers were like him, excepting the princely compensation.

The present Comptroller, in his maiden report of 1839, page 19, in reference to a general receiving office, uses this language: "*It has heretofore been proposed to establish a general receiving office for the collection of the ordinary Taxes, and of all other Assessments. The plan has been favorably thought of. For efficiency and economy it would be a manifest improvement. The amount paid to the Ward Collectors alone, for collecting the tax of* 1838, *amounted to nearly* $30,000."

We are very glad to quote the City Comptroller on the right side, as above, and shall

always be very glad of the opportunity to do so on future occasions.

Various Provisions of the LAW passed April 18th, 1843.

"ARTICLE I.

"COLLECTORS OF TAXES AND OF ARREARS OF TAXES ABOLISHED, AND A DEPARTMENT CREATED THEREFOR.

"SECTION 1. The office of collectors of taxes, as created and established by the charter of the city of New York, and by the statutes of the State, and the office of collectors of arrears of taxes in the said city, as created and established by the common council of the said city, shall cease from and after the day when this act shall take effect; and all provisions by charter, statute, ordinance, resolution or otherwise, creating such offices, and imposing or defining the duties thereof, are hereby abrogated.

§ 2. It shall be the duty of the common council of the said city, within twenty days after this act shall take effect, to establish an office for the collection of taxes in the city of New York, which shall be a branch of, and subordinate to, the department of finance of the said city, and which shall be conducted by a receiver of taxes, a deputy, and a suitable number of clerks, to be appointed as hereinafter directed, and whose duties are hereinafter prescribed.

§ 3. It shall be the duty of the common council of the city of New York, within twenty days after this act shall take effect, to appoint a suitable and discreet person, to be known as receiver of taxes in the city of New York, who shall hold his office during the pleasure of the common council, and until his successor shall be appointed, as hereinafter provided; and another person, to be known as deputy receiver of taxes in the city of New York, who shall hold his office for the like term, unless sooner in like manner removed. The said receiver of taxes shall receive an annual salary not exceeding the sum of two thousand dollars, and the said deputy receiver an annual salary not exceeding the sum of fifteen hundred dollars, to be paid to them respectively by the mayor, aldermen, and commonalty of the city of New York, on the usual quarterly days."

"ARTICLE II.

"OF THE MODE OF THE COLLECTION OF TAXES.

"SECTION 1. The board of supervisors of the city and county of New York shall cause the corrected assessment roll of each ward of the said city, or a fair copy thereof, to be delivered to the receiver of taxes in the said city, on or before the twenty-fifth day of September in each year.

"§ 2. To each assessment roll so delivered to the said receiver of taxes, a warrant under the hands and seals of the board of supervisors, or of any five or more of them, of whom the mayor and recorder shall always be one, shall be annexed, commanding such receiver to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite to their respective names, and to pay the same from time to time, when collected, to the chamberlain of the said city, according to the provisions of this act.

"§ 3. The said receiver, upon receiving the said assessment rolls and warrants, shall proceed to collect and receive the said taxes from the several persons assessed in the said assessment rolls in the manner hereinafter mentioned.

"§ 4. If any person who shall be assessed in any of the said assessment rolls shall desire to pay the amount of his taxes on or before the first day of January succeeding the delivery of the said assessment rolls and warrants to the said receiver, it shall be the duty of the said receiver to receive the same, and to deduct therefrom at the rate of seven per cent. per annum, between the day of such payment and the said first day of February then next succeeding.

"§ 5. If any such taxes shall remain unpaid on the first day of January, it shall be the duty of the said receiver to give public notice, by advertisement, in six or more of the public newspapers printed in the said city, that unless the same shall be paid to him at his office on or before the fifteenth day of February in each year, he will immediately after that day proceed to collect the same as provided in the next section.

"§ 6. If any such taxes shall remain unpaid on the said fifteenth day of February, it shall be the duty of the said receiver to charge, receive and collect upon such tax so remaining unpaid on that day, in addition to the amount of such tax, one per cent on the amount thereof, and to charge, receive and collect upon such tax so remaining unpaid, on the fifteenth day of each month, between the said month of February and the first day of April thereafter, a further addition or increase of one per cent upon the amount of such tax; and such increase or percentage shall be paid over and accounted for by such receiver from time to time as hereinbefore prescribed, as a part of the tax collected by him.

"§ 7. If any such tax shall remain unpaid on the first day of March after the delivery of the assessment rolls and warrants to the said receiver, the said receiver shall immediately thereafter cause notice, in writing, to be given to the person from whom the same shall be due, specifying therein the amount of such tax and the per centage which shall accrue thereon, and requiring such person to pay the same to the said receiver on or before the first day of April thereafter at his office.

"§ 8. Such notice shall be served upon such person, if he be a resident or engaged in the transaction of business within the said city, either personally or by leaving the same at his residence or place of business, as the case may be, with some person of suitable age and discretion, at least eight days before the said first day of April.

"§ 9. The said receiver shall also, immediately after the said first day of March, give public notice in at least six of the public newspapers of the said city, to be published therein respectively at least ten days, notifying all persons who shall have omitted to pay their taxes to pay the same to him at his office on or before the first day of April. Upon filing an affidavit of the service of the notice required by the seventh section of this article, as therein prescribed, in the office of the clerk of the city and county of New York, or that the person therein named could not, upon diligent search and inquiry, be found within the said city, and also upon filing an affidavit or affidavits of the due publication of the notice required by the eighth section of this article as therein prescribed, it shall be the duty of the said receiver to charge, collect, and receive upon all taxes remaining unpaid on and after the said first day of April, an interest at the rate of 12 per cent per annum, to be calculated from the day on which the said assessment rolls and warrants shall have been delivered to the said receiver. It shall also be lawful for the said receiver, if any such tax, with the interest thereon, as hereinbefore provided, shall remain unpaid on the fifteenth day of the said month of April, to issue his warrant under his hand and seal, directed to the sheriff of the city and county of New York, or any constable or marshal of said city and county, commanding him to levy the said tax, with interest thereon at the rate of twelve per cent per annum from the day of the delivery of the assessment rolls and warrants to the said receiver, to the time when the same shall be paid, by distress and sale of the goods and chattels of the person against whom the said warrant shall be issued, or of any goods and chattels in his possession, wheresoever the same shall be found within the said city, and to pay the same to the said receiver and return such warrant within thirty days after the date thereof; and no claim of property, to be made to such goods and chattels so found in the possession of the said party, shall be available to prevent a sale."

ARTICLE IV.

REPEAL OF OTHER PROVISIONS, AND TIME WHEN THIS ACT SHALL TAKE EFFECT.

"SECTION 1. The provisions of Chapter XIII. of the First Part of the Revised Statutes, regulating the collection of taxes, shall hereafter be inapplicable to the city and county of New York.

"§ 2. All former laws, acts and parts of acts, relating to the collection of taxes in the city of New York, or to the officers by whom the same shall be collected, and to the sale of property, real or personal, therefor, or to the redemption of real estate sold for taxes in the said city, and all other acts or parts of acts inconsistent herewith, are hereby repealed.

"§ 4. This act shall take effect immediately, except the provision to abolish the office of collector of taxes, which provision shall take effect on the first day of April, 1844.

REMARKS.

The reader has now the provision of the Tax Act in this matter before him, and we proceed to give these provisions that construction which the words of the law seem to warrant.

We will in the first place take the concluding section of the act, which we will state again.

§ "*This act shall take effect immediately*," (here is a comma: it then proceeds) "except *the provision* to abolish the Office of Collector of Taxes, which *provision* shall take effect on the 1st day of April, 1844."

Thus all the Act, *except* section 1 of Art. 1, took effect on the 18th day of April, 1843, and that *single* provision is excepted.

The Ward Collectors hold office, but we contend that there is *no provision of Law* to to give them any duties to perform. Special provision *is made* in that portion of the Act which took effect *immediately*, for the Collection of the Tax by OTHER OFFICERS.

Suppose the Ward Collectors execute a bond to the City Chamberlain,—will that bond be legal?

Suppose a Citizen pays his tax to a Ward Collector, may it not be said that he pays in his own wrong?

Are the Ward Collectors authorised to make an abatement of Interest for payment prior to February 14, 1844?

When the tax act passed, we supposed that its provisions were such as to make the act of doubtful construction, but subsequent examination confirms us in the opinion we now express.

It will be seen by a careful reading of the Tax Act that the following are its provisions as to the periods of payment of the tax:—

By Sec. 4 of Art. 2—Any person desirous of paying his tax prior to January 1st, shall, on paying the amount to the Receiver, be entitled to a deduction at the rate of Seven Per Cent. per annum, to be computed from the day of payment to the 1st day of Feb.

By Sec. 5, Art. 2—Any person may pay his tax to the Receiver subsequent to Jan. 1st and prior to February 15th, but he has no discount allowed.

By Sec. 6 of Art. 2—He has an extension of time from the 14th of February to the 14th of March, on paying in addition to the tax a penalty of one per cent. in lieu of interest.

By Sec. 6 of Art. 2—He may have a further extension from the 15th until the 31st of March, on paying a further penalty of one per cent. making two per cent.

By Sec. 9 of Art. 2—He may have a further indulgence to the 15th of April, on paying interest on the amount of the tax, to be reckoned from the day the assessment rolls were delivered to the Receiver until the day of payment, at the rate of 12 pr. ct. per annum.

By Sec. 9 of Art. 2—The Receiver may issue his warrant of distress to the Sheriff or Constable to levy the amount of any tax unpaid on the 15th April, or he may proceed to advertise the real estate which has been assessed, and after giving three months notice, may sell the same for such terms of years as any person will agree to take the same for, in consideration of paying such tax, and the owner has two years after this to redeem it.

We find no law whatever (in our humble opinion) to authorise Ward Collectors to demand, collect, or receive any tax.

AMENDMENTS

PROPOSED TO THE TAX ACT IN THE LEGISLATURE.

In order that an opinion may be formed of this act we give a copy of the Journal of Assembly in reference to its peregrinations in that body.

ASSEMBLY JOURNAL—PAGE 871.

"*Wednesday, April 12th*, 1843, 4 *o'clock, P. M.*—The Senate also sent for concurrence the Bill entitled 'An Act for the collection of taxes in the City of New York, which was read the first time, and by unanimous consent was also read a second time, and referred to the Committee on Internal Affairs of towns and counties."

The New York Citizens' Committee, of which JOHN M. BRADHURST Esq. is Chairman, attended the Committee on the Internal Affairs of Towns and Counties, and with that committee went through the various sections of the Bill, and prepared the following Amendments, all of which the Committee on the Internal Affairs of Towns and Counties unanimously adopted.

AMENDMENTS PROPOSED TO

ARTICLE I.

"§ 2. After word 'the' in first line, strike out the word 'Common Council,' and insert the words 'Board of Supervisors' after the word 'City.' In the same line insert the words '*and County*.'

"In the 3d and 4th line strike out after the words 'New York' the words 'which shall be a branch of, and subordinate to the department of finance of said city.'"

In Sec. 3, after the word 'the' in first line, strike out words 'Common Council' and insert in lieu the words 'Board of Supervisors:' in same line, after the word 'City' insert words '*and County*.'

In 3d line, after word 'City,' insert words '*and County*.'

In 4th line, after word 'the,' strike out words 'Common Council,' and insert words '*Board of Supervisors*.'

In 11th line, after word 'the,' strike out words 'Mayor, Aldermen and Commonalty of,' and insert in lieu thereof, the words '*Board of Supervisors*,' and in same line, after the word 'City,' insert words '*and County*.'

In Sec. 5, second line, after word 'the,' strike out words 'Common Council,' and insert in lieu thereof words '*Board of Supervisors*.

In 3d line, strike out word 'Ordinance,' and insert in lieu thereof word '*Resolution*.'

ARTICLE II.

In Sec. 4, second line, after word 'the,' strike out word 'first,' and insert in lieu thereof word '*fifteenth*.'

In 3d line, after the word 'of,' strike out the word 'January' and insert word '*February*' in lieu thereof.

In 6th line, after word 'said,' strike out word 'first,' and insert in lieu word '*fifteenth*.'

In Sec. 5, 4th line, after the word 'office,' strike out words 'on or.'

In Sec. 6, 1st line, after word 'said,' strike out word 'fifteenth,' and insert word '*sixteenth*' in lieu thereof.

In 6th line, after word 'the,' strike out word 'first' and insert word '*sixteenth*' in lieu thereof.

ARTICLE III.

Sec. 1. In 12th line, after word 'payment,' insert words '*so much of*.'

In 13th line, after word 'specified,' strike out words 'for the lowest term of years at which any person or persons shall offer to take the same in consideration of advancing' and insert in lieu the words '*as will satisfy*.'

In 21st line, after word 'auction,' strike out words 'for a term of years.'

In 28th line, after word 'purchased,' strike out words 'the term of years for which the same shall have been sold.'

In 30th line, after word 'a,' strike out word 'lease,' and insert in lieu the word '*deed*.'

In 32d line, after word 'sold,' strike out words 'or leased.'

In 36th line, after word 'New York,' strike out the following words, 'one of which shall contain a particular and detailed statement of the property to be sold for taxes, and such as is now published by the Street Commissioner in two daily newspapers or the said' and insert in lieu the words '*and a*.'

In line 40, after the word 'pamphlet,' strike out the words 'at the discretion of the said Comptroller in which case.'

In line 41, after the word 'deposited,' strike out the words 'in his office.'

In line 45, after the word 'published,' strike out words 'in one of the daily newspaper naming the same or.'

In 46th line, after word 'pamphlets,' strike out words 'as the case may be.'

Sec. 2. In 3d line, after word 'each,' strike out the word 'week' and insert in lieu thereof the word '*month*': in the same line, after word 'six,' strike out word 'weeks' and insert word '*months*': and in same line, after word 'in,' strike out word 'two' and insert word '*one*.'

In the 11th line, after word 'of,' strike out word 'fourteen' and insert in place thereof word '*twelve*.'

In 14th line, after word 'a,' strike out word 'lease' and insert word '*deed*.'

In 15th line, after word 'sold,' strike out words 'for such term of years as the same shall have been sold.'

In 16th line, after word 'such,' strike out word 'lease' and insert in place thereof the word 'deed'; and in the same line, after word 'be,' strike out the word 'conclusive' and insert the words '*prima facie*.'

In 20th line, after word 'said,' strike out word 'lease' and insert word '*deed*.'

Sec. 4. In line 6, after word 'exceeding,' strike out word 'fifteen' and insert word '*three*' in place thereof.

Sec. 9. Wherever the word 'lease' occurs in this section, strike it out and insert in its place the word '*deed*.'

Sec. 10. In 2d line, after word 'to,' strike out word 'fourteen' and insert word '*twelve*.'

In 3d line, after the words 'per annum,' strike out the following words: "but no interest shall be calculated on a less portion of time than one quarter of a year, and in all cases where the property shall be redeemed during any fractional part of a year, the interest shall be calculated so as to include the quarter in which such redemption shall be made, the time to be computed from the day of sale.'

Sec. 12. In 2d line, after word 'Comptroller,' strike out word 'sixty' and insert in lieu thereof the word '*two*.'

In 7th line, after word 'one,' strike out word 'month' and insert in lieu thereof the word '*day*.'

In Sec. 13. In 3d line, after the word 'residence,' strike out words 'if known to the Comptroller' and insert in lieu thereof the words '*as described in the memorandum*.'

In 9th line, after word 'assessed,' strike out words 'together with the term of years.'

In 11th line, after word 'expire' strike out words 'with a notice.'

In 12th line, after word 'or,' strike out word 'by' and insert word '*before*.'

In 13th line, after word 'that,' strike out word 'lease' and insert in lieu word '*deed*.'

Sec. 15. In 4th line, after word 'some,' insert words '*without charge*.'

Sec. 16. In 1st line, after word 'receive,' strike out words 'twenty-five cents' and insert in lieu thereof words '*six cents per folio*.'

Sec. 20. In 5th line, after word 'tenement,' insert words '*and also upon the owner*.'

In 12th line, after word 'the,' strike out words 'lease and advertisements' and insert word '*deed*.'

In 14th line, strike out word 'lease' and insert in lieu word '*deed*.'

In 18th line, after word 'thereto,' strike out words 'during the term of years for which such lands and tenements have been conveyed.'

Sec. 21. Line 2, after word 'and,' insert the words '*and also of the owner or*.'

Sec. 22. Strike out word 'lease' in 6th line, and insert word '*deed*' in lieu thereof.

Sec. 24. In line 4, after word 'certify,' strike out words 'to the fact' and insert words '*the same*.'

In line 7, after word 'thereto,' strike out the words 'during the term of years for which the same shall have been conveyed.'

Sec. 26. In 5th line, after word 'thereon,' strike out the words 'as the Mayor, Alderman and Commonalty of the City of New York in Common Council convened' and insert in lieu thereof the words '*as the Comptroller of the City of New York*.'

ARTICLE IV.

Sec. —. In 2d line, after word 'regulating,' strike out 'assessment and.'

Sec. 4 *to read as follows*:—This Act shall take effect on the second Tuesday of May, 1843.

REMARKS.

The above are the Amendments proposed by the New York Citizens' Committee, of which JOHN M. BRADHURST ESQ. is Chairman, to the act entitled "An Act for the Collection of TAXES in the City of New York," to the Standing Committee on Internal Affairs of Towns and Counties, and unanimously approved of by that Committee, and by them reported to the house of assembly on the 13th of April, 1843, as Amendments to the Bill, with which amendments they see no objections to the same becoming a law.

Mr. Jones, of the New York delegation, was Chairman of the Select Committee to which the Bill and Amendments were referred to report complete, and struck out all the Amendments, reporting the bill precisely as it came from the Senate.

One of the New York Committee subsequently stated to Mr. Jones that the Select Committee had, by striking out all the Amendments indiscriminately, prevented the County of New York from imposing a tax, as the 1st section of Art. 4, as it stood in the bill, repealed the Law, as far as the City and County of New York was concerned, which authorised the assessment of Taxes.

Mr. Jones examined the bill, saw this blunder, and asked unanimous consent to correct it.

We will now give the reader the reasons urged upon the Standing Committee in favor of the Amendments.

FIRST—*As to Sections* 2, 3 *and* 5, *in Article I.*—These specific Amendments would leave the matter of Taxes in the Board of Supervisors, where they belong. The tax is a County Assessment and not a Corporation Tax, and therefore the Board of Supervisors is the appropriate body, and not the common council.

ART. 2.

SECOND.—The Amendment to the fourth section allows persons voluntarily paying their taxes the deduction of interest from the time of payment to the 15th February, when the tax is payable, instead of only allowing persons paying prior to January 1st interest from the date of payment to February 1st, two weeks short of its being due; and besides, as the bill stands without the Amendment, there is no inducement held out by an abatement of interest to pay from the 1st of January to the 14th February.

The Amendment proposed to the 5th and 6th sections, corrects an ambiguity. As the Law now stands, the tax is allowed by the 5th section to be paid on the 15th February, and the next section imposes a penalty on all remaining unpaid on said day.

ART. 3.

The Amendment proposed in section 1 authorises the sale of only so much of the land as will pay the tax, instead of leasing the whole estate for a term of years, so that if a man owns a hundred lots, and these are all taxed one thousand dollars, only a sufficiency to pay the tax should be sold, and not all. Also that a detailed description of the lands shall be published in a pamphlet instead of a newspaper, and a short notice of the sale in ten daily papers, once a week for three months, which notice shall state that a detailed statement is published in a pamphlet, and state where these pamphlets are deposited for gratuitous distribution. The expense of this would not be a fifth as much as will be the cost under the present law.

The Amendment proposed to the 2d section is that the notice to redeem shall be published once a month for six months, instead of once a week for six weeks. Contrast these two provisions together, and see the very great difference. For example, a lot sold for taxes on the 2d January, 1842, would be redeemable on the 1st of January, 1844. As the law now stands notice is given, commencing on the first of February, 1843, once a week for six weeks, and this notice is out of print by the middle of August, four and a half months before the time of redemption expires. By the Amendment, a notice would be given on the first of every month from July to January, so that the owner would have four times the greater opportunity of seeing the notice in this case than the other.

The Amendment makes the deed prima facie instead of conclusive evidence of the regularity of the sale. Experience in tax and assessment sales show this to be very necessary.

The Amendment proposed to the 10th section allows the owner redeem at any time by paying the tax and expenses and 12 per cent interest, and relieves from the payment of interest from an unexpired quarter.

The Amendment to the 12th section gives to a person who may take a mortgage on real estate notice of the sale of that estate for taxes up to within one day of the time of redemption, and the present law affords no protection unless he files his memorandum sixty days before that period.

The Amendment also gives to persons who are not personally known to the Comptroller the same rights as those who are acquainted with that officer.

The Amendment to the 15th section allows the record of memorandums of mortgages in the Register's office to be examined free of charge.

The Amendment to Sec. 16 fixes the fees of the Register at six cents per folio instead of twenty-five cents per memorandum. This is necessary, as the Register charges for a memorandum containing 20 pieces of land, all of which may be on a single sheet of paper, five dollars being 25 cents for each piece of land.

The Amendment to section 20 requires notice of sale of premises to owner, and also to the occupant. These may have con-

flicting interests, and therefore both should be notified: thus the tenant could not take advantage of his landlord.

The Amendment to the 24th section allows the Comptroller to certify in a qualified sense, and not in an absolute character.

The Amendment to section 26 gives the apportionment of taxes to an officer instead of the title of a municipal corporation.

ART. 4.

The Amendment to section 1 was one of great importance. Without it the County of New York could not have imposed any tax the present year, nor hereafter, until the Legislature passed a law to that effect.

The Amendment to sec. 4 placed the act in force on the same day the new Board of Supervisors were in office under the charter of April, 1843.

P. S. Since the preceding Sheet (ending with page 260) passed through the press, the Supervisors, or Comptroller, delivered the Assessment Rolls of all the Wards to the RECEIVER—not to the Ward Collectors,—and the Receiver is now receiving the money from Citizens at his office. We understand that **17** of the Supervisors have signed the Rolls in the hands of the Receiver. We also are credibly informed that the State Attorney General, Mr. BARKER, has given a legal Opinion sustaining our Construction of the Tax Act of April 18th, 1843. We are glad to have so responsible an Endorser to our opinion. Alderman WOODHULL's resolution was an attempt to repeal a STATE LAW!!!

CONFISCATION ACT.

JOURNAL OF THE SENATE.

Page 128.

"MONDAY, 11 o'CLK. A. M.—*Feb'ry* 6, 1843.

"Mr. Franklin presented the memorial of MARTHA AMORY; also of JAMES MCBRIDE; also of R. V. R. SCHUYLER, of the City of New York, praying for relief from assessments; which were read and referred to a select committee, to consist of the Senators attending the Senate from the first Senate district." NOTE. *Copies of the memorials in this volume, pages* 158, 154, and 146.

Page 200.

"FRIDAY, 11 o'CLK, A. M.—*Feb'ry* 24, 1843.

"Mr. Dixon presented the memorial of JAMES G. KING, EFFINGHAM SCHEFFELIN, and others, of the city of New York, praying that public officers may be restrained by the Legislature from further proceedings in the imposition of vexatious assessments for opening streets, &c.; and praying that these matters may be investigated, and that power may be given to send for persons and papers; which was read and referred to the select committee, consisting of the Senators attending the Senate from the First Senate District."

"Mr. President presented the memorial of PHILIP MILLEDOLER, of the city of N. York, complaining of oppressive and arbitrary assessments upon his estate, and praying for relief; which was read and referred to the same select committee."

"Mr. Rhoades presented the memorial of Daniel Van Reed, of the city of New York, complaining of an assessment without notice, and praying for protection, &c.; which was read and referred to the same select committee."

"THURSDAY, 11 o'CLK. A. M.—*March* 2, 1843.

"Mr. Dixon presented the remonstrance of JONATHAN THOMPSON and others, against certain obnoxious provisions of the New York city tax bill; also a memorial asking that the members of the board of water commissioners may be members of the board of supervisors, and that the president of said board of water commissioners may be county treasurer; which were read and laid on the table."

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"TUESDAY, 11 o'CLK., A. M.—*Mar.* 7, 1843.

"On motion of Mr. Varian,

"Ordered, That the remonstrance of JONATHAN THOMPSON and others, against certain provisions of the New York city tax bill; also the memorial, asking that the members of the board of water commissioners may be members of the board of supervisors, and that the president of said board of water commissioners may be county treasurer, now on the table, be referred to the committee on the judiciary."—Page 251.

NOTE. *This Remonstrance is set forth in a subsequent page of this number.*

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Page 253.

"WEDNESDAY, 10 o'CLK, A. M.—*Mar.* 8, 1843.

"Mr. Dixon presented the memorial of GULIAN C. VERPLANCK, SAUL ALLEY, and others, on the subject of assessments and taxes, and the general concerns of the City of New York; which was read and referred to the Committee on the Judiciary."

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Page 258.

"THURSDAY, 10 o'CLK, A. M.—*Mar.* 9, 1843.

"Mr, Dixon presented the memorial of JOHN TARGEE and others, of the city of New York, praying for an amendment of the laws of this State relative to the city of New York as to taxes, and for a reduction of the amount of the annual tax; which was read and referred to the Committee on the Judiciary."

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Page 261.

"FRIDAY, 10 o'CLK, A. M.—*March* 10, 1843.

"Mr. Rhoades presented ELEVEN several memorials of sundry Citizens of New York, praying for a reduction of the annual taxes; also for an amendment to the assessment law; also for imposing restrictions upon the public officers of the city of New York, and for other purposes; which were read and referred to a select committee, to consist of the Senators attending the Senate from the First Senate District."

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Page 266.

"SATURDAY, 10 o'CLK, A. M.—*Mar.* 11, 1843.

"Mr. President presented the remonstrance of sundry Citizens of the city of New York, convened by public notice at the Merchants' Exchange, New York, against certain provisions of the tax and assessment laws; also a memorial for amendments to said laws, with accompanying papers; which were read and referred to the Committee on the Judiciary."

"SATURDAY, 10 o'CLK, A. M.—*Mar.* 18, 1843.

"Mr. Franklin presented the memorial of the mayor, aldermen and commonalty of the city of New York, praying for the passage of an act to authorise the corporation of said city to purchase lands sold for taxes and assessments in certain cases, and for other purposes; which was read and referred to a select committee, to consist of the Senators attending the Senate from the First Senate District."—Page —.

REMARK.—This memorial was not signed by the Mayor of the City of New York, the Hon. Robert H. Morris. It was signed by J. R. Taylor, Clerk of the Common Council.

The previous memorials from the Corporation we have seen before the Legislature, with the signature of the Mayor uniformly affixed to them.

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"TUESDAY, 10 o'CLK., A. M.—*Mar.* 21, 1843.

"Mr. Franklin, from the select committee, consisting of the Senators attending the Senate from the First Senate District, to whom was referred the memorial of the common council of the city of New York, relative to authorising them to purchase lands in certain cases, asked for and obtained leave to report a bill entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases, and for other purposes;' which was read the first time, and committed to a committee of the whole.

"On motion of Mr. Franklin,

"Ordered, That the usual number of copies of said bill be printed."—Page 316.

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"FRIDAY, 10 o'CLK., A. M.—*March* 31, 1843.

"Mr. Rhoades presented the remonstrance of JOHN M. BRADHURST, Chairman of the New York Citizens' Committee, against the passage of any act authorising the corporation of the city of New York to purchase lands for unpaid assessments and taxes, with accompanying documents, which were read and referred to the committee on the judiciary."—Page 389.

REMARK.

Mr. Rhoades moved that the Bill entitled "An act to authorise the Mayor, Aldermen and Commonalty of the City of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes" be recommitted to the Committee on the Judiciary.

Mr. Varian remarked that himself and his colleague, Mr. Franklin, had both been members of the Common Council, and as they had composed a part of the Committee which had reported the Bill, he would be glad to see it take the course proposed by the Senator from the Seventh. It was so ordered. This was our understanding of the proceedings which we witnessed at that time in the Senate, and to which we will more particularly refer in the subsequent pages.

"TUESDAY, 10 o'CLK., A. M.—*April* 4, 1843.

"On motion of Mr. Scott,

"Ordered, That the committee of the whole be discharged from the further consideration of the bill entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases, and for other purposes;' and that the same be referred to a select committee, to consist of the Senators attending the Senate from the First Senate District, to report complete."—Page 407.

NOTE. *This Bill was not in the Senate at this time: it was in the hands of the Judiciary Committee.*

"WEDNESDAY, 10, A. M.—*April* 5, 1843.

"Mr. Dixon presented the memorial of Phelps, Dodge & Co., and three hundred and twelve others, in relation to lands sold for taxes and assessments in the city of New York, &c.; which were read and referred to the committee on the judiciary."—Pg. 415.

NOTE. *We have the Albany Daily Advertiser before us, of April* 6, 1843, *in which we find the following:—*

"IN SENATE,

"WEDNESDAY—APRIL 5TH.

"By Mr. Dixon, **30** Memorials from New York, signed by **2,500** Citizens, that the Corporation may be prohibited from purchasing under sales and assessments; that the Water Commissioners may be Supervisors; that the President of that Board may be County Treasurer; that the arrears of taxes be not assessed; and that the annual tax may be reduced."

NOTE. It will be seen on referring to the files of the Senate that Mr. Dixon presented THIRTY Remonstrances against the passage of the Bill authorising the Corporation of the City of New York to purchase lands for taxes and assessments, signed by TWO THOUSAND FIVE HUNDRED persons. The Albany papers of that and the following day, in their published proceedings of the Senate, state this particularly, as by a reference to their files will appear; and the endorsements on thirty distinct memorials in the Senate show this also; and the proceedings of the Assembly as below. In the resolution passed by that house, requesting the Senate to send thirty memorials, signed by 2,500 Citizens, to the Assembly, which resolution, it will be seen, the Senate concurred in. The Clerk of the Senate, therefore, made a mistake in these important papers.

It will also be seen by the above proceedings, that the Bill authorising the Corporation to purchase lands for assessments, was not, at the time Mr. Scott made the motion to refer the same to himself and his colleagues of the city of New York, before the house, but was in the hands of the Judiciary Committee; and that committee had not, up to that time, had any meeting upon the Remonstrance, presented as above by Mr. Rhoades, on whose motion this Bill was re-committed to the Judiciary Committee.

Such a proceeding as this, was unparliamentary, and not (as we believe) in accordance with the rules of the Senate.

"Mr. Franklin, from the select committee, consisting of the Senators attending the Senate from the First Senate District, to whom was referred the bill entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases, and for other purposes,' to consider and report complete, reported the same without amendment; which was agreed to by the Senate, and the bill ordered to be engrossed for a third reading."—Page 418.

REMARKS.

On the presentation of the report by Mr. Franklin, objections were made to the ordering of the Bill to a third reading, by Mr. Hunter, who stated that the New York Citizens' Committee had called upon him, and expressed strong objections to the passage of this bill; and that this Committee had been sent by a public meeting held at the Merchants' Exchange in the city of New York. Mr. Varian said the meeting of the merchants did not remonstrate against this bill—the meeting was called in relation to taxes.

Mr. Strong, Chairman of the Judiciary Committee, to which the Memorial and Remonstrance of the Meeting held a tthe Merchants' Exchange had been referred, handed to Mr. Hunter the said memorial, and Mr. Hunter sent the same to the Clerk's desk, and requested that the following portion of it be read, as follows:

"The Remonstrants suggest that the application of Common Council for a law to authorise the Corporation to become purchasers at Assessment and Tax sales ought not to be granted; that it is bad as a principle, and will be worse in practise. That the Corporation have not the means of paying for such purchases except by taxing the Citizens for the amount of the purchase money; that the Corporation should not be allowed to hold any real estate not required for public use; that it will be a wrong done to the Owners of such lands, will lead to expensive litigation for which the Citizens must be again taxed, and thus indirectly sanction Assessment Abuses—of an aggravated character—and give to Contractors, at exorbitant and improper prices, the public money, and to public Officers fees and charges for services never rendered.

"Preserved Fish, Chairman;
Assistant Chairmen,

Abraham Van Nest,	John Haggerty,
Peter Schemerhorn,	A. G. Thompson,
Peter Cooper,	George Griswold,
Peter Embury,	Jonathan Goodhue,
Peter Lorillard, jun.,	Charles H. Russell,
Wm. B. Crosby,	Peter I. Nevius.

"Wm. Billings Meach, Secretary."

NOTE. *While this sheet was passing through the press we addressed the following letter to the Clerk of the Senate.*

To the Clerk of the Senate.

DEAR SIR: The Citizens' Committee, of which I am a member, are reprinting so much of the Journals of the Senate and Assembly as relates to the compulsory inspection laws, to the taxes, and also to the assessments of the city of New York, which were before the Legislature at the last session.

In the Journal of Senate, of April 5, 1843, 10 o'clock, A. M., is the following:

"MR. DIXON presented the memorial of Phelps, Dodge & Co., and 312 others, in relation to lands sold for taxes and assessments in the city of New York, &c., which were read and referred to the Committee on the Judiciary."

Mr. Dixon, on that day, as you will perceive by the files of the Albany papers, of the proceedings of the Senate, presented **30** Remonstrances and Memorials of 2,500 persons, against the passage of the bill reported by Mr. Franklin a few minutes after. See page 415, Senate Journal.

You will see, by referring to your files, the **30** Memorials with such distinct endorsements on each memorial.

You will also perceive, by a resolution of the Assembly, that these same 30 remonstrances were directed to be sent to that House.—*See Senate Journal of April 14th, 1843, page* 508.

We were at a loss how to rectify this great error, in this important matter, and thought best to write to you, and ask advice.

Very respectfully,
EBEN MERIAM.

New York, October 11, 1843.

On the 17th of October we received the following Reply to the above letter from the Clerk of the Senate.

"Albany, October 15, 1843.

"DEAR SIR: I cannot now rectify any error that exists in the Journal of the Senate. This can only be done by an order from that body.

"You ask 'my advice,' though upon what precise point, I cannot clearly apprehend. If it be, as to the mode of rectifying the error to which you allude, in the reprint of the Journals which you are making, all I think you can do is by way of Note to refer to the omission alleged, and, in corroboration of your statement, make extracts from the Reports of the legislative proceedings contained in the Albany papers of that day.

Very respectfully, yours,
ISAAC R. ELWOOD.

Eben Meriam Esq., N. York City."

NOTE. At the time this Bill to authorise the Corporation of the City of New York to purchase lands at their own sales for odious and oppressive assessments imposed by their own officers was reported, a warm discussion took place. This we shall notice in full, in subsequent pages.

SENATE JOURNAL.

"On motion of Mr. Strong,

"Ordered, That the committee on the judiciary be discharged from the further consideration of the petitions in relation to the sale of land for taxes and assessments in the city of New York, and that the same be laid on the table."

"SATURDAY, 10 o'CLK, A. M.—*April* 8, 1843.

"The engrossed bill, entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' was read the third time and passed; two-thirds of all the members elected to the Senate voting in favor thereof, as follow, to wit:

"*For the affirmative*—Messrs. Bartlett, Chamberlain, Corning, Denniston, Ely, Faulkner, FRANKLIN, Hard, Hopkins, Hunter, Lott, Mitchell, Platt, Porter, Rhoades, Ruger, SCOTT, Strong, VARIAN, Varney, Works, Wright."

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"SATURDAY, 10 o'CLK., A. M.—*April* 8, 1843.

"Ordered, That the Clerk deliver the several bills to the Assembly, and request their concurrence in the same."—Page 456.

ASSEMBLY JOURNAL.

"SATURDAY—*April* 8, 1843.

"The Senate sent for concurrence the *bill* entitled 'An act to authorise the mayor, aldermen, and commonalty of the city of New York, to purchase lands sold for taxes and assessments in certain cases, and for other purposes;' which was read the first time, and by unanimous consent was also read the second time, and referred to the committee on the incorporation of cities and villages."—Page 820.

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"MONDAY, 10 o'CLK., A. M.—*April* 10, 1843.

"By unanimous consent,

"The memorial of the committee appointed at a public meeting held at the Merchants' Exchange in the city of New York, remonstrating against the passage of the act authorising the mayor, aldermen and commonalty of the city of New York to purchase lands at assessment sales, together with the proceedings of said meeting, was read and referred to the committee on the incorporation of cities and villages."

NOTE. Several memorials in relation to odious and ruinous assessments had been presented in the Assembly, which will be noticed hereafter.

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Page 880.

"THURSDAY—*April* 13, 1843.

"Mr. Redington, from the committee on the incorporation of cities and villages, to which was referred the engrossed bill from the Senate, entitled 'An act to authorise the mayor, aldermen and common council of the city of New York to purchase lands sold for taxes and assessments in certain cases and for certain purposes,' reported that the committee had examined the said bill, and saw no reason why the same should not be passed into a law."

NOTE. Here is an error.

"Ordered, That said bill be referred to a select committee, consisting of Messrs. Jones, White and Haight, to report complete.

Page 894.

"Mr. Jones, from the select committee, to which was referred the engrossed bill from the Senate, entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for certain purposes,' reported that the committee had gone through with the said bill, and agreed to the same without amendment; which report was agreed to by the House, and the bill ordered to have its third reading."

NOTE. Here is an error.

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Page 904.

"FRIDAY—*April* 14, 1843.

"On motion of Mr. Haight, and by unanimous consent,

"Resolved, That the Honorable the Senate be requested to send to this House the remonstrance of JONATHAN THOMPSON and others; of ANDREW FOSTER & SONS, and others; and THIRTY OTHER REMONSTRANCES OF 2500 CITIZENS of the city of New York *against the passage of the act authorising the Corporation to purchase lands for Assessments; and also the Remonstrance of the Meeting held at the Merchants' Exchange in the city of New York, upon the same subject, which have been received in the Senate, and referred to the judiciary committee, and which are not yet reported upon.*

"Ordered, That the Clerk deliver the said resolution to the Senate."

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SENATE JOURNAL.

Page 508.

"FRIDAY, 10 o'clock, A. M.—*April* 14, 1843.

"A copy of a Resolution was received from the Assembly, AND READ, in the words following, to wit:

"Resolved, That the Hon. the Senate be requested to send to this House the Remonstrance of JONATHAN THOMPSON and others, ANDREW FOSTER & SONS, and others, and THIRTY OTHER REMONSTRANCES OF TWO THOUSAND FIVE HUNDRED CITIZENS of the City of New York, *against the passage of the act authorising the Corporation to purchase lands for Assessment; and also the Remonstrance of the Meeting held at the Merchants' Exchange in the city of New York, upon the same subject, which have been received in the Senate, and referred to the judiciary committee, and which are not yet acted upon.*

"Thereupon,

"Resolved, That the SENATE DO CONCUR in said resolution.

"Ordered, That the Clerk deliver a Copy of said resolution and said papers to the Assembly."

—

ASSEMBLY JOURNAL.

Page 905.

"A message from the Senate was read, informing that they have agreed to the resolution of this House, requesting the transmission of certain remonstrances to this House, and have transmitted the same accordingly."

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Page 1016.

"TUESDAY—*April* 18, 1843.

"The engrossed bill from the Senate, entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' was read the third time.

"Mr. Speaker put the question whether the House would agree to the final passage thereof, and less than two thirds of all the members elected to the House voting upon the said question, the same was laid upon the table.—(Ayes 77, nays 8.)

"Those who voted in the affirmative are,

"Messrs. Allen, *E. G. Baldwin*, Bentley, Booth, Bostwick, Bowdish, Brooks, Burleson, Bushnell, Cadwell, Cornell, *Daly*, Demarest, Dickinson, Farrett, Findlay, Fitzhugh, Flint, French, *Glasier*, Griffin, Griggs, J. T. Hall, Hathaway, Hawley, *Hibbard*, Hoes, Holmes, Hubbell, Hulburd, Hutchinson, *Jones*, Ketchum, Lamson, Lee, Leland, *McMurray*, Mason, Medbury, *Miller*, Monroe, Morrison, Murray, Nicoll, Niles, Palmer, *Paulding*, *Pentz*, Poucher, Richards, *Sanford*, Sheffield, L. Sherwood, T. Sherwood, Shumway, Slingerland, J. B. Smith, Soper, Sours, Speaker, Spink, Stimson, Stratton, Teats, *Thompson*, Tower, Udall, Van Duzen, Van Schaack, Vary, Walton, S. Warren, *White*, Wright, Youngs, Zoller.

"Those who voted in the negative are,

"Messrs. BABCOCK, DEWEY, FULLER, KENYON, MCGRAW, SPENCER, E. STRONG, A. STRONG.

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Page 1022.

"The House then (3 o'clock p. m.) proceeded to the further consideration of the question on the final passage of the engrossed bill from the Senate, entitled 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' *heretofore read the third time and laid on the table.*

Mr. Speaker put the question whether the House would agree to the final passage of the said bill, and it was determined in the affirmative—two thirds of all the members elected to this House voting in favor thereof, as follows, to wit: ayes 91, nays 3.

Those who voted in the affirmative are, Messrs. Allen, Austin, E. Baldwin, *E. G. Baldwin*, O. Benedict, T. Benedict, Bentley, Bigelow, Booth, Bostwick, Bowdish, Brooks, A. Brown, M. Brown, Buck, Burleson, Bushnell, Cadwell, Church, *Daly*, Demarest, Dickinson, Douglass, Elseffer, Emerson, Erwin, Fassett, Findlay, Fitzhugh, Flagler, Flint, French, *Glasier*, J. T. Hall, W. Hall, Hathaway, *Hibbard*, Hoes, Holmes, Hubbell, Hutchinson, Jackson, *Jones*, Kenyon, Ketchum, Lee, Leland, Lyon, McCarthy, *McMurray*, Mason, Medbury, *Miller*, Morrison, Murray, Nicoll, Niles, Osterhout, Palmer, *Paulding*, *Pentz*, Poucher, Richards, Russell, *Sanford*, Sheffield, L. Sherwood, T. Sherwood, Slingerland, Smiley, J. B. Smith, Soper, Speaker, Spink, Stimson, Stratton, A. Strong, Sweeney, Teats, *Thompson*, Tower, Udall, Vandenburgh, Wait, Walton, S. Warren, West, *White*, Wright, Youngs, Zoller.

"Those who voted in the negative are

"Messrs. HAWLEY, McGRAW, McNEAL."

NOTE. The gentlemen who voted against the passage of this bill are the

HON. GEORGE R. BABCOCK, Buffalo.

" JEDEDIAH DEWEY, JUN., Manchester Centre, Ontario County.

" JEROME FULLER, Brockport, Monroe County.

" HARVEY McGRAW, Cortlandville, Cortland County.

" DANIEL D. SPENCER, Fowlerville, Co.

" ENOCH STRONG, Perinton, Monroe County.

The names of the members absent, are the Hon. Messrs. J. C. Brown, H. Cole, Wm. Conselyea, jun., Edward Cornel, Joseph Graves, H. Hunt, Robert Haight, S. Larned, Milton McNeal, John W. Martin, J. W. Porter, George Redington, E. A. Rice, A. Ritchmeyer, S. Russell, Robert Smith, E. Suydam, D. Wales, E. F. Warren, N. K. Wheeler, R. A. Williams.

Page 1024.

"Ordered, That the Clerk deliver the said bill to the Senate, and inform them that this House has passed the same severally without amendment."

NOTE. *The Senate were at this time in Executive session in reference to the Recordership of Troy, and continued in executive session from 3 to 4 o'clock, P. M. See Journal of Ex. Session and Albany Journals of that and several succeeding days.*

SENATE JOURNAL.

Page 592.

"A message was received from the Assembly, informing that they had passed the bill with the following title, to wit: 'An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' without amendment.

"Ordered, That the Clerk deliver the said bill to the Governor.

Page 575.

"TUESDAY, 10 o'CLK., A. M.—*April* 18, 1843.

"Mr. Bockee offered the following resolution:

"Resolved (if the Assembly concur), That the time of the adjournment of the Legislature be extended to four o'clock, P. M.

"Mr. President put the question on agreeing to said resolution, and it was decided in the affirmative.

"The yeas and nays having been moved and seconded, were as follows:

"FOR THE AFFIRMATIVE—Messrs. Bartlett, Bockee, Chamberlain, Corning, Dixon, Ely, Faulkner, Foster, Franklin, Porter, Putnam, Rhoades, Root, Scovil, Sherwood, Works, Wright.

"IN THE NEGATIVE—Messrs. Denniston, Deyo, Dickinson, Hard, Hopkins, Lott, Mitchell, Platt, Ruger, Strong, Varian, Varney.

"Ordered, That the Clerk deliver a copy of said resolution to the Assembly."

ASSEMBLY JOURNAL.

Page 1031.

"TUESDAY, 10 o'CLK., A. M.—*April* 18, 1843.

"The Senate sent for concurrence a resolution in the words following, to wit:

"Resolved (if the Assembly concur), That the time of the adjournment of the Legislature is extended to four o'clock, P. M.

"Mr. Speaker put the question whether the House would concur in the above resolution, and it was determined in the affirmative.

"Ordered, That the Clerk return the said resolution to the Senate, and inform them that this House has concurred therein."

SENATE JOURNAL.

"TUESDAY, 10 o'CLK., A. M.—*April* 18, 1843.

Page 584.

"A copy of a resolution was received from the Assembly, informing that they had concurred in the resolution of the Senate, extending the time for adjournment until 4 o'clock, P. M."

Copy of a Document filed in the Office of the Secretary of State, and certified by that officer, under his Seal of office, in reference to the Confiscation Act.

"SECRETARY OF STATE'S OFFICE,
"TUESDAY, APRIL 18th, 1843.
"Half-past 4 o'clock, P. M.

"The undersigned—a member of a Committee appointed by a public meeting held at the Merchants' Exchange in the City of New York, on the 6th day of March, 1843, to proceed to Albany to deliver to the President of the Senate a remonstrance of said meeting against the provisions set forth or referred to in certain bills applied for by the corporation of the City of New York, or some of their officers, to the Legislature of this State, to be passed into laws; and also to appear before the Committee of either branch of the Legislature, and oppose the passage of said bills in their then shape—Remonstrates against the approval by the Governor of this State of the act entitled 'An Act to authorise the Mayor, Aldermen and Commonalty of the City of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' on the ground and for the reason that both branches of the Legislature of this State, which had passed the said bills, did not give the same to His Excellency the Governor for his approval until past the hour which they, the said two houses, had fixed on, by a concurrent resolution, for adjournment; and that the said bill was not signed, as approved by His Excellency the Governor, until past four o'clock of this day in the afternoon; and that the bill was signed by His Excellency the Governor after the said bill became null and void, under the provisions of the twelfth section of the 1st Article of the Constitution of this State: the said bill having been signed by the Governor, in the presence of the Hon. Mr. Babcock, a member of the House of Assembly of this State, who was with another Honorable Member of the Assembly in attendance upon His Excellency as a Committee from the said House, and also against its being certified.

"EBEN MERIAM, of the Committee, and for himself individually.

"HON. SAMUEL YOUNG,
To the Secretary of State.

"Filed April 18, 1843, at ten minutes before 5 o'clock, P. M.

"ARCH'D CAMPBELL, Dep. Sec. of State.

"STATE OF NEW YORK,
Secretary's Office.

"I have compared the preceding with an original instrument in writing, on file in this office, and do certify that the same is a correct Transcript therefrom, and of the whole of said Original.

"In Testimony whereof I have hereunto affixed the Seal of this office, at the City of Albany, the twentieth day of October in the year of Our Lord, One thousand eight hundred and forty-three.

[SEAL]

S. YOUNG, SEC'RY OF STATE."

NOTE. No disrespect is intended toward His Excellency the Governor in this paper. Had he known the demerits of the Bill, he certainly would not (in our opinion) have given his assent to it.

NOTE. *Mr. Meriam was (at the time the above Document was filed) the only representative of the Citizens' Committee at Albany. The Chairman and other members having left, he remained in full charge of the business of their mission.*

SENATE JOURNAL.

Page 593.

A message was received from the Governor, informing that he had this day approved and signed the bill entitled "An act to authorise the mayor, aldermen and commonalty of the city of New York to purchase lands sold for taxes and assessments in certain cases and for other purposes."

Preamble and Resolutions for paying contractors and applying to the Legislature for act to buy under sales for assessments.

WHEREAS, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule, prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the common council, and which were to be paid for by assessments on the property benefited, and as soon as the amounts of said assessments were collected.

AND WHEREAS, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same only in part made, and most of them returned as unpaid and uncollected, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state, advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; but the amount due on said assessments could not be real-

ized, by reason of their being no bids at such sales for said property, *THE AMOUNT OF SAID ASSESSMENTS BEING MORE THAN THE PRESENT MARKET VALUE OF SAID PROPERTY SO LIABLE*, in consequence whereof the said contractors are still unpaid; the common council, in order to relieve them, and anticipating the collection of said assessment, and which may hereafter be made, and trusting that they may be authorised by the Legislature, to raise by tax the amount which they may so advance, and to secure themselves and city treasury, from any loss, by being authorised to purchase in at any sale, such property, for which there may be no bids; do adopt the following resolutions:

1. *Resolved*, That the counsel prepare a law, under the direction of the law committee, to be applied for, to the Legislature, authorising the corporation to become purchasers of property which may hereafter be offered for sale, for payment of assessments agreeably to law; to refund them for any advances which may have been made them, to contractors or others, for the improvement for which such assessments were imposed. Such law to contain all needful provisions to secure the rights of parties interested therein, and that such property be held as a trust fund to repay such advances.

2. *Resolved*, That the comptroller be authorised to pay the several contractors the amounts respectively due them, for the several improvements made in pursuance of the ordinances of the common council, in all cases where the property assessed therefor, was benefited by such improvement, has been offered for sale, and could not be sold by reason for the want of any bid, at the recent sale of property for assessments, or in cases in which the sale of such property has been enjoined by the Court of Chancery, such payment to be made on the first day of October next.

3. *Resolved*, That the comptroller include the estimated amount required for the above payment, in the amount of the next annual tax bill, to be applied for to the next Legislature.

4. *Resolved*, That the counsel to the corporation, under the direction of the law committee, **take measures to obtain a revision of assessments,** mentioned in the annexed schedule as may be judged expedient, and agreeable to law.

Passed Board of Aldermen, February 22; Assistants, Feb. 25; approved by the Acting Mayor, February 25, 1841.

Copy of a Letter addressed to Lieut. Governor DICKINSON, *President of the Senate, and by him presented to that body on the 11th of March, 1843, and now on file in the Archives of the Senate, accompanied by the Memorial of Meeting held at the Merchants' Exchange, together with the semi-Veto Message of His Honor Mayor* MORRIS.

"NEW YORK, MARCH 9TH, 1843.

"HON. D. S. DICKINSON, LT. GOVERNOR of the State of New York, and PRESIDENT OF THE SENATE; or the "HON. GEORGE R. DAVIS, SPEAKER of the House of Assembly.

"Dear Sir: At a Public Meeting (convened by public notice) held at the Merchants' Exchange on Monday, March 6th, 1843—to take into consideration the objectionable features of the Assessment and Tax Bills recently agreed upon by several members of the board of aldermen and assistant aldermen of the city of New York, and *dissented* to by his Honor the Mayor of the said city as set forth in his Message herewith sent—a Resolution was passed that this meeting remonstrate against the objectionable provisions of the Tax and Assessment Bills; and that a Memorial, asking for amendments, and further and other provisions of Law, in the premises, be coupled therewith. Whereupon, a Remonstrance and Memorial was submitted to the meeting, read and approved; and it was thereupon further resolved, that a Copy thereof be sent to His Excellency the Governor, the Hon. the President of the Senate, the Hon. the Speaker of the Assembly, and the Hon. the members of the Senate and Assembly from the city of New York; and that a Committee proceed to Albany and present the Remonstrance and Memorial to the Hon. the President of the Senate, or to the Hon. the Speaker of the Assembly, and request the presiding officer to whom the same is delivered to present the Remonstrance, Memorial and accompanying Documents to the Legislature, and *ask* for the reading of the Remonstrance and Memorial, and the Message of the Mayor, and move that all be referred to the Committee to whom the New York Tax and Assessment Bills have been referred; and that the Committee, delegated by this Meeting, ask to be heard before the Hon. the Committee to whom these matters shall be referred. It was further resolved that the President and Vice Presidents appoint such Committee, and that the committee have power to add to their numbers.

"At a subsequent meeting of the President and Vice Presidents, the following named persons were appointed such Committee, viz., JOHN M. BRADHURST, EBEN MERIAM, BURTIS SKIDMORE, H. W. FIELD, PETER COOPER, ABRAHAM G. THOMPSON, PETER EMBURY, GEORGE GRISWOLD, WILLIAM GALE, W. B. MEECH.

"At a meeting of the said Committee, the following named persons were added on the * * day of March ensuing, viz.: * * *

"It was also further ordered by said committee that the Secretary of the meeting, one of the Committee of Delegates, proceed forthwith to Albany and present this Communication, and the Remonstrance, Memorials and Documents, to the Hon. the President of the Senate, in case the Bills in question are still pending in that body; but if the bills have already passed the Senate, then to the Hon. Speaker of the House of Assembly, who is herein by the Committee here assembled, and by one of their number, in person at Albany, most respectfully requested to present the same to that Branch of the Legislature over which he presides, and ask for the reading of this, of the said Remonstrance and Memorial.

"This Committee not being in readiness to leave the city to-day for Albany, take this course to put the Legislature in possession of the paprs, and thereby prevent delay.

"The Members of this Committee, who are to proceed to Albany, will follow with as little delay as possible.

J. M. BRADHURST,
PETER EMBURY,
A. G. THOMPSON,
PETER COOPER,
BURTIS SKIDMORE,
EBEN MERIAM,
WM. BILLINGS MEECH."

COMPTROLLER'S OFFICE,
JULY 14, 1843.

To the Honorable the Board of Supervisors of the City of New York.

Gentlemen,—This being the day assigned by law for the annual inquiry into the amount of tax to be imposed on the taxable property of this city and county, I send your honorable body all the facts I have been able to collect to assist you in this matter.

Upon examination of these facts, you will perceive that the amount to be imposed by you for the current year must, under any circumstances, be larger than that imposed last year, and this, too, under laws that restrict you to the imposition of a tax for the ordinary purposes of city government, obviously far below that of former years on the same account, and which will be largely deficient in capacity to meet the actual expenditure which will be incurred in this respect under existing laws and appropriations. Over this deficiency you have no control except as a branch of the Common Council, who, informed of the difficulty and the remedy, shall feel it your duty to originate ordinances in the Board of Aldermen, calculated while yet the year is but half spent, to reduce the Corporation expenditures to the limited income you are at this meeting to provide.

You will perceive, gentlemen, that notwithstanding you are called upon by the State laws, to impose a lower tax for the ordinary expenditures of the city government than heretofore, yet the aggregate tax levied for the past year is $2,177,000.* As I have before stated, but which cannot lose any of its emphasis by being repeated, this large imposition of tax is not sufficient to cover the ordinary expenditures of the city, as now incurred and incurring under existing customs and ordinances; and unless the correcting hand of promised Reform be at once applied by the Common Council in retrenching some expenditures and postponing others, there seems to be no alternative but a stoppage of supplies at the close of the year, or the accumulation of a floating debt in the shape of unpaid bills, as the Common Council have not the power to borrow a larger amount in anticipation of its revenues than the tax which the Board of Supervisors levy.

It will undoubtedly surprise your honor-

able body, that under these circumstances the aggregate lot is to be higher. It arises from the state of the school and water taxes. Last year the aggregate of these two taxes was about $574,000. This year they may amount to nearly $790,000, being an increase of nearly $260,000. The Board of Supervisors could well inquire whether it is not in their power, under the existing laws, to compel the trustees of common schools, in their respective wards, to the alternative of leasing school houses for the present, instead of buying them.

My predecessor estimated the expenditure of the present year, for the purchase of sites, &c. for school houses, at $200,000—the estimate in the papers herewith submitted is but $70,000—all of which must be raised by tax, unless the board has power to arrest the expenditure by requiring all parties to hire school houses for the present, which, if in their power, will reduce the tax to a very small item, and accomplish all the beneficial objects intended by the school laws.

The water tax of last year was $477,615, sufficient to meet a little more than two quarters' interest. This year it must be large enough to meet the four quarters' interest, and I have estimated it at $570,000. I have enumerated the different laws affecting the taxes you are to impose, and shall communicate any additional particulars when the committee to whom this communication will be referred may desire.

Respectfully communicated,
ALFRED A. SMITH, Comptrol.

ESTIMATE OF TAXES FOR 1843.

Water tax		$570,000
Floating debt tax		50,000
Watch tax		212,000
Lamp tax		110,000
Contingent tax		688,000
State tax		230,000
School tax		220,000
Delinquencies on tax of 1842		57,000
Discount on tax	Levying Tax	16,000
Collector's fees	Levying Tax	29,000
Assessors' fees, &c.	Levying Tax	15,000
Total		$2,177,000

BOARD OF SUPERVISORS.

SEPTEM. 27TH, 1843.

The following communication, was received from the Comptroller, viz.:

COMPTROLLER'S OFFICE, SEPT. 27TH, A. D., 1843.

To the Hon. the Board of Supervisors:

Gentlemen—I respectfully submit the new assessment-rolls for confirmation. I have been unable to do so at an earlier period by the delay of several of the Assessors.

The aggregate amount of the taxable property enrolled is $227,997,090 58-100ths, being a decrease of $9,809,810 42-100ths below the enrollment of the previous year.

The aggregate amount enrolled in the
Lamp District, is - - $220,604,442 58-100
Watch District - - - - 220,723,797 58-100
Water District - - - - 217,940,097 58-100

You will be pleased to ascertain that the present tax to be levied need not be so high as was anticipated, nor so large even as that imposed last year. So great is the proposed reduction that the increased tax for water interest, and for the exemption of the 12th and part of the 16th Wards from the water tax, will not be *practically* felt in other parts of the city.

The hesitation of the Common Council at expensive projects, and its efforts for curtailing others of less notice, have had a marked effect in producing this desirable state of things. The improved laws relative to the collection of certain revenues belonging to the Common Council, long in **ABEYANCE,** have worked exceedingly well, producing results the most gratifying, and far beyond the most sanguine anticipations; I allude to the laws permitting the Corporation to indem nify themselves for awards advanced upon unpaid assessments, imposed by the Supreme Court. It is now **four years** since the Common Council first endeavored to procure the passage of this act. The vigorous and misapprehending opposition it met at every stage of its progress, delayed its passage until the **close** of the last session of the Legislature. For the few months it has been in operation, it has contributed a large accession to the city treasury, thereby enabling the government to dispense with an equal amount of tax.

Owing to the caution in expenditures and the improvement in the revenues above alluded to, the aggregate tax need not be more than $1,800,000, being $230,000 lower than that of the previous year, and about eighty-one cents to each one hundred of the assessed valuation. The credits which the several Wards are entitled to receive, will, in fifteen of the Wards, *slightly* reduce this rate; in the Fifteenth Ward they will *largely* reduce it, and in the Twelfth Ward almost annihilate it.

Respectfully communicated.
ALFRED A. SMITH,
Comptroller.

Which was directed to be published, printed as a document, and ordered on file.
SAML. J. WILLIS, Clerk.

On page 8 of the Report of Alfred A. Smith Esq., City Comptroller, for 1840, under head of "Liabilities of the City Government," is the following:—

"Assessments Bonds, $400,000..00."

On page 83 of the report of the same officer, for 1841, the amount of these bonds, *outstanding*, is stated at "$270,000."

On page 26, of the same report, the Comptroller states thus—

"The assessment bonds of the Corporation, to the amount of $270,000, have been issued in anticipation of the assessment sales to take place in March next, to meet the payment of awards to individuals for damages sustained in opening and widening streets, imposed by the Supreme Court. They were negotiated at par, bearing six and seven per cent. interest, *to be met and paid whenever and as often as the liens held by the Corporation for their redemption are realized.* Seventy thousand dollars of the issue of 1841, with the issue of the previous year, have been paid. The amount of these bonds outstanding January 1st, 1842, was $200,000..00. A specific amount of the liens is given in the appendix. The Bonds were issued under the authority of the *amended Charter*, empowering the Corporation to borrow money in anticipation of its revenue; and the State act, cited in the ordinance on the subject, passed August 1, 1840. It is believed that this is the last issue of Assessment bonds the Corporation will be required to make."

In a Communication of the City Comptroller, Alfred A. Smith Esq., for the present year, dated May 29th, 1843, to which he appends a schedule of the City Debt, he states that the Assessment Bonds outstanding on the 20th of May, 1843, amounted to $200,000..00; and subsequently he states that the means of redemption of these bonds are "arrears of assessments."

In the Communication of the City Comptroller of the 27th September, addressed to the Board of Supervisors, quoted above, he uses this language:

"The improved laws relative to the collection of certain revenues belonging to the *Common Council*, long in abeyance, have worked exceedingly well, producing results the most gratifying, and far beyond the most sanguine anticipations; I allude to the laws permitting the Corporation to indemnify themselves for awards advanced upon unpaid assessments, imposed by the Supreme Court. It is now four years since the Common Council first endeavored to procure the passage of this act. The vigorous and misapprehending opposition it met at every stage of its *progress*, delayed its passage until the **close** of the last session of the Legislature. For the few months it has been in operation, it has contributed a large accession to the City Treasury, thereby enabling the Government *to dispense with an equal amount of tax.*"

How much? Answer, 0 0 0 0!

Gentle Reader, compare the foregoing Statements of the City Comptroller together, and then compare his Schedule of Tax Items of July 14th, 1843, with the following Resolutions.

"BOARD OF SUPERVISORS,
"SEPTEMBER 27, 1843.

"The following Resolutions were called up, the blanks filled, and the same were then laid on the table and directed to be printed for the use of the members.

"SAMUEL J. WILLIS, Clerk.

"1st. Resolved, That there shall be raised by tax on the real estate situated within the City of New York, and on such persons as are or may be liable to taxation on personal property therein, and to be collected according to law, the sum of five hundred and forty-four thousand eight hundred and forty-four dollars and ninety-one cents, to be applied towards defraying the contingent expenses properly chargeable to the said City and County of New York, towards paying such expenses as the Mayor, Aldermen and Commonalty of the City of New York

may in any manner sustain or be put to by law, and for defraying the whole of the expenses for assessing and collecting the taxes to be raised as aforesaid, by virtue of, and in conformity with, the provisions of the Act of the Legislature of the State of New York, entitled 'An Act to enable the Supervisors of the City and County of New York to raise money by tax,' passed April 17, A. D. 1843.

"2d. Resolved, That there be raised by tax on the real estate situated within the said city, and on such persons as are or may be liable to taxation on personal property therein, and to be collected according to law, the sum of thirty-five thousand four hundred and four dollars and seventy-one cents, being the amount of money last appropriated by this State to the said City and County of New York, for the support and encouragement of common schools in the City of New York; and also the further sum of one hundred and thirteen thousand nine hundred and ninety-eight dollars and fifty-four cents, being the one-twentieth of one per cent. of the value of the said real and personal property in the said city liable to be assessed thereon, to be applied exclusively to the purposes of common schools in said city, pursuant to an Act of this State to extend to the City and County of New York the provisions of the general Act in relation to common schools, passed April 11th, 1842, and the law to amend the same, passed April 18th, 1843.

"3d. Resolved, That there be raised by tax on the estates, real and personal, of the freeholders and inhabitants of, and situated within the said city and county, to be collected, the sum of seven hundred and eighty dollars, for the support and education of six mutes at the New York Institution for the Instruction of the Deaf and Dumb. The said tax to be raised and collected by virtue of, and in pursuance of a law of this State entitled 'An Act extending and supplementary to certain Acts providing for the indigent deaf and dumb within this State,' passed April 15, A. D. 1825; and other Acts extending the same, passed April 30th, A. D. 1836, and May 1st, A. D. 1841.

"4th. Resolved, That there shall be raised by tax on the estates, real and personal, of the freeholders and inhabitants of and situated within the said city and county, to be collected, the sum of two hundred and eighty dollars, for payment of clothing of thirteen deaf and dumb persons, viz., Mary Hurley, Catharine Gilhooley, Frederick Swaysland, David Jones, Emily Stanton, Catharine McMourgel, Margaret and Patrick Harrington, John Fenton Rapp, John Kerrigan, Jennette Wallace, Jefferson Houston, and John Acker, and placed in said Institution for the Deaf and Dumb by the Commissioners of the Alms House; said tax to be raised and collected by virtue of, and in pursuance of the laws of this State of 1838, Chap. 244; and also the further sum of four hundred and forty dollars for payment of clothing of twenty-two blind persons, viz.,

* * * * * * *

placed in the State Institution for the Blind by the said Commissioners of the Alms House; said tax to be raised and collected by virtue of, and in pursuance of the laws of this State of 1839, Sec. 5 of Chap. 200.

"5th. Resolved, That there be raised by tax on the said estates, real and personal of the freeholders and inhabitants of, and situated within said city and county, to be collected the sum of fifty thousand dollars, to be raised and collected and applied under and by virtue of an act of this State, passed May 14th, A. D. 1840, in relation to the **OLD Floating Debt** of said city.

"6th, Resolved, That there shall be raised by tax on the estates, real and personal of the freeholders and inhabitants of and situated in the said city and county, to be collected the sum of two hundred and twenty-seven thousand nine hundred and ninety-seven dollars and seven cents, being one mill on the dollar on the valuation of the said real and personal estate, in pursuance of an act of the Legislature entitled, 'An Act to provide for paying the debt and preserving the credit of the State,' passed March 29th, A. D. 1842.

"7th. Resolved, That there be raised by tax on the estates real and personal of the freeholders and inhabitants of and situated within the water district of said city, the sum of $509,391..16, to pay the interest on the water stock of the City of New York, in pursuance of an act entitled 'An Act in relation to the Croton Water Works of the City of New York,' passed April 18th, A. D. 1843.

"8th. Resolved, That there shall be raised by tax on the estates, real and personal of the freeholders and inhabitants of and situated within the 'Watch district' of the said city, the sum of two hundred and twelve thousand dollars to be collected towards defraying the expenses of watching and guarding such district, in pursuance of an act, to enable the Supervisors of the City and County of New York, to raise money by tax, passed April 17th, A. D. 1843, and also the further sum of one hundred and ten thousand dollars, by a tax on the estates real and personal of the freeholders and inhabitants of and situated within the 'Lamp district' of the said city, to be applied towards defraying the expenses of lighting said district last mentioned, pursuant to the said last mentioned act, passed April 17th, A. D. 1843.

"9th. Resolved, That the amount of the taxes hereby imposed and directed to be levied for interest on the Water Stock, for the support of Common Schools, and for the State Tax, be carried out on the assessment books, in a column separate from all other taxes herein imposed.

"10th. Resolved, That the assessment rolls annexed, are hereby confirmed, and that the Comptroller cause the same to be completed."

REMARKS.

We have thus given the proceedings of the Senate and Assembly upon the Bill authorising the Corporation to purchase lands for assessments.

The Petition, it will be seen, was presented by Mr. Franklin in the Senate on the 18th of March; and on the 21st of March, Mr. Franklin, as Chairman of the Select Committee, composed of himself, Mr. Varian, Mr. Scott, and Mr. Lott, reported a bill, which was read the first time and committed to a Committee of the Whole, and ordered to be printed. Mr. Franklin had been a member of the Common Council of the city of New York, and so had Mr. Varian, and at a time when these assessments were, many of them, consummated. Mr. Franklin, in 1840, signed a memorial to the Legislature, which is now in the archives of the Senate, and a copy of which is in the Senate Document No. 100 of 1842, page 285, in which these assessments are characterised as uncalled for, unnecessary and ruinous, and asking the Legislature to remedy the evils complained of, and to suspend the sales for assessments. Mr. Franklin also presented the memorials of Martha Amory, James McBride and R. V. R. Schuyler, on the 6th of February, 1843, which were, on his own motion, read and referred to a Committee of which he was a member, and which he had not reported upon, although they had been in his hands more than a month. Here were three memorials which set forth abuses of an aggravated character, and copies of which are to be found in Senate Document of 1842, No. 100, pages 318 to 324 and in pages 154 to 158 of this volume.

On the second of March, Mr. Dixon presented in the Senate, the memorial of James G. King, Effingham Schieffelin, and others, complaining of assessment abuses of an aggravated character; which was read and referred to the Committee of which Mr. Franklin was Chairman.

On the 11th of March the Lieut. Governor of the State, as President of the Senate, presented in the Senate, the Memorial of a public meeting held at the Merchants' Exchange in the City of New York, on the 6th of March, over which thirteen distinguished Citizens presided as officers, viz.: Preserved Fish, Chairman; Abraham Van Nest, Peter Schemerhorn, Peter Cooper, Peter Embury, Abraham G. Thompson, George Griswold, Jonathan Goodhue, Charles H. Russell, Wm. B. Crosby, Peter J. Nevius, Peter Lorrillard jun. and John Haggerty, Assistant Chairmen. All the gentlemen named, were in their seats upon the platform, except the two latter, who subsequently signed the proceedings which are now in the Archives of the Senate, and to which we refer. A more respectable set of Officers of a public meeting cannot be found any where, and they are gentlemen about equally divided in numbers as to politics—men greatly beloved, and of deservedly very high standing in this community.

The Officers of this meeting, were by a resolution of the meeting, authorised to appoint a Committee to proceed to Albany to represent the matters contained in their remonstrance to the Legislature. The officers were duly convened on the evening of the day succeeding the day, on which the public meeting was held. A Committee of nine

gentlemen were appointed, seven of whom convened the next day and addressed a Letter to the Lieut. Governor of the State, Hon. D. S. Dickinson (President of the Senate), which he presented to the Senate, with the memorial of the public meeting signed by the Chairmen and twelve assistant Chairmen and their Secretary, which were read, and on motion of Senator Strong, referred to the Judiciary Committee. A Copy of the letter is herein before set forth.

Numerous Memorials were at various times presented in the Senate by Mr. Dixon and Mr. Rhoades, numerously signed by highly respectable Citizens of BOTH political parties, complaining of the imposition of Fictitious and Ruinous Assessments upon Private Property for what are miscalled "*public improvements*"; and of the loose and *reckless* manner in which these proceedings have been carried on. These memorials were signed by STEPHEN ALLEN and PHILIP HONE, two Citizens of high standing—men of great purity of character, and of great moral worth—both of whom had held the office of Mayor of the City of New York; —by PETER A. JAY, former Recorder of the City of New York—a man beloved by all who knew him;—by GULIAN C. VERPLANCK, a very distinguished member of the Senate—distinguished as well for his unyielding firmness and independence as for a great and highly cultivated mind. Mr. Verplanck was a member of the Committee appointed by the Senate in 1841 to investigate assessment abuses in the city of New York, but whose term of office expired before that Committee made their report to the Legislature. The memorial was also signed by near thirty gentlemen who had been members of the Common Council, and thousands of other citizens of the highest respectability, of both political parties, including the President of nearly every Bank and Insurance Company in the City. This memorial was twice published in the Journal of Commerce, one of the most respectable journals of the City of New York, and printed copies sent to all the Banks and Insurance Offices in the city. This memorial was signed by the great capitalists in the City of New York, and numerous others—gentlemen who pay immense taxes annually. Such an expression of PUBLIC OPINION, by such a multitude of most worthy Citizens, we have never before witnessed.

The worthy Chairman of the New York Citizens' Committee, JOHN M. BRADHURST, one of the best men in our land—the man who (when holding the office of Alms House Commissioner) resigned his office in preference to being longer an officer under a profligate, reckless, and most prodigal Corporation—on the 31st March presented, through SENATOR RHOADES, to the Senate a Remonstrance against the passage of the Act authorising the Corporation to purchase lands for assessments. This Remonstrance was also signed by all the members of the Citizens' Committee then in attendance at Albany, and was, on motion of Mr. Rhoades, referred to the Committee on the Judiciary: he also moved that the Bill which had been reported by Mr. Franklin be committed to the Committee on the Judiciary. The Bill was so committed. This, it will be borne in mind, was on the 31st of March. On the following Tuesday, which was the 5th day of April, Mr. Scott offered a resolution that the bill "authorising the Mayor, Aldermen and Commonalty to purchase lands sold for taxes and assessments, in certain cases, and for other purposes," be referred to a Select Committee to report complete. Such a motion as this, was not in order—the bill not being before the Senate, but in the hands of the Committee on the Judiciary. One of the New York Citizens' Committee spoke to Mr. Scott in relation to his resolution, and told him that the bill was in the hands of the Committee of the Judiciary, and he replied that the Legislature would never pass the bill, and no apprehension need be felt about it; and yet, notwithstanding this remark, he recorded his own vote, on its third reading, in favor of its passage. We cannot see how Mr. Scott can reconcile his remark, as above, with his vote. Mr. Scott has been waited upon several times, by the Citizens' Committee, and was told that this bill was a very obnoxious bill, and ought not to be for a moment entertained. We are still more surprised, in contrasting this vote of Senator Scott with the language in his correspondence with a member of the New York Citizens' Committee, which is as follows:

"CONGRESS HALL, ALBANY,
April 19th, 1843.

"HON. JOHN B. SCOTT:

"Dear Sir—The Secretary of the Merchants' Exchange Meeting in New York, held on the 6th of March ult., brought from the city of New York, to your address, forty memorials on the subject of taxes and assessments in said city.

"Will you have the goodness to say if they were received, and what disposition was made of these papers.

"Respectfully, &c.,
"EBEN. MERIAM, of the
Committee of the Merchants' Exchange Meeting."

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"NEW YORK, MAY 23, 1843.

"DEAR SIR—When at Albany, I addressed you a note, enquiring for the petitions forwarded to you for presentation to the Legislature (40 in number), having been unable to find any mention of them in the Journals of the Senate. I am again under the necessity of renewing the enquiry. As the Committee, delegated by the public meeting held at the Merchants' Exchange, are to be convened to make a report of their proceedings, to be published to the people, your reply is needed.

"Should I not receive a reply, I shall address a communication to Mr. Meech, enclosing copies of this communication and of note addressed to you at Albany, and lay the whole before the Committee as the best information that I am able to present on the subject. "E. MERIAM, of the Citizens' Committee delegated by the Meeting at the Merchants' Exchange.

"HON. JOHN B. SCOTT."

"NEW YORK, 26TH MAY, 1843.

"E. MERIAM, ESQ.:

"Sir,—I have received yours of the 23d inst. stating when at Albany you addressed me a note enquiring for the petitions forwarded to me (40 in number) to be presented to the Legislature, and that you had been unable to find any mention of these in the Journals of the Senate.

"If you forwarded any petitions to me I did not receive them, otherwise I should have presented them, as I have always done. I took a deep interest in the subject of assessments, and if in my power to correct the evils complained of, no legislator would have done more.

"I admit you addressed to me when you was at Albany a note making some enquiry about petitions you said was forwarded to me. The reason must have been, why I did not answer it, because I did not think it necessary, as I *saw you every day*—and if you had considered it important, why you did not mention it to me, to say the least of it is very extraordinary. You was sent to Albany expressly to attend to this matter. I was pressed as you know with a great load of public business; notwithstanding I was always accessible and frank in my communications with you, and if you had called on me at Albany, or since my return, I should have been happy to give you any information in my power. I do repeat your two notes are very extraordinary in as much as I have not had one word of difference with you. If your committee instructed you to communicate only in writing, you should have informed me on the subject—and I should have told you such a course was inadmissible particularly at the close of the Session for want of time. JOHN B. SCOTT."

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"E. MERIAM, ESQ.:

"Dear Sir—I have just received your note of 30th May enclosing a communication from Hon. John B. Scott to yourself relative to the petitions forwarded by the Committee of which I was a member, and which Mr. Scott denies having received. I am surprised at this, as I have a distinct recollection of having handed him the petitions or memorials on the morning of my arrival at Albany, with a request that he would present the same to the Legislature that day. The memorials were, I think, thirty or forty in number, forming quite a large package, and with them a letter of introduction from yourself to Mr. Scott. I am positive of this from the circumstance of my experiencing some difficulty in finding him.

"The memorials may have been mislaid, and subsequently forgotten, from his great press of business; but as to the fact that he received them, I cannot be mistaken.

"Tuesday Evening, May 30, 1843.
"Respectfully, yours,
"WM. BILLINGS MEECH."

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"NEW YORK, 31ST MAY, 1843.

"E. MERIAM, ESQ.:

"Dear Sir—Yours of the 29th inst. and a letter from Mr. Meech of the 30th directed

to you subsequently enclosed to me. I am as much surprised at Mr. Meech's letter as he can possibly be at mine. I do not mean to say that it is all very possible he handed to me the Petitions with a request to present them to the Legislature, but I do declare unequivocally that I have no recollection of the fact. That if he handed me a bundle of papers I could not have heard, or understood they were petitions. Mr. Meech admits I was very much engaged at the time, and he had no opportunity to converse with me. I do not *know Mr. Meech personally* and do not remember seeing him at Albany, or a gentleman by that name or any letter of introduction from you. I think I am sure if I know myself, if Mr. Meech had conversed with me and called my attention to the Petitions I could not have failed to notice it. I have ever held it a sacred duty as a Representative of the People, to hear them on every subject, they may wish to bring before the Legislature.

"You will admit with me, that the great pressure of public business, Legislative, as well as Executive, last winter was such that the continual stream of thousands pouring in upon me for public office, was some excuse why I could not at all times hear every body at *the time they wished*, or treat them with the ceremony of the drawing room. I have been in the habit always of opening papers and letters on my table, and occupied at a late hour at night in reading them, and making a memorandum of every thing to be done the next day. But unaccountable as it may seem, I never saw these petitions. I cannot doubt but that this package was taken from my table or mislaid, because I cannot doubt that so respectable a gentleman as Mr. Meech is, having charge of the package, and having only one object to remember, whereas I had a great many every day, that it is most probable he is right—that he handed it to me—what he said, that *they were petitions* may also be so. I suppose you know, I am *hard of hearing in one ear* and if communication directed to me on my left side in the ordinary tone, I do not hear distinctly.

"I have written you a much longer letter than I intended, but am anxious to convince you that no neglect was intended on my part—and I have endeavored to account for a matter which I can no more conjecture than you can. I have never held but one language on the subject of assessments that great abuses have been practised, and that no one was more willing to remedy them as far as my power extended, nothing would have given greater pleasure than to have presented the petitions coming from so large a body of my fellow citizens.

"Very respectfully, yours,
"JOHN B. SCOTT."

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"HON. JOHN B. SCOTT:

"Dear Sir—In your letter to me of May 31st, 1843, you say in speaking of the Memorials forwarded to you by Mr. Meech, you 'cannot doubt but this package was taken from my table or mislaid.'

"If the package was mislaid, you would probably have met with it ere this, and thinking it probable that you may have met with it, I take the liberty of addressing you this note to make the enquiry.

"Yours, respectfully,
"E. MERIAM, of the
New York Citizens' Committee.
"Nov. 7th, 1843."

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When the Bill in question was ordered to a third reading there was much discussion, which we shall notice under the head of Compulsory Inspection, in subsequent pages of this volume. Mr. Varian took the lead in the discussion, and was told by the presiding officer, that Senators must confine their remarks to the question before the Senate. Mr. Varian, as appeared by the printed advertisement of sale of lots for assessments, which was then in the archives of the Senate, was pecuniarily interested in the question, as property in his name is there stated to be assessed the large sum of $1,423..00, and this property, as appears by the record of bids kept by Mr. BODLE at the Assessment Sale, was bid off to the Corporation, on the 21st of June, 1843, for the term of 1000 years, subject to redemption within two years, on payment of 7 per cent. per annum interest. We are not sure, however, that there is not some mistake about this assessment, as it is often the case, that persons are assessed large sums, without notice; and we were subsequently informed by Mr. Gale, a gentleman of high standing, that in conversation with Mr. Varian in the Street Commissioner's office, in June or July, 1843, Mr. V. stated to him, that he had been paying an assessment of a large amount. If Mr. Varian was pecuniarily interested in this question, he should not have voted on the third reading of this bill, and had he not have done so, the bill would not have passed, as his vote alone made up the constitutional number. (*See ante page* 264.) Mr. Varian, as a Citizen, is esteemed a good man, as is also Mr. Scott and Mr. Franklin; but when they express opinions on public measures in their respective capacities of Representatives of the People, these opinions can be publicly reviewed without the least impugning the motives of either of these gentlemen. The best men entertain sometimes erroneous opinions upon public measures, and although the men themselves are beloved and respected, yet that much cannot be felt for the erroneous opinion expressed by them. Had Mr. Varian been aware that he was assessed this large sum, it is presumed, his own sense of delicacy, would have induced him to have asked the Senate to have excused him from voting, and that body no doubt would have excused him. Mr. Franklin, also, is one of our most amiable citizens, a man greatly beloved—had Mr. Franklin consulted his pillow, before giving his vote, in reference to *that* vote, we are confident that his name would not have been recorded in the affirmative. But in the hurry of legislation, with a score of politicians and Corporation Officers at his elbow he had little time for that calm deliberation which, he was taught from infancy to adopt as a rule of conduct. In the Common School question, Mr. Franklin has been highly, and most deservedly commended. We have listened to his addresses in the Senate chamber upon that question, and have been enraptured by his eloquence, by the moving appeals that he made to the consciences of Senators, an appeal that caused the eyes of men whose heads were whitened by the frost of more than three score winters to glisten with emotions, which a heaving bosom had produced. In this question he has won for himself a fame that will endure longer than his mortal frame, and a repose that will be sweeter than all the political conquests ever achieved could have produced.

On the repeal of the compulsory inspection law he also maintained the dignity of the man, and sustained that of the Senator.

Mr. Varian is a man venerable in years—he was for some time member of the Common Council, and two years mayor of the city of New-York, and he was elected to the Senate by a large vote.

In the last year of his mayorality he was (after an excited election) brought to a bed of sickness, which came near terminating his mortal life. We would not wish to utter a thought that would pain the feelings of that venerable man, far from it, but in speaking of a public measure and of the part he took in that measure, public duty requires of us as much as we have said.

Of Mr. Scott, we have to say that he is considered a most excellent citizen. He was a member of the Select Committee of the Senate appointed to investigate assessment abuses in the city of New-York. The report made by that Committee is stated in this volume. Mr. Scott for many years held the office of Judge of the Marine Court. He has been much conversant with public affairs. On the vote being taken on the School question, Mr. Scott did not record his vote—he was absent from his seat—many good persons censured Mr. Scott for this absence.—We were in the Senate chamber at the time the discussion was pending, and when the Vote was taken. We did not blame Mr. Scott then, for his absence, nor do we now, and we have heard Mr. Franklin, when speaking of Mr. Scott, as connected with this particular question, say as much.

It is unpleasant, we repeat, in speaking of these three Senators in connection with the bill authorising the Mayor, &c., to buy lands for assessment to withold the approbation which had they voted and acted differently, we should have been glad to have given them, but nevertheless, we will not condemn the men, but merely the act. The opinions of some of our best, most worthy citizens, upon this act, subsequent to its passage was expressed to the Common Council, and is to be found in chronological order in these pages and connected with these remarks, and before its passage, of the measure, *the foregoing* Memorials and Remonstrances are sufficient, without any addition. The difficulty is that with our public men, politics have too much influence, and overpower their judgments. The Bill in question involved principles, big

with consequences, which we shall notice in the sequel.

This Bill after the discussion in the Senate on ordering it to a third reading was left wholly to its chance by the Citizens Committee, the declarations of Mr. Franklin, that the New-York Senators would take upon themselves the responsibility of the passage of this bill, was an announciation without precedent in the annals of Legislation, and the New-York Committee after this left the Senate Chamber while the bill was passing in that body.

On the 8th of April this bill came to the house of Assembly for their concurrence and was by the Speaker referred to a standing Committee. Mr. D. R. Floyd Jones of the Assembly, from the city of New-York, applied to the Chairman of that Committee to report the bill back again to the house *instanter*, as we are credibly informed—which the Chairman declined doing. The standing Committee of which Mr. Redington of St. Lawrence county was chairman, was convened, and the Senate bill, authorising the Mayor, Aldermen, &c., to purchase lands at assessment and tax sales, laid before them.

"AN ACT

"To authorise the Mayor, Aldermen, and Commonalty of the city of New-York to purchase lands for taxes and assessments in certain cases, and for other purposes.

"*The People of the State of New-York, represented in Senate and Assembly do enact as follows:*

"SECTION 1. It shall be lawful for the comptroller of the city of New-York, at any sale of lands for taxes in the said city, and for the street commissioner of the said city, at any sale of lands for assessments in the said city, held pursuant to law, to bid in, for the mayor, aldermen, and commonalty of the said city, every lot of land and premises by them put up, for which no person shall offer to bid; and certificates of such sale shall be made *by the said comptroller and the street commissioner*, in the several cases of such sale for taxes or assessments, which shall describe the lands purchased, and specify the term of years for which the same shall have been sold, and the time when the said mayor, aldermen, and commonalty will be entitled to a lease of such lands and premises. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands sold shall not be redeemed, *or shall not have been assigned as hereinafter provided*, the said comptroller, in sales for taxes, and the said street commissioner in sales for assessments, shall execute a lease therefor by virtue of the authority in them vested by this act, to the said mayor, aldermen, and commonalty, in the same form and with the same effect as in the cases of leases to individuals, as now authorized by law.

"§ 2. It shall be the duty of the said comptroller, in all cases of purchases of land by the said mayor, aldermen, and commonalty for taxes, and of the said street commissioner, in all cases of purchases of land by the said mayor, aldermen, and commonalty for assessments, *to assign any and all such purchases to any person who shall, at any time within one year from the time when such purchases were made*, offer to take the same, upon their paying to the said comptroller and street commissioner respectively, for the use of the said mayor, aldermen, and commonalty, the purchase money, with *seven per cent interest thereon.*

"§ 3. The person receiving the assignments mentioned in the next preceding section, shall be entitled, upon the redemption of the property to receive the amount paid by them to the said mayor, aldermen, and commonalty, with interest from the time of such payment, *at the same rate and in the same manner as if they had purchased the property at a sale for taxes or assessments.*

"§ 4. In all cases of lands and premises purchased by the mayor, aldermen, and commonalty for taxes or assessments, *in which the same shall not have been assigned, as provided in the second section of this act*, any person may redeem the same previous to the time when the mayor, aldermen, and commonalty, shall be entitled to a lease of such lands and premises, by paying, in the manner provided by law, for the use of the said mayor, aldermen and commonalty, the purchase money, with seven per cent thereon, together with any expense which shall have accrued since the sale.

"§ 5. In all cases where mortgagees of real estate sold for taxes and assessments in the city of New-York, their personal representatives, or owners, lessees, or persons otherwise interested in any lands or tenements so sold, shall file in the register's office of the said city a memorandum of such mortgage or property, pursuant to the act entitled "An act in relation to the redemption of lands sold for taxes or assessments in the city of New-York," passed May 6th, 1841, and of the act entitled "An act in addition to the acts respecting the collection of taxes and assessments in the city and county of New-York," passed May 25th 1841, the street commissioner shall cause the notice of such sale required by said acts to be given to such persons, by sending to them, in the manner therein provided, a printed list describing all the property sold for assessments or taxes, and remaining unredeemed. Such description shall name the street or avenue on which the property may be situated, the side of the street or avenue, and between what streets or avenues, with the map or street numbers of the property, and in whose name assessed, together with the term of of years and the amount for which the same shall have been sold, and the day or days on which the time limited for the redemption of the property will expire, with a notice that unless the property shall be redeemed on or by such days by the payment of the sums for which the same was sold, with all interest and expenses allowed by law, that leases will be given to the purchasers in accordance with the statute in such case made and provided; and it shall not be necessary for the street commissioner to give any other or further notice to the person aforesaid, than is herein contained.

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The following amendments were proposed to the bill in case the Standing Committee should report in favor of its passage, by the New-York Citizens Committee:

AMENDMENTS.

"§ 7. This act shall not be construed to alter or change the term of time during which lands may be redeemed from assessments or tax sales to any shorter period than heretofore provided by law, whether the certificates of sale have been assigned or not, nor to legalise or confirm any assessment not made in accordance to the laws of this State, anything herein before contained to the contrary in any wise notwithstanding.

"§ 8. The moneys authorised to be raised by tax on the estate, real or personal, of the inhabitants and freeholders of the city and county of New-York, shall in no case be used, appropriated or applied to purchase of any lands sold for taxes or assessments in the said city.

"§ 9, This act shall not be construed to authorise the purchase of any lands for unpaid assessments in any case where the improvement was not made on the petition of the majority of the owners of the land affected thereby: nor shall it authorise the purchase of any lands which are assessed more than ten times the actual value of such land; nor in any case where the fees alone of the officers exceed ten thousand dollars for one single improvement; nor in any case where the members of the Common Council of the city of New-York were interested directly or indirectly in the contract work; nor in any case where the Mayor, Aldermen and Commonalty of the city of New-York have not complied with the provisions of the statute under which the proceedings were had; nor in any case where the fees or charge for advertising such property for sale for such such assessment exceed the actual value of the land; nor in any other case where the fees of any one of the officers which are assessed in part thereon exceeded fifty thousand dollars per annum.

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The Committee, as we understood reported in favor of the two first sections of the amendments. Mr. White says in favor of only one of them. One of the amendments we are certain of being reported with the bill, and two we feel very confident were included, but it is sufficiet for our present purpose, that one was reported with the bill.

In the Assembly Journal page we find the following record:

Page 880.

"Thursday, April 13, 1843.

"Mr. Redington from the committee on the incorporation of cities and villages, to which was referred the engrossed bill from the Senate, entitled an 'Act to authorise the mayor, aldermen and common council of the city of New-York to purchase lands sold for taxes and assessments in certain cases and for other purposes,' reported that the

committee had examined the said bill, and saw no reason why the same should not be passed into a law."

"Ordered that the said bill be referred to a select committee, consisting of Mess. Jones, White and Haight, to report complete."

This record of the report of the committee is incorrect as will be seen by the letter of Mr. White which was written in reply to the following:

"New-York, 26th Oct. 1843.

"Hon. Edward H. White

"Member of the Standing Committee on the Incorporation of Cities and Villages, of the House of Assembly, of the session of 1843.

"Dear Sir:—On the 8th of April, last, as appears by the printed Journals of the Assembly a bill from the Senate, was received, entitled "An act to authorise the Mayor, Aldermen and Commonalty of the City of New-York to purchase lands sold for taxes and assessments, in certain cases and for other purposes" and referred to the Standing Committee on the Incorporation of Cities and Villages. I attended before that Committee, as a member of the New-York Citizens' Committee, and proposed amendments to the bill, which were in part adopted by your committee, and as I understood, unanimously, and by that Committee reported with the bill to the house, with a recommendation in favor of the passage of the bill with the amendments.

Am I right as to my understanding as to adoption of the amendments by your Committee, and of the report of the amendment with the bill to the house.

"Yours Respectfully,

"E. Meriam."

"We shall feel obliged by your reply, and the bearer will call at your counting-room for it, this afternoon, or at any other time more convenient for yourself.

—

"New-York, Oct. 28th, 1843.

"Dear Sir:—When the bill authorising the Corporation of the City of New-York to purchase property sold by them for assessments was referred to the Committee on the "Incorporation of cities and villages," of which I was a member, I advocated several amendments to the bill and succeeded in securing the adoption of one, to the effect, that the fund arrising from our ordinary taxation should not be appropriated to the payment of such purchases, and the Bill so amended was reported to the House by Mr. Redington. It was thus referred to a select committee to report complete; that committee consisted of Mr. D. R. F. Jones, Mr. Haight and myself. Mr. Jones on observing the amendment remarked that the Bill was a Senate Bill—that we were within two days of the adjournment—that if the amendment was adopted the Bill must be sent back to the Senate, for which there was not time, and as the Bill was an important one, the amendment must be stricken out; in those views Mr. Haight coincided, and they being a majority of the Select Committee the Bill was reported complete without the amendment. Respectfully yours,

"Edwd. Haydock White."

"E. Meriam, Esq."

—

The following is the correspondence with Mr. Jones in reference to the proceedings in the Assembly touching this bill:

"New-York, Oct. 25th, 1843.

"Dear Sir—I find in the Assembly Journal pg. 894, as follows:

"Mr. Jones from the Select Committee, to which was referred the engrossed bill from the Senate, entitled "An act to authorize the Mayor, Aldermen, and Commonalty of the City of New-York to purchase lands for taxes and assessments in certain cases, and for other purposes," reported that the Committee had gone through the said bill, and agreed to the same without amendments; which report was agreed to by the House, and the bill ordered to its third reading."

"Will you have the goodness to inform me if this recital in the Journal is correct.

"I will direct the bearer to call at your office this evening and if you will favor us with a reply we shall feel greatly obliged.

"E. Meriam, of the Committee deputed to proceed to Albany in relation to Assessments and taxes.

"Hon. D. R. F. Jones.

—

"New-York, Oct. 25, 1843.

"E. Meriam, Esq.

"Dear Sir—I have this moment received your letter enquiring whether the recital of the report of the Select Committee upon the Bill to which you refer as contained in the Assembly Journal p. 894, is correct.

"Let me say in reply. That I well recollect making a report upon the Bill referred to, from a Select Committee to which it was referred for the purpose of being reported complete, immediately subsequent (if I am not mistaken) to the report made thereon by the Standing Committee which had it in charge—and think I made the report as set forth in the Journal. When, however, we take into consideration the hurry of legislation always prevailing at the close of the session and the vast amount of business in which as Chairman of the Judiciary Committee, I was necessarily involved in, it will not be thought strange that I should not recollect with perfect distinctness all the particulars attending the report and disposition of the Bill referred to. I believe however the report in the Journal is correct.

"Very respectfully, &c.,

"D. R. Floyd Jones."

—

"New-York, 3d Nov. 1843.

"Dear Sir—When Mr. Redington, Chairman of the Standing Committee on the Incorporation of cities and villages reported the bill authorising the Mayor, Aldermen, &c., to purchase at their own assessment sales, I was standing at his side. He reported the Bill with amendments. The next morning I went with him to the Clerks desk to examine the bill, and he expressed great surprise on being informed by the Clerk that the amendments had been struck out, and added that he had been in his seat all the previous day and had not heard of motion being made to refer the Bill to a Select Committee to report complete. Will you be so good as to inform us on whose motion this bill was referred to a select committee to report complete.

"The bearer will call for an answer.

"Yours respectfully,

"E. Meriam, of the New-York Citizens' Committee.

"Hon. D. R. F. Jones."

—

"New-York, Nov. 3d, 1843.

"E. Meriam, Esq.

"Dear Sir—In reply to your letter received this morning I have to say that as I am am named in the Journal as Chairman of the select Committee to which was referred the Bill "To authorise the Mayor, &c., to purchase lands &c.," it is very probable that the motion to refer to a Select Committee was made by myself. Very respectfully,

"D. R. Floyd Jones."

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Had the unanimous consent of the House been asked to refer the bill to a Select Committee to report complete it would not, we are confident have been granted, and no other of course proceeding than this, was in order, under the rules of the House.

We are not so conversant with all the nice details of the rules of the two houses which compose our state legislature, and for this reason we deemed the proper course to make enquiry. We therefore addressed a brief note to a highly intelligent citizen who had been four years a distinguished member of the Senate of this making enquiry as to the rules. We received a reply of which the following is a copy:

"Dear Sir—You ask me the question—"When a bill is reported in the Assembly, which has been received from the Senate, and referred to a Standing Committee and such committee report the bill back to the house with amendments. What course does the bill then take under the rules? Can such bill be referred subsequently to a Select Committee" to report complete "without any motion being made by a member to that effect?"

"My answer to your question, is—When a bill is reported by a Standing Committee, either with or without amendments, the ordinary course of business in the Assembly, under the rules, is, that the bill with the proposed amendments, is placed upon the "general orders"; and cannot be moved from thence, or referred to a select committee "to report complete," except upon motion of a member; which motion can only be made when *motions, resolutions, and notices* are in order, unless by unanimous consent of all the members present, or permission being asked, or upon a motion and vote taken to lay all the previous orders of business upon the table, with the view of taking up that of "motions, resolutions and notices."—Some Sessions, towards the close, when the House is much pressed with business, and

their general orders are very large, the Assembly appoints a Select Committee of nine members who are empowered to examine the Clerk's list of the general orders, and to designate such bills as in their judgment should be taken off that list, and referred to be reported complete.

The business of this Select Committee of nine is confined to reporting such bills as originate in the House, either with or without amendments proposed, where there is no dispute about the bill, or where the amendments are not objected to—and also such bills as come from the Senate and present no objectionable features. Money bills—bills of general moment, or those involving contested questions, are not, or at least should not be disposed of in this manner. This proceeding is for the purpose of expediting the minor business of the House, and is applied to bills principally of a private character, which although of great moment to those immediately interrested, are of little importance to the public generally. When this committee have determined what bills are proper to be removed from the general orders, they report the same to the House. Their report is generally adopted as a whole; but any member, who is opposed to one or more of the bills thus reported by them, may ask for a division, and the question is then taken upon one or more of :he bills separately as may be desired.

On adopting the report of this Committee of nine, the Speaker then refers the bills mentioned in it, to the appropriate Committees, with instructions to consider and report complete. The Committee thus instructed may report the bill as complete either with or without the amendments proposed by the previous Standing Committee as they may think fit. Their report of the bill as complete must be made to the house when reports are in order, and upon its adoption by the House, the bill is either ordered to be engrossed for a third reading, if originating in the Assembly, or the amendments ordered to be engrossed if any are made to a bill coming from Senate, and the bill if coming from the Senate is ordered to a third reading.

In no other way than one of those above indicated can a bill reported in the Assembly, and placed upon the General Orders, be properly taken off, and reported complete, and passed to a third reading. The Senate have no such course of proceeding as that of the Committee of 9—all bills there must be taken off the General Orders by special motion and referred to a Committee to report complete. If no such motion be made, the bill remains upon the General Orders, until it is reached either as general or special order, and passed by the Committee of the Whole, upon whose reports, if adopted, it is either ordered to a third reading, or to be engrossed for a third reading.

" Trusting that the above may contain al the information you desire—

" I am, Sir,

" Yours very respectfully,

" G. Furman."

Brooklyn, Oct. 27, 1843.

Previous to the bill being received from the Hon. the Senate, authorising the Mayor, Aldermen, and Commonalty, to purchase lands, at their own assessment sales, several memorials asking relief from assessment abuses of an aggravated character had been presented in the Assembly, as will appear by the following extracts from the Assembly Journal:

" *Assembly Journal.*

Page 268.

" Thursday, February 9, 1843.

" The memorial of Joseph Alexander of the city of New-York, complaining of various public officers, in relation to the arbitrary and oppressive assessments for the the pretended opening of Manhattan square, was read and referred to the committee on grievances.

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Page 274.

" Friday, February 10, 1843.

" The petition of Mrs. Winifred Mott, for relief in the matter of the proceedings of various public officers in relation to an oppressive an arbitrary assessment for the pretended opening of the ninth avenue in the city of New-York, was read, and referred to the committee on grievances.

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Page 352.

" Tuesday February 21, 1843.

" The Memorial of Cornelius Bogert, agent of Sampson Benson, in relation to an assessment imposed on a piece of salt meadow, was read, and referred to the committee on grievances.

" The memorial of John H. Talman, in relation to an assessment upon his property, for the pretended opening of Manhattan square, was read, and referred to the committee on grievances.

" The memorial of John Morss and others, with public documents annexed, in relation the Chapel-sreet assessments in the city of New-York, was read, and referred to the committee on the judiciary.

" The memorial of Martha Amory complaining of certain judgments of the Supreme Court being a lien upon real estate, and that the proceedings were without notice, and therefore ex parte, was read, and referred to the committee on the judiciary.

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Page 369.

" Friday, February 24, 1843.

" The memorial of George Wolf, for relief from assessments for the pretended opening of the Forty-sixth street and the Third avenue; the memorial of Burtis Skidmore and others in relation to the surveyor's fees in the matter of the assessment for repairing Spring-street, accompanied by a printed report; and the memorial of T. & V. Kirby, complaining of certain proceedings of public officers in the matter of the pretended opening of Manhattan square in the city of New York, were severally read, and referred to the committee on grievances.

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Page 487.

" Thursday, March 9, 1843.

" The memorial of Jacob Aims, George B. Smith, Edward Doughty, and one hundred and ninety others, complaining of the great and arbitrary powers exercised by the corporation of the city of New-York, in the imposition of fictitious and ruinous assessments, and also of the alarming increase of city taxes, and of other evils, and asking for a reference of the subject to a special committee, and for the passage of a law to remedy the evils, was read.

" Mr. E. G. Baldwin moved its reference to a select committee.

" Mr. Jones moved that it be referred to the committee on grievances.

" Mr. Speaker put the question whether the House would agree to the said motion of Mr. Jones, and it was determined in the affirmative.

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Page 521.

" Monday, March 21, 1843.

" The several memorials of Peter Schemerhorn, John D. Wolfe, John Haggerty, Theodore Sedgwick, William Jay, and others, of the city of New-York, for an amendment of the laws of the State relative to said city, as to taxes and assessments, and for a reduction of the annual taxes, was read and referred to the committee on grievances.

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Page 661.

" Wednesday, March 29, 1843.

" The memorial of James Riker and others, for relief from arbitrary assessments for Chapel-street, in the city of New York, accompanied by public documents, was read referred to the committee on grievances.

The memorial of Mrs. Martha Amory, noticed above, was referred to the committee of which Mr. D. R. F. Jones was chairman, and upon which the Journal of the Assembly show no report to have been made. This memorial is set forth in full on pg. 154 of this volume.

The Committee on Grievances, of which Mr. Haight was chairman, to which several memorials had been referred, were convened, and the New-York Citizens' Committee, attended before them.

The first memorial which came up in that Committee was that of Mr. Benson.

This is the assessment imposed upon a piece of salt meadow about six miles from the City Hall, which the memorialist states is assessed 26 times the value of the land, and the memorialist adds, moreover, that the interest of the assessment, for eight months, exceeds the value of the property assessed, and that the expense of advertising this piece of land for sale for this aseessment was nearly half the value of the land.

After the Committee on Grievances, had examined this matter and heard the New-York Citizens Committee on the subject of this Assessment, the Chairman replied that they were satisfied of the enormous abuses, and would report in favor of relief without further examination.

The members of the New-York Citizens' Committee, which attended before the Committee on Grievances, were Mr. Bradhurst,

Alderman Cooper, Mr. Skidmore and Mr. Meriam.

The Session of the Legislature being near its close, this committee did not complete their report.

We have here shown the record of Remonstrances against the passage of the act in question, such as are rarely, if ever found in legislative proceedings to such an overwhelming extent. In fact we may plainly say, that in no record of a legislative body, is to be found such a disgregard of public opinion as indicated in the journals by the passage of this act, an act containing the most odious provisions, and besides is without a single redeeming paragraph. The members, had they understood its bearing, never would have voted for it.

Then take into view the total disregard both to the rules of the Senate, in Mr. Scott's resolution, and also in the Assembly, of a reference to a select committee to report complete.

It seems to us that this proceeding should receive at the hands of the next Legislature, a serious investigation, by an impartial committee of both houses composing that body.

The Bill, when Mr. Scott's resolution was offered in the Senate, on the 4th of April was not before that body, but was in the hands of the committee on the judiciary.—Mr. Scott's bill therefore was not in order, nor was it in accordance with the rules of the Senate.

The reference to a Select Committee in the house of Assembly is a most unaccountable proceeding and has nothing to sustain it in the Assembly Journals, in accordance with the rules of the House, as are here shown.

On the last day of the session, this bill came up, and was read a third time, not two thirds of the members voting in favor of the bill, it was not then passed, but it was again called up, as appears by the journals of the House, in the confusion of the adjournment, and passed.

The New-York Citizen's committee had abandoned the opposition to the bill in the Assembly on learning that the amendments and the bill were, as detailed, separated. A lobby was in attendance to press the passage of this bill, composed of Alfred A. Smith, Esq., X City comptroller, John Ewen, Street Commissioner and several other persons.—Smith stated that the sinking fund belonging tc this city, was to be used to purchase at these sales.

The two houses composing the Legislature, by a concurrent resolution had fixed, the termination of the present session at 12 o'clock, M., on the 18th of April. On that day a little prior to 12 o'clock, M., the Senate passed a resolution, extending the Session to 4 o'clock P. M., which resolulution was concurred in by the House.

The Journals of neither house show any prolongation of the session beyond that time, and both houses had agreed to adjourn at that time under that provision of the Constitution which says "neither house shall adjourn without the consent of the other."

If the session could be continued by members setting in their seats, it might also be continued by their standing in the Hall of the Capitol. There was not a quorum of the houses in their respective seats after 4 o'clock, and if there had been, this fact would not extend their session, without a previous rescinding of their rules, or a repeal of the rosolution passed terminating the session, or the passage of a new resoulution, prior to 4 o'clock, P. M., of that day to alter or change the hour fixed.

At the time this bill was sent to the Governor, authorising the mayor, &c.. to purchase lands for assessments, the term of the session, as fixed by the concurrent resolution of the two houses, had already expired, the bill not having been signed, or approved, or sent for approval, was therefore, a nulity, and the subsequent action of the Governor did not resuscitate it.

The Constitution provides that if the Governor approve a bill he shall sign it, if not, he shall return it within ten days, with his objections to the house in which it originated, unless the Legislature by their adjournment prevent its return, in which case it shall not become a law.

We give the following:

Extracts from the Constitution.

"ART. 1, SEC. 3—Each house shall determine the rules of its own proceedings."

"SEC. 4—Each house shall keep a journal of its proceedings, and publish the same."

"Neither house shall without the consent of the other, adjourn for more than two days."

"SEC. 12—Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for, and against, the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall by their adjournment, prevent its return; in which case it shall not bea law."

It is urged by some gentlemen, whose opinions are entitled to great consideration, that the words "unless the Legislature shall by their adjournment prevent its return" applies only to bills which the executive disapproves, and such disapproved bill the constitution says "in which case it shall not be a law."

This is a constitutional question of great moment, and when we shall have here made a passing remark, as to the bill in question, and stated some official proceedings we will, attempt to discuss it:

This bill involves principles which are fundamental. It is a bill to legalize to a colourable extent a direct violation of the constitution of the State and had his Excellency compared this bill with the report of the select committee appointed by the Senate to investigate assessment abuses, with the advertisement of sale, and with memorial sent him by the meeting at the Merchant's Exchange and all these with the constitution, we think he would not have signed it.

The protection of private property is a matter of no small importance—a government, under the administration of which, private property is not protected, is a shadow without a substance.

This Bill authorises a public officer to bid off land at a public sale in the name of a political corporation and to execute leases therefor, for a term of years equalling the fee simple absolute, and for an assessment imposed by that self same corporation, notoriously of an illegal character and which had been reported most unfavorably upon by a committee of the Senate appointed to investigate these very assessment abuses.

We said notoriously illegal. We should have said notoriously infamous—unequalled in the annals of any proceedings of the kind on the face ef the globe.

"BOARD OF ALDERMEN.

"MONDAY, MAY 29, 1843.

"Memorial of ROBERT SMITH, JONATHAN THOMPSON, ROBERT C. CORNELL, ANSON G. PHELPS, JOHN HAGGARTY, and others, for a postponement of the assessment sale, to June 1844; and also asking that the Common Council will discountenance the sale of property for improvements not made, and for the payment of fees and costs for services not rendered,—which was read, and referred.

THE MEMORIAL.

"*To the Honorable the Common Council of the City of New-York:*

"The undersigned, Citizens of the City of New York, most respectfully take leave to represent to the Common Council, that the Street Commissioner of the City of New York has advertised for sale several thousand lots of land, to be sold at public auction on the 12th June, for unpaid assessments.

"The undersigned represent, that very many of the assessments are for improvements not made, or needed, and that the assessments include a very large amount of fees and expenses for services not rendered, and which fees and expenses have not been taxed, or audited, or approved by proper officers.

"Your Memorialists represent, that it would be more unjust to enforce the payment of such fees and expenses by a sale of lands of those who are in no way benefitted thereby.

"Your Memorialists represent, that the abuses in the imposition of most of the assessments, for which the lots are advertised, are of an aggravated character, and should receive no countenance from the Common Council of the City of New York.

"Your Memorialists, therefore, in consideration of the premises, respectfully ask, that the sale be postponed 12 months, and that the Common Council will act upon the subject at once, that the owners of property may not be kept in suspense.

"And as in duty bound, &c.

"New-York, May, 1843.

"Memorial of sundry citizens for relief, in the matter of the assessment for the removal of the former sewer in Chapel-street, and the destruction of the pavement and grade of said street, and for a postponement of the sale for assessment until the matter shall be settled by the Supreme Court, and for a reference to a special committee.

"Memorial of MARTAA AMORY, widow of James Amory, for relief from three onerous assessments of upwards of eight thousand dollars, for the pretended opening of Manhattan square, seventh avenue, and sixth avenue, in which no improvements have been made, and in which the fees of the officers exceed thirty thousand dollars, and for the payment of which her property is advertised for sale—read and referred.

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From the Journal of Commerce.

"BOARD OF ALDERMEN—JUNE 7TH.

"Memorial of William B. Crosby, Abraham G. Thompson, Peter Schermerhorn, James McBride, and others, asking that the assessment sale be postponed till June 1844, on the ground that MOST of the IMPROVEMENTS for which the Assessments have been IMPOSED, have NEVER been made, and that FEES and expenses to an IMMENSE AMOUNT are included in the Assessment for services NEVER PERFORMED or required; and also asking that the Common Council will discountenance proceedings of such an aggravated character as the proceedings here complained of.

"Memorial of John M. Bradhurst, Peter Cooper, W. W. Fox, John Morss, and others, for the same.

"Memorial of Peter Embury, Samuel Ward, Duncan P. Campbell, Samuel Marsh, and others for the same.

"Also several memorials from other citizens, of the like tenor.

"Memorial of persons interested in the property in Chapel and adjoining streets, damaged by the destruction of the former sewer, and placing the new sewer so high in the ground as to deluge the cellars instead of draining them.

"Memorial of Benjamin A. Benson, complaining that a piece of Salt Meadow has been assessed $16,053..63; that the annual INTEREST of the Assessment exceeds the VALUE of the Property; and that the assessment, interest and expenses in the aggregate, exceed TWENTY-SEVEN times the VALUE of the Property assessed; and remonstrating against the sinking fund, or the money raised by county being used to purchase this property at the sale; and asking that the assessment may be cancelled in consequence of no benefit being derived, and because the proceedings were ILLEGAL and therefore void."

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"BOARD OF ALDERMEN.

"JUNE 26, 1843.

"Alderman Lee in the chair.

"From the Comptroller on the subject of purchasing property for unpaid assessments with a resolution appropriating $240,000 for that purpose—referred.

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"BOARD OF ALDERMEN,

"JULY 3D, 1843.

"Report from the special committee, in favor of purchasing lands sold for non-payment of assessments, and recommending the appropriation of $240,000, therefor.

There were five remonstrances against this appropriation. After considerable discussion in which Ald. Waterman and Tillou took the principal part, the report was adopted, the motion to refer back having been lost.

The vote upon this appropriation is as follows:

IN THE AFFIRMATIVE—Alderman *Woodhull*, Dunning, *Emmans*, Nash, *Vandervoort*, *Waterman*, *Hatfield*, *Rawsm*, *Lee*—9.

IN THE NEGATIVE—Alderman MARTIN, TILLOU, (President) PURDY, BREEVORT, SCOLES, BRADY—6.

NOTE.—Mr. Emmons was a collector of Assessments, and being therefore interested, should not have voted.

The following is a copy of the Remonstrance:

"To the Common Council of the City of New York:

"The undersigned represent that they are informed that an application has been made by the City Comptroller to the Board of Aldermen, for an appropriation of Two hundred and forty thousand dollars to pay for land bid off at the Assessment sale.

"The undersigned remonstrate against any appropriation whatever of the money of the people for such **UNWORTHY PURPOSES**, against the increase of city debt, against the increase of county taxes, against the attempt to increase the amount of public property not absolutely necessary for public use, and ask the Common Council to discountenance the odious assessment abuses which are notoriously of an aggravated character.

"The undersigned dissapprove of the application to the Legislature for the passage of a law to authorize the Corporation to become purchasers at assessment sales, **AND OF THE MEANS AND REPRESENTATIONS MADE TO PROCURE THE PASSAGE OF THE SAID ACT**, and they believe that the law is disapproved by the good men of all parties in the city.

"And your Memorialists, &c.

This Remonstrance was signed by WILLIAM B. CROSSBY, JONATHAN THOMPSON, ROBERT C. CORNELL, WILLIAM W. FOX, GEORGE GRISWOLD, JNO. HAGGERTY, BROWN, BROTHERS, & Co., JOHN M. BRADHURST, ROBERT SMITH, BURTIS SKIDMORE, JAMES FELLOWS, JOHN ANTHON, ABRAHAM G. THOMPSON, and numerous other citizens of the highest standing and respectability.

—

Here follows the official admission of the Street Commissioner of the loose manner in which assessments have been made in the city of New-York.

"The Street Commissioner, to whom was referred the annexed Petition of Martha Amory for relief from several assessments.

Respecfully reports:—That he has examined in detail the several assessments upon the property of the Petitioner's late husband, as set forth in her memorial, with a view to discover whether any and what relief could be granted to her in the premises.

The undersigned feels satisfied from such examinations, that errors have been committed by the Commissioners in making their estimates and assessments in the matters of opening the 6th and 7th avenues,—and in the former case, very greatly to the prejudice of the property referred to.

The other assessment compalined of, for the opening of Manhattan square, although perhaps an injudicious proceeding, and accomplished at great cost, arising principally from a fictitious and over-valuation of the land taken for the square, during a period of great speculation in unproductive real estate, presents in her case nothing remarkable. The property is assessed for said square, or about 304 lots of lands, the sum of four hundred and forty-one dollars.

In the matter of opening the seventh avenue, the estate of Amory is awarded on lots 162 and 163 for land taken for the avenue, the sum of $304 68. The estate is assessed for benefits in the same matter, on lot No. 500 situated between 68th and 70th streets and within about a hundred feet of the avenue, $1,116 94; on lot No. 504, situated between 70th and 71st streets, and within about thirty feet of the avenue, $714 61; and on lot No. 508, situated between 71st and 72d streets, and extending into the avenue, $1,069 46. A portion of this last named assessment is for the part of the ground extending into the avenue, and taken for the same, which belonged to the estate, but for which an award of $392 05 was made to the Corporation under a presumption that it belonged to the city. The ground belonging to the estate of Amory on this avenue was formerly a part of the common lands, and was purchased by Amory from the corporation. The conveyance to him included all the land which the Corporation possessed in the avenue at that place, it

being the westerly boundary of the common lands. The Corporation would not be entitled to an award for the land in the avenue, even if had not been formerly conveyed to Amory; the Supreme Court having long since determined that where land is conveyed as bounding upon a street or avenue, the grantor by such Act virtually appropriates the land belonging to him in the street or avenue in front of the land so conveyed.—The Corporation therefore having wrongfully received this award, it is undoubtedly proper that it should be passed to the credit of the estate to which it belongs. The sum of the assessments against the estate of Amory over and above the award in its favor, on this avenue, by the assessment, is $2,596 33; which being credited with the award of $392 05 erroneously made to the Corporation, will be reduced to $2,595 33.* This is undoubtedly a very erroneous assessment upon about 186 unproductive lots of land for the mere purpose of divesting the owners of land in the avenue, of the fee, and placing it in the Corporation in trust for public use; and like most other assessments made during a period of high speculation in unproductive real estate, is excessive, as before stated, from an over valuation of the land taken for the avenue, which has caused a corresponding assessment for benefit upon the lands in this vicinity. The sum allowed on a lot of land in this vicinity as nearly as can be ascertained from an examination of the assessments, is about $300; which is probably more than three times its value for any purposes whatever.

The valuation of the land taken in the opening of the 6th avenue appears to have been estimated at a still higher rate,—the sum of about $400 per lot having been allowed by the Commissioners for the rocks and swamps in that vicinity; and it is against the assessment for the opening of this avenue, that the Petitioner has the greatest cause of complaint, not only from the over valuation referred to, but from gross errors as the undersigned believes, on the par tof the Commissioners in making their assessments, which errors he will attempt to explain.

The Estate of Amory embraces a number of blocks of land on each side of the sixth avenue, between 65th street and 73d street, which formerly constituted a part of the common land street, sixty feet in width, laid out anterior to the laying out of the present avenue; its Eastern side corresponding with the present Easterly side of the avenue, leaving a space between its Westerly side and the Westerly side of the avenue, of forty feet in width.

In some cases the Corporation, in conveying to Amory, bounded him on each side of this old street, by which he received a conveyance of a forty feet strip of land in the avenue, between the line of the old sixty feet street and the Westerly line of the avenue. In other cases the Corporation in conveying to Amory, bounded him by the lines of the avenue, but reserved in the conveyance the forty feet, a piece in front between the Westerly side of the old commonlands street and the Westerly side of the avenue, for the avenue, intending thereby to furnish the entire avenue between the premises conveyed, for avenue purposes. In the former case, where the forty feet space in the avenue was conveyed to Amory, the Estate has been awarded on that side of the avenue, as damages over benefits for this strip of land taken for the avenue, the sum of $601, and assessed on the land on the opposite side for benefits, the sum of $603, by which the benefit and damage is but equal; and in this case the estate has no cause of complaint, as the ground on each side of the avenue belonging to it should furnish the avenue between; but in the other case where the ground in the avenue had already been furnished to the Estate by the Corporation, there being no award for the land in the avenue, there should be no assessment upon the adjoining property, except for its proportional part of the expense. There has been assessed upon the block on the Westerly side of the avenue between 69th and 70th street, the sum of £595, and on the easterly side of the avenue directly opposite, the sum of $603; also upon the block on the Easterly side of the avenue between 71st and 72d streets, where the entire avenue also had been furnished, and for the land in which no ward has been made in the proceedings, the sum of $599, when **all that the Commissioners could have properly charged upon these blocks would have been their proportional part of the expeses, which would have been about $55 upon the three blocks, instead of the sum of $1801 charged in the assessment.**

From the foregoing statement of facts, elicited from an examination of the several assessments referred to, it appears that the Estate of the Petitioner's late husband has been importunely and largely assessed, growing out of the following reasons, 1st, a high valuation of the property taken for the several improvements. 2d. The allowance to the Corporation of an award for land actually belonging to the Estate. 3d. Palpable errors in imposing upon the property large assessments for opening the 6th avenue, in cases where no land was required, or paid for in part of the property assessed.

In the case of the erroneous award, it is clearly evident that the Common Council has the power, and that it is its duty, to make the correction,—the Corporation having received the benefit of the award, and the law making provisions for such corroction; but it is extremely doubtful whether the Corporation can be made liable for any errors whatever in these assessments, however palpaple such errors may appear, or however onerous they may prove to the individuals upon whom they may fall; or whether the Common Council has legitimately the power to grant relief. The Corporation has had no agency in making or confirming these assessments, and is not entrusted by law with the power of reconsidering or making any corrections in them. The power exercised by the Corporation in those street openings is purely legislative, in directing the opening of any avenue, street, or public square, either by themselves, or on the petition of persons interested. In such case the Commissioners of estimate and assessment are appointed by the Supreme Court, and their report of the assessment is confirmed by the Court. The Corporation has no right to intefere and object to any assessment made upon the property of an individual; but the right to present such objections, either to the Commissioners before confirmation, or to the Court when their report is presented for that purpose, belongs to such individuals, who must suffer the consequences of a neglect to perform such duty. In the case under consideration, if a representative from the Estate had gone forward and examined the assessments when they were advertised for that purpose, it can hardly be doubted but that upon the errors being pointed out to the Commissioners they would have been corrected by them, or if not by them, by the Court on the presentation of the report of the Comissioners for confirmation. It does not seem to the undersigned that the Corporation, from a mere exercise of a Legislative power in these matters by a law of the State, can be made answerable for any evil consequences to individuals under proceedings growing out of such lawful acts, any more than the State should be liable for the evils which may fall upon individuals by the failure of Corporations whose charters were granted by the Legislature. If the Corporation be not liable for these errors, then it is perhaps questionable whether the power of granting relief by imposing a tax upon our citizens can be legally exercised by the Corporation. As this subject is important, not only in reference to the case under consideration, but to others which will undoubtedly come up, and as the undersigned is incompetent to give an opinion in regard to these important legal questions which ought to influence the action of the Common Council, he recommends that the subject be referred to the counsel of the Corporation for that purpose.

The cases of Joseph R. Stuyvesant and Benjamin Townsend are alluded to in the petition, in which the Common Council relieved them from an erroneous assessment; The former in opening of Eleventh street, and the latter in the opening of the 7th Avenue. The undersigned had the honor of writing those reports for Committees on assessments. The ground assumed in these reports in granting relief, was, that it was better that the misfortnne should be borne by the mass of citizens composing the community, than it should be visited upon a single citizen.

If this doctrine should in all coses be car-

*If the first sum is right, this should be $2,204 28.—[Jour. Commerce]

ried out, it would have a tendency to relieve individuals from the responsibility of looking after their own interests in these matters, and cause the responsibility to rest with the public. The equity of the case would seem to be, that the Commissioners should pay for these gross blunders.

In regard to the sums charged for fees by the Commissioners and others, complained of in the petition, the undersigned will state, that they have been the subject of investigation by a select committee of the Senate of this State, appointed in 1841 to investigate alleged abuses in assessments during the recess of the Legislature; the result of which may be ascertained by an examination of their report and the accompanying testimony. The undersigned will state in conclusion, that the opening of these avenues and that of Manhattan square, was ordered by the Common Council previously to his being in office, and during the time of his predecessor, George B. Smith, Esq.—That he had occasion to examine the several documents connected therewith, during the investigation of the select committee, and that the petition for opening the Seventh Avenue was signed by a large number of influental citizens, some of them no doubt having no interest in the property, who in their petition endorse the principles set forth in the report of the Committee on Streets for opening the 6th avenue, and express their belief that the masses are in favor of a general opening of the avenues and streets, and that the course recommended in the report of the Committee on Streets in relation to the opening of the 6th Avenue, was the only one to advance the City in wealth and consequence.

The undersigned submits for adoption the following resolutions:

Resolved, That the foregoing Report of the Street Commissioner be referred to the Counsel of the Corporation for his opinion as to the liability of the Corporation for the errors in the assessments therein referred to; and in case the Corporation should not be liable for such errors, whether or not the Common Council may legally exercise the power to relieve the petitioner by the payment of money out of the City Treasury.

JOHN EWEN, Street Commissioner.
Street Commiss'rs Office, July 31st, 1843.

REMARKS.

We give next in order, the Petition of MRS. MARTHA AMORY, upon which the above report of the Street Commissioner has been made. We are at all times most happy to quote this autocratic officer on the right side in assessment matters, and much regret that he does not more often, afford us this opportunity. We do not agree with him in the doctrines he advances in the report, but in his statement of the injustice of the assessments we are with him. The Counsel of the Corporation, has not yet reported upon the reference of the memorial made to him, although it is now near four months since the reference, and during that time the Street Commissioner has sold this property for this very assessment, and the Mayor, Aldermen, and Commonalty are the purchasers under this very Confiscation Act, for the term of 1000 years, which heads this renotice of proceedings, passed or claimed to have been passed April 18th, 1843.

Here is the Memorial:

"Memorial of Martha Amory, widow of the late Jas. Amory, deceased.

"To the Honorable the Mayor and Common Council of the city of New York:

"Your Petitioner, MARTHA AMORY, widow of James Amory, late of the city of New-York, deceased, takes leave most respectfully to represent that the estate of her deceased Husband, situated in the 12th Ward of the city of New-York, and in that part of the Island of New-York appropriated to the purpose of Agriculture and farming, has been assessed the very large sum of **$3,133 00,** for the opening of Manhattan Square. Sixth Avenue, and Seventh Avenue, and that these improvements, *so called* have *not* been made, nor are the opening of these avenues and square called for by public convenience, or public necessity, either now, or heretofore.

"The undersigned, states, that it appears by the appendix to the city comptrollers report, for the year 1843, Pg. 122, that the counsels fees in these proceedings, is stated at the large sum of **$9,015 67.** The surveyor's fees, at **$3,351 39,** and the commissioners fees at **$9,420 00,** and the contingent expenses to **$1,280 00.** The collectors fees are stated at **$3,153 00,** which include the appraisers fees of twenty-five dollars, making an aggregate of **Thirty-one thousand two hundred and twenty dollars and six cents,** for the accuracy of which, she refers to the receipts taken by the Street Commissioner for the respective amounts, to the Surveyor, Counsel and Commissioners.

Your petitioners represents that these costs, and expenses, were not presented to the Supreme Court, at any time, and that the same were not taxed by any officer authorised by law to tax the same, and the **amount is of startling magnitude,** in the case of the counsel, amounting to a greater sum than the salaries of the entire Branch of the Justices of the Supreme Court, for the whole year, and equal to the salary of the Mayor of New-York for three years, the fees of the Surveyor at the rate of four dollars per day, are equal to the pay for **twenty hundred eighty-seven days,** and upwards, which allowing six working days to a week, is pay for about six years, nine months, an amount of time which needs no illustration. The Commissioners fees, at the rate of four dollars per day, for each of the three commissioners, is for that of the seventh avenue, pay for four hundred and ten days, *each;* for the sixth avenue, for two hundred and four days; and for Manhattan square, one hundred and thirty one days, *each;* making an aggregate of time, of seven hundred and eighty-five working days, equal to two years and six months, and upwards, more than half of which time, was charged for in the assessments of the seventh avenue.

Your Petitioner refers to the returns made to the Comptroller of this State, by the Clerks of the Supreme Court, for the years 1839 and 1840, for the amount of expenses incurred in that court, for the proceedings in relation to the Sixth avenue, and suggests, that an estimate may be made of the expenses incurred in the other cases from what is there stated to have been charged, or paid, in this particular case, which is stated at but *a few shillings.*

"Your petitioner refers to the non compliance with requirements of the law of April 20th, 1839, inthe nontaxation of the costs in the assessments for the opening of the sixth avenue, and to the fact, that an attempt is now making to collect those very costs, by a sale of the premises assessed, notwithstanding this bold violation of the Statute.

"Your petitioners refers to the records of the respective Boards, composing the Common Council, for the fact, that in adopting the reports of the Committee, recommending the opening of these avenues, and square, and passing the resolution directing the same to be opened, that the same were not published, as required by the seventh section of chapter 122 of the laws of 1830, nor were the *ayes and noes* called, or published, as required by the provisions of said section, which the Honorable the Supreme Court of this State, say in an opinion delivered in that Court, on the 13th May instant, is "a plain violation of the amended charter;" and also to the Veto Message of his Hon. Mayor Morris, known as document No 9, of the board of Aldermen, of 1841.

"Your petitioner states that the application to the Supreme Court for the appointment of Commissioners of estimate and assessment, was *exparte*, and without notice, and the persons appointed, are not such as the persons interested in the property affected in their property affected by their acts, would approve of, and that in all these cases for which the estate of her deceased Husband, has been assessed, *she had no notice whatever of the proceedings until after the confirmation of the reports.*

"Your Petitioner believes and therefore states the fact to be, that a majority of the owners of property did not petition for the said contemplated improvement and was ignorant of the proceedings she complains of being in Progress.

"Your Petitioner, therefore, in consideration of the premises, and the fact that the Estate in question has been in no manner benefitted, asks the Common Council to discontinue all further proceedings to collect the said Assessments on any part of them.

"Your Petitioner refers to the case of Joseph R. Stuyvesant and also that of Benjamin Townsend in which the Common Council relieved the sufferers.

"Your Petitioner respectfully suggests

hat if your predecessors in office have done wrong in the premises, that their acts should not be consummated by the present Common Council, by a sale of the premises assessed, and moreover insists, that the residue of the estate of her deceased Husband, should not be taxed to raise the monies to pay the corporation bids upon that which is advertised for sale, and thus attempted to be indirectly confiscated.

"Your Petitioner states that the amount of the annual rental of the premises assessed does not exceed $1800 00. The amount of the present assessment including the interest is **$10,516 64,** and add to this the annual tax, as paid the last year, it will make an aggregate of interest on assessments of $1,000. Comparison of these taxes, is an illustration which needs no argument of words, to make plain to the most common understanding.

"Your Petitioner asks that justice and equity may be done in the premises, and she looks to the Mayor and Common Council of the city, for such immediate relief, as will relieve her anxiety, and save her from vexatious and expensive litigation and trouble.

"And in duty bound, &c,

"MARTHA AMORY."

"NEW-YORK, MAY 26TH, 1843."

REMARKS.

The Street Commissioner in his Report says:

"The equity of the case would seem to be, that the Commissioners should pay for these gross blunders."

MRS. AMORY applied to the HON. MURRAY HOFFMAN, Assistant Vice Chancellor and obtained an injunction against the Corporation restraining them from collecting the assessments. The opinion of that excellent judicial officer is as follows:

In Chancery, { *Martha Amory, vs. The Mayor, Aldermen, and Comonalty of the city of New-York.*

"This case is in its leading particulars, similar to that of Stuyvesant, vs. the Corporation, before noticed. It is distinctly charged as to the proceedings in relation to the Sixth Avenue, that when the first publication of the notice of motion to confirm the report was made the act of 20th April, 1839, was in force the rule of confirmation being made on the 6th of June, 1839. Here also the question under the 12th section is of great importance as the costs of the opening exceeds $10,000. Some questions may arise under this section; but this at least is clear: *no part of the costs can be levied upon the party or his property, nor can a sale be made to pay them until the taxation has been made.*

The case of Stuyvesant to which the assistant Vice Chancellor refers is to be found on page 179 of this volume.

In that opinion the Assistant Vice Chancellor uses this language.

"But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterises the proceedings complained of. I have a deep rooted conviction that ultimately the decision must be against the Corporation, and I believe the jurisdiction vested in this Court to compel the Corporation to try the question fairly in a single action at law between them and the complaining party. I think it is within the province of this Court to prevent an innocent purchaser being deluded into litigation and probable loss, and to confine the controversy to the alleged wrong doer and the injured party. This strikes me as the plain common sense view of the case."

This opinion of the most worthy and excellent Assistant Vice Chancellor, is worthy of himself, and will be commended by every intelligent jurist in the land.

The Chancellor dissolved the injunctions granted by Assistant Vice Chancellor Hoffman. The Chancellors opinion is to be found on page 195, of this volume, and he also required the complainants to pay the costs.

The Select Committee appointed to ievestigate assessment abuses in the city of New-York by the Honorable the Senate of this State in 1841, in their report, Senate Document No. 100. of 1842 page 18, — say:

"When these questions first arose, the Court of Chancery affirmed its jurisdiction, entertained bills of complaint, and granted injunctions to stay proceedings in the sale for those assessments, until the alledged errors could be examined, on the same ground that it always asserted its jurisdiction in case of fraudulent judgments, and that although the judgment was illegal, yet it being a lien upon real estate was a **cloud** upon the title and should be removed by the intervention of a Court of Equity. So these assessments, although stated to be illegally imposed, were declared by Statute to be a lien upon the lands assessed, and would appear to be equally a **cloud** upon the title, and for the same reason that a judgment is so regarded, they both being equally liens upon real estate. But that Court has since denied that it had jurisdiction in those matters and referred the applications to the Courts of law."

In page 164 of this volume is the opinion of CHANCELLOR WALWORTH *in assessment cases which will well repay an attentive perusal.*

The Street Commissioner next proceeds to say, in his report, that:

"In regard to the sums charged for fees by the Commissioners and others, complained of in the petition, the undersigned will state that they have been the subject of investigation by a Select Committee of the Senate of this State, appointed in 1841, to investigate alledged assessment abuses during the recess of the Legislature; the result of which may be ascertained by an examination of their reports and the accompanying testimony."

The street Commissioner has done right in referring to this report and the accompanying testimony. We will give copious extracts from the Report which is known as printed "Senate Document No. 100, of April 9th, 1842."

Extract from Report of Select Committee p. 13.

"In the opening of the SEVENTH AVENUE from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for the land taken for the avenue, was $28,141,41, while the fees and expenses of that opening amounted to the large sum of **$12,435,70**—and if to that is added the collectors fees for collecting the assessments $1,115,00, it will show a total of expenses paid by the owners of land on that portion of the Seventh Avenue for its FORMAL opening, amounting to $13,550,70."

The Committee remark in same page:

"The amount paid to the Commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the Statute, is pay for **sixteen months services** for each Commissioner, in making the estimate of the land taken for opening that avenue; and assessing that value back again upon the land each side of the avenue; and in opening this one street, of one hundred and eight blocks, of about 270 feet each, the Commissioners were each engaged three times the whole period that the legislature is employed in legislating for the State, and each of them received about three times the compensation that is paid to a legislator for passing the whole winter from his home in attending to the public business."

"And in addition to that it was shown to the Committee that Commissioners were frequently engaged on several streets or avenues at the same time taking their four dollars per day on each of those improvements; and that they received and were paid that compensation in some instances where they did not attend to the duties of their appointment, and in others, where they attended but once or twice."

"If the case of the SEVENTH Avenue had been a solitary instance, the committee might have supposed that it had taken place through some mistake; but they found the same principle of ENORMOUS EXPENSES to extend throughout the whole system of street openings in that city, and that to such an amount *that the surprise should be not that the inhabitants now complain of it, but that they had not done so at a much earlier period.*"

Extracts from the testimony of John Leonard, Esq, *given before the Select Committee from the senate, pg.* 32.

"Was one of the Commissioners of estimate and assessment in opening second avenue from 28th st. to 86th street, was associated with Henry P. Robertson aed Andrew Mills. Mr. Robertson and the witness were the only two who did any work on such estimate and assessments. Mr. Mills was there once or twice. Mr. Mills may have been there oftener than that but he never did any thing except to sign the report. Mr. Mills may have been there three or four times, but witness does not recollect distinctly of his being

there more than twice, there was work for him to do, if he had attended to it and been capable of doing it. Mr. Mills signed the Report. He made the same charge for his services as was made by the other Commissioners."

Again the witness states on pg. 33 *of the testimony,*

"The witness thinks the amount charged by each commissioner in that case was over $700—being about seven hundred and fifty dollars. The chargefor room hire was a separate charge. Those fees were assessed upon the property supposed to be benefitted by the improvement."

On pg. 39 *of the testimony the witness states:*

"The witness cannot tell the particular number of days Mr. Mills was there; he was not there five times and done nothing when he was there, he was a perfect cypher. The precise number of days for which the Commissioners charged, upon the said second avenue was 190 days for each commissioner, at four dollars per day."

On page 119 *from the testimony of* Andrew Warner, Esq.

"The witness also officiated as a Commissioner on several other streets and avenues; his associates did not in every instance attend the meetings of the Commissioners for making such estimates and assessments, but there were always two present, those absent were allowed the same compensation as those present, and their fees made up in the general assessment in the usual way."

Extract from testimony of Anthony L. Robertson, Esq., *page* 119.

"Witness does not think he did attend all the meetings held at the Mr. Harris' house at Harlem, but was engaged in making calculations at his own house, upon the same parts of the avenue they were engaged upon at said meeting. Pg. 123. Witness has been Commissioner on other improvements beside Seventh avenue; he thinks 47th street, and and 48th street. It was the general custom to allow each commissioners for an attendance at each meeting although they were not all three present."

Extract from the testimony of Jonathan Thompson, Esq. *pg.* 47.

"That formerly between 25 and 30 years ago the witness was personally acquainted with all the assessments of the city of New-York, being the Collector of the internal revenue of the United States. Afterwards the witness, in 1819 or 1820, at the request of the common council valued all the property of the city of New-York with Mr. Targee and Mr. Smith. Witness has been a commissioner upon forming and grading the third avenue, and upon a number of other improvements. Witness knows the labor and time necessary in making out assessments, as he has spent several weeks at it, or rather months. Witness has examined the Commissioners map of the second avenue, from 29th to 86th streets and also the abstract of the Commissioners report, showing the number of persons to whom awards, and against whom assessments were made in the matter of opening the said second avenue. He can only estimate the time necessary to be spent in making the estimate and assessment of said second avenue by comparing it with third avenue from the Bowery road to Harlem Bridge, which was six miles and a quarter in length, and on which the witness made the assessment for regulating and grading.—The expenses of the Commissioners on said third avenue which was in May 1819, the assessment roll contained about a quire and a half paper closely written was as follows:

"Total expense for working and regulating,		$97,514,00
"For advertising,	8,00	
" Surveying	244,00	
" Collector, three per cent, 33,280,31	998,41	
" Assessors for assessing stationary, &c.	886,56	
" Contingencies paid st. commissioner,	190,03	2,327,00
" Total		$99,841,00

"The witness produces the Surveyor's bill above referred to, which is sworn to August 3d, 1820, by the affidavit of Mr. Daniel Ewen the Surveyor which is surveying, compiling, collecting information, and drawing maps of the third avenue from its commencement at the Bowery to Harlem bridge, 61 days at $4 per day—$244,00. The assessment on third avenue extended one half way to the next block same as 2d avenue.—The second avenue is paralel to the 3d avenue and about *500 feet distant and there is not much differrence in the situations and ground, and he thinks it was as easy to make the maps of 2d avenue as to make that of the third avenue. In fact, he thinks it was much more labor to make the map for the third avenue for the same distance than it was to make that of the 2d avenue, it was a new thing when that of the 3d avenue was made and there were many more assessments.—The witness should not say there was one tenth of the labor in making out the estimate and asessment of the 2d avenue that there was in making out the assessment which witness made out on third avenue. The assessment which the witness referred to as being a quire and a half of paper, on third avenue contained descriptions of all the property assessed. The abstract of the Commissioners report on the 2d avenue is made out on two sheets of paper. The witness knows what services used to be rendered in cases of street improvements by the Corporation Counsel. The Commissioners or Assessors would make out their report or assessment roll and hand it the Counsel who would put it into legal form."

Extract from the testimony of John Leonard, Esq. *pg.* 38.

"The Statement produced in relation to the second avenue is signed by the witness and the other commissioners. The sum total of Assessments is $19,259,60. The aggregate amount of awards is $12,595,23½. The expenses are

" Surveyor's Bill,	$1,700 00
" Appraiser's bill,	60 00
" Corporation attorney, counsel, and court charges,	2033 55
" Commissioner's fees,	2280 00
" Room hire, clerk hire, printing and stationery,	324 72
" Collector,	300 00
" Total expenses,	$6,698 27"

The number of blocks on the 2d *avenue assessment is but* 58, *while those of the third avenue are more than double that number.*

Extract from Senate Document No. 100, *p.* 298.

"The Commissioners for making the estimate of the expense of opening the 7th avenue have included in their estimates some expenses of a most extraordinary character, viz:

Commissioner's fees	$4,920 00
Room hire for do.	410 00
Carriage hire,	30 00
Clerk hire,	250 00
Stationery, &c. &c.,	48 00
Counsel fees,	3,977 77
Surveyor's fees,	2,801 00
Collector's fees,	1,115 00
•Total,	$13,550 77

The City Comptrollers Report for 1841, *pg.* 108 *to* 113 *affords an illustration of that portion of the Mr. Thompson's testimony, in which he says:*

"She witness knows what services used to be rendered in cases of Street improvements by corporation counsel.

City Comptroller's Report 1841, *pg.* 108.

"Opening 8th avenue throughout."	
" Counsel fees,	745,45
" Commissioners fees,	760,68
" Surveyor's fees,	310,50
" Appraisers fees and " Collector's charges	296,87
" Incidental expenses,	178,37
	$2291,87

This avenue, is longer than the seventh avenue, of which Mrs. Amory complains of the enormous expenses, and it will be seen on comparing the expenses of the avenues, together, that the counsel fees alone in the 7th avenue exceeded the whole expense of all the officers, &c., in the 8th avenue, by more than **$1600!!**

We will take another case as a farther illustration.

City Comptroller's Report, 1841, *p.* 109.

"Tenth Avenue from 28th to 71st street.	
" Counsel fees,	338,76
" Commissioners fees,	348,00
" Surveyor's fees,	130,00
" Collector and appraisers,	130,00
" Contingent expenses,	0 75
Total,	$936,51

The Counsel fees in the seventh avenue, complained of, are more than four times the amount of the fees of Commissioners Surveyor, Counsel, Appraiser and Collector, all put together in opening the tenth avenue, from 28th to 71st street which is 43 blocks.

•Probably a typographical error.—*Ed.*

The Surveyor's fees in the seventh avenue are more than nine times the amount of the surveyors fees for opening the 8th avenue of greater length than the 7th.

The Commissioners fees, in the seventh avenue complained of, are more than six times as much as that of the Commissioners for making the estimate and assessment in opening the 8th avenue. It will be borne in mind also that the 8th avenue is the most extensive street, as opened.

The **room hire** of the commissioners in the 7th avenue proceedings, was more than all the surveyor's charges in the opening of the 8th avenue.

The proceedings in the 8th avenue, was in 1811, the 10th avenue in 1815.

In reference to the extraordinary expenses in the seventh avenue, A. L. Robertson Esq., one of the Commissioners, in his testimony, contained in Senate Document, before referred to, in pg. 120, says:

"When witness applied for his fees as Commissioner, he got a warrant from the Street Commissioners office, from Mr. Gaines, he thinks, or the comptroller; at the time of getting that warrant he deposited in the Street Commissioners office an abstract of the estimate and assessments, with the expenses in gross amounts as Commissioners fees $4920. Surveyor's $2001,* &c., the Supreme Court having passed *upon the accuracy of the items* contained in their report, he did not consider the corporation, or any of its officers authorised to question their right to the amount charged by them, they being the mere depository of moneys paid by persons assessed to be paid to those to whom it was awarded by their report. Witness believes the expenses are stated in a paper annexed to their report, and the Supreme Court passed upon that report."

The witness is evidently under a mistake as to the Supreme Court passing upon those expenses, as will be seen by the testimony of John Keyes Paige, Esq., Clerk of the Supreme Court, Senate Doc. No. 100, pg. 85.

Mr. Paige states as follows:

"Witness never knew any bill of items of expenses in opening streets or avenues or public squares in the city of New-York, presented to the Supreme Court for taxation when the reports of the Commissioners of estimate and assessment were presented to that Court for confirmation though it is possible when such confirmation was opposed, such bills of items may have been presented to the court with the report and other papers, and the judge may have passed upon them, but the witness never saw any such bills, and none have fallen under his observation in his office.

From the testimony of Benjamin Townsend Esq. formerly a member of the Common Council and Chairman of the Street Committee of the Board of Assistants. Senate Doc. No. 100, p. 94.

"Witness went to Albany, and there saw the report of the Commissioners in the matter of opening the Seventh Avenue, on file in the Supreme Court Clerks office, and examined the report, and looked for a bill of costs with it, but could find none accompanying it or attached to it. Witness was three or four days examining the said report."

Extract from the testimony of Col. John Ewen, Street Commissioner. Senate Doc. p. 44.

"The abstract of the report signed by the Commissioners containing the aggregate account of the expenses, award and assessments, *is the only voucher* on which such payments were made; the claimants for such expenses were never in the habit of presenting any bills. *Again, the witness says,* The witness supposed that upon presenting the abstract of the report of the Commissioners the expenses therein mentioned had been taxed by the Supreme Court as required by law and that the officers of the corporation had no power to withhold their payment."

Extract from a letter addressed by Robert Emmet., Esq., the counsel in these cases to a member of the Board of Assistant Aldermen, who had offered and procured to be passed in that body a resolution calling for information in the premises. See Senate Doc. No. 100, pg. 278.

"Sir I have received a copy of a resolution offered by you and passed by the board of Assistants on the 9th inst. requiring me to furnish that board with the items of the bill for Counsel fees and Court charges in the matter of opening the seventh avenue, also a bill of the charges of the commissioners of estimate and assessments, and the surveyor's bill in the same matter. I had determined to send back the copy of the resolution, enclosed in a short communication to the President of the Board of Assistants, respectfully denying the right of that Board, or of the Common Council, to require any such information from me, but being informed that the resolution was not drawn by you, and believing that you might not have well considered its fitness, or propriety, when you introduced it. I have thought it due to you to make this personal communication to yourself on the subject:

Again, Mr. Emmett says on same page 278:

"The proceedings for opening the seventh avenue, were conducted and concluded under the act of April 9th, 1813, the 189th section of which provides that the commissioners of estimate and assessment (WHO ARE THE APPOINTED BY AND ARE OFFICERS OF THE SUPREME COURT), &c.

Again the same witness says:

"But I know of no law which made it my duty to preserve and exhibit to the Common Council, or to any other party, or even to make out a bill with items of the costs fees and Court charges in the matter of opening the seventh avenue, or in any other of the numerous street cases which I had charge of," &c.

On enquiry being made, of A. L. Robertson Esq, one of the Commissioners for making the assessments for the seventh Avenue as to the means that the persons interested had of knowing what the expenses were, he states, in his testimony, pg. 120, as follows:

"The persons interested in that avenue could have ascertained the amonnt of expenses by deducting the amount of awards from assessments, the ballance would show the amount of these expenses. To ascertain that they must add up the items on each page, which are pronable not more than three in number on each page, aed carried out on the margin for the facility of reference.—Thinks the report may have contained two hundred leaves, but that is a mere guess."

Thus, we have shown that in these *immense expenses*, payment was made, without any taxation, or auditing, or approving, and the street commissioner says he *supposed* the costs, &c. had been taxed, by the Supreme Court. This certainly is a very poor apology for paying such immense sums of money to persons whom he knew could not have earned it, and for which he knew they had rendered no equivalent service.

There was no means of knowing how much the expenses were, except by adding up the awards and assessments page by page for two hundred leaves, four hundred pages. Is this the way of transacting public business—surely such proceeding have no parallel in the civilized world.

We will next look at the Surveyors charges and these require a little comparison.

The Surveying for the 3d avenue which was six miles and a quarter in length was 244 dollars.

The venerable JONATHAN THOMPSON, the distinguished Ex-Collector of the port of New York, one of our best citizens, in his testimony, says, he thinks it was as easy to make the map of the 2d avenue, as to make that of the third avenue for the same distance, in fact he thinks it was much more labor to make that of the third avenue for the same distance, than to make that of the second avenue.

The length of the survey on the second avenue, was only half that of the third avenue, and the Surveyor's bill for the second avenue, was $1,700,00, taking the length of the two surveys into account, it would appear that for as much work as Mr. Thompson allowed $244, the 2d avenue Commissioners allowed at the rate of $3,400,00 for, or a little less than fourteen times as much as Mr. Thompson allowed. This certainly is an extraordinary difference, but we will make another comparison. The Surveyor's fees for the 10th avenue from 28th to 71st street which is fifteen blocks less, being a little over three fourths of the distance of the 2d avenue survey was but $130 and the second avenue $1700.

We will here introduce a comparison of the expenses of the Commissioners, &c. &c., for opening 10th avenue, from 28th to 71st in 1815, with the expenses charged and paid for opening 7th avenue from 21st street to 129th street, in 1839, and compute the charges in each proceedings by the block.

SEVENTH AVENUE, has 108 blocks.

*Should be $2801, see his testimony pg. 123 of Senate Doc.

Counsel fees per block,	36,81¼
Surveyor's fees,	25,93½
Commissioners,	45,55½
Contingencies,	6,83¼
Total per block,	$115,13½

TENTH AVENUE has 43 Blocks.

Counsel fees per block,	7,87
Surveyor's fees "	3,02½
Commissioners "	8,09
Contingencies, "	0,01¾
Total per block,	$19,00¼

The expenses on the same work in 1815 cost but $22,02¼ per block, and in 1839 cost $125,45½. *Near* six hundred per cent increase including collectors fees! ! !

Mr. Leonard *in his testimony before the Senate Committee, pg.* 38, *says:*

"The witness arrived at the amount of surveyor's fees by the Surveyors bill, which was generally *an aggregate amount.* The Commissioners knew the extent of the work but were *no judges of the value of the survey.* They received the Surveyor's bill from *the Corporation Counsel,* and when they did not receive it, *that way,* they would ask the Corporation Counsel whether it was correct.—The Surveyor's bill was *not audited, or certified,* by any officer to witnesses knowledge. THE WITNESS DOES NOT KNOW WHO SELECTED THE SURVEYOR."

Col. Ewen, Street Commissioner, says in his testimony before the Senate Committee, pg. 45, *that:*

"The wintess has been an engineer and surveyor for a considerable period, could not say what would be a fair compensation for making such a survey and map as of 2d avenue by a mere inspection of the map, because he does not know what time or labor was spent in producing it, and because he has been out of the profession for the last five years, persons now in the profession may give a better judgment."

Col. Ewen is as familiar with this ground as with his own office, and during this whole five years has acted as assessor and passed upon more than one hundred surveyors bills. He has a general knowledge of the surface of the whole Island of New-York.

The remarks we have made in reference to the cost and expenses apply to the seventh avenue, for which the estate of Mrs. Amory, was most enormously, and most wrongfully assessed.

We next take the assessment for the pretended opening of the sixth avenue.

The Street Commissioner in his report, uses this language:

"The Corporation has had no agency in making or confirming these assessments, and is not entrusted by law with the power of reconsidering or making any corrections in them."

This proceeding originated with the corporation. It is true, a petition was presented, asking for this avenue to be opened, got up by persons who wanted jobs of surveying, counseling, assessing, collecting, &c. &c., but the petition was not signed by owners of three fourths of the land fronting on the avenue required by the 177th section of the act of 1813, the corporation, therefore, usurped the jurisdiction without having first legally or properly acquired it. They were therefore trespassers in the premises, and had no jurisdiction.

As to the power possessed of correcting those abuses—it is their duty to take the most rigid measures to compel the public officers to return the money to the city treasury, which they have improperly taken from it and blot out such acts from the city government.

Again, the Street Commissioner in his report says:

"The power exercised by the corporation in these street openings is purely legislative, in directing the opening of any avenue, street or public square, either by themselves, or on the petition of persons interested."

The definition of powers, are a matter of speculation. We term the act administrative and not legislative. Although we at the same time are free to admit that the Street Commissioner has opinions of some judicial officers to sustain his *dicta.*

The power is not given to a particular officer, naming such officer, but is vested in the mayor, aldermen and commonalty, a vague and loose investment. The words, Mayor, Aldermen, and Commonalty, are the title of a municipal corporation, composed of the freeholders and inhabitants of the city of New York. Some further legislative provision was necessary to enable any particular officer or class of officers to execute this power thus vested in a mere corporate body. The act itself is a disgrace to the statute book and should never have been there.

When the Charter of the City of New-York was amended in 1830, a restriction was imposed upon the Common Council in all proceedings which generated assessments, this restriction is contained in the seventh section of the act of 1830, applies to the important preliminary step of giving notice to the persons whose land is intended to be entered upon and appointed to public use, and to those persons who are to be assessed to pay for the land thus taken. This section of the charter provides: "all resolutions and reports of Committee s which shall recommend any specific improvement involving the appropriation of public money or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the Common council in all the newspapers employed by this corporation and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner." The debates in the city convention, when this section was framed, are set forth on the 241st page of this number. The kind of notice required to be given, is plainly, and clearly stated, it was first proposed to be published "*in the daily newspapers*"—then "*in one or more of the daily newspapers,*" and finally determined that notice should be given "*in all the newspapers employed by the corporation*" This is too plain to require any argument. Now let us see how this law has been complied with, by the Common Council?

In the testimony of DAVID T. VALENTINE Esq., *assistant clerk of the Board of Aldermen, before the Senate Committee, pg.* 36, *he says:*

"It has not been customary to publish the reports of the Committee on Street improvements in the corporation papers. The witness does not recollect any instance in which such reports were published in the Board of Aldermen."

Here is an officer of the corporation, who states with great plainness and frankness that this law by which alone the Corporation could acquire jurisdiction in the premises has been uniformly and grossly violated.—The evil results must fall upon the doers of the mischief. Had the citizens had notice they would have risen in mass and put a stop at once to the proceedings. Mr Valentine has been in the corporation since the adoption of the amended charter.

Again Mr. Valentine *says:*

"Since the witness has been assistant clerk of the board of aldermen it has not been the practice of that board, in all cases to take the ayes and noes on resolutions for street improvements, but during the *present year,* since the veto of MAYOR MORRIS, they have adopted that practice."

The law was passed in 1830 and it was in 1841, Eleven years after, that Mr. Valentine gives this testimony.

On the 9th of Dec. 1839 the Board of of Assistant Aldermen passed a deliberate vote that they *would not* comply with this law. *See ante pg.* 244.

The convention which assembled in 1829 to frame a bill to amend the city charter were convened almost wholly, and solely on this very point, see the discussions in the public newspapers for 1820 to 1829 and their addresses to the people on accepting the bill on the 2d page of this number and of this volume pg. 242.

The Legislature subsequently provided two other notices, viz: in the act passed April 20th 1839, amendatory of the act of 1813. In this act it is required that the commissioners shall give notice by hand bills posted up, and also in four newspapers of the intended presentation of the report of their estimate and assessment to the Supreme Court for confirmation.

It was also required that the costs and expenses should be taxed before these are allowed and paid. This law was also wholly disregarded in every particular. Even the Supreme Court confirmed assessments in the month of June 1839, after this law had taken effect, without the costs having been taxed, altho' the court was required by the act to make rules for such taxation, The Court, however made such rule in July term, but at the following September and December Special Terms confirmed Reports of Commissioners without taxation. No objections were made to the court,—and good reason why, the parties had no notice—and yet judicial officers seem to think the parties who are sufferers are precluded from relief in

setting such proceedings aside. This is an unsavored dicta to hand down to posterity.

Mr. Paige, *the Clerk of the Supreme Court*, in his testimony, pg. 86 of Senate Report, says:

"Witness produced the report and additional report of the Commissioners of estimate and assessment in the matter of opening of 6th avenue in the city of New-York, which was filed in his office June 6th 1839, and appears by endorsement to have been confirmed on that day. There does not appear to be any evidence that said notice of presenting such report or confirmation was published in handbills annexed to said report or additional report."

Mr. Leonard *in his testimony, senate report pg.* 33. *says*:

"Witness does not recollect that any notice was given of presenting such report by posting handbills in the vicinity of the contemplated improvement, nor in how many newspapers, the said notice was published, that was left to the counsel of the corporation, who then had charge of the proceedings."

"At the time witness made that report he was not aware of the existence of any law which required such notices to be posted up in handbills."

This report which the witness refers to was that of the second avenue which was presented to the court and confirmed Sept. 1839 four months after the passage of the law and two months after this very court had made a rule under it. The Court, however, say, that they do not act as a court, in these Street cases, but act as *quasi Commis*-missioner; but the Constitution, says: "*neither the Chancellor, nor justices of the Supreme Court nor any Circuit judge shall hold any other office, or trust.*" Sec. 7, art. 5. Const.

We shall be obliged to suspend our remarks, and introduce here the opinions of Mr. Justice BRONSON, Mr. Justice COWEN, and also extract from an opinion of Mr. Justice BRONSON, and Mr. Chief Justice SPENCER.

We give the opinion of Mr. Justice Bronson—delivered at the May term in 1843, of the Supreme Court.

SUPREME COURT.

In the matter of opening 39th street in the city of N. York from the east to the Hudson River.
Also, 37th street from river to river.
Also, 11th Avenue, between 32d and 47th streets.
Also, a new street between the 4th and 5th avenue from 22d, to 32d street.

BRONSON, J. The Corporation is authorised to proceed upon its own motion in opening streets laid out by the Commissioners under the act of 1807 and the want of a petition from the land owners is a matter of no consequence. 2 R. L. 408, §177.

Whether the necessity, or convenience of the public require the opening of a street, is a question belonging exclusively to the corporation. The Court has nothing to do with it. (§177 and 8.)

The Report and resolutions of the Committees recommending the opening of these streets were not published pursuant to the act of 1830 *nor were the ayes and noes called when the resolution to open the streets was adopted by the Common Council, Statute* 1830, *p.* 226, §7. *These* **are plain violations of the amended charter,** and it is not improbable that they may in some form affect the proceedings of the corporation. (See matter of Mount Morris Square.)

2 Hill 20 Sharp vs. Spear & Sharp v. Johnson 2 Hill 76 and 92). But I am of opinion that this is not the proper time to raise the question. If the ordinance for opening the streets was not duly passed the objection should have been taken on the motion for the appointment of Commissioners or a motion should afterwards have been made to set aside the appointments. The case is now before us on its merits and the only question is whether the Commissioners have made a just and equitable assessment of the loss and damage, benefit and advantage of the several persons interested in the improvements (§178) it is not unlike a motion for a new trial on a case to set aside a report of reference on the merits, when we should not entertain the question whether the action has been duly commenced.

It is said the counsel of the corporation was never instructed to take the necessary measures for opening the streets and that he has proceeded without authority. This objection also comes too late. It should have been taken when the motion was made, for the appointment of Commissioners and besides the objection seems not to be well founded in point of fact. The Common Council passed a resolution that the streets be opened and it is understood that it thereupon became the duty of the Counsel to take the necessary legal measures for carrying the resolution into effect.

But however that may be Counsel has beeu proceeding in the matter under the eye of the Corporation for the last six or seven years and the Corporation is now here moving for the confirmation of the reports. If any such thing was necessary the proceedings of the Counsel have been adopted and ratified by the Corporation (matter Mount Morris square 2 Hill, 14,19)

The assessment in these four cases exceed the awards by sums amounting in the aggregrate to $9,000,00 and upwards this difference must have been made for the purpose of covering the charges and expenses incident to the proceedings, §185, §189, the Commissioners to receive not more than $4,00 per day each, while actually employed on the duties of their appointment besides all reasonable expenses for maps, surveys, and plans, clerk hire and the necessary expenses, disbursements, (§180) the costs and charges of the counsel for prepreparing the papers, advising the commissioners, and conducting the procedings to their final determination have usually been allowed as a part of the necessary expenses and disbursements of the Commissioners, the amendatary act of 1839 provides that no costs or charges to the said Commissioners, their attorney, counsel or others shall be paid or allowed for any services performed under this act or the act hereby amended unless the same shall be taxed (Stat. 1839 p. 185, §12). This applies to the proceedings which have already been commenced as well as those which might be commenced in future (§14). In these cases the costs and charges have not been taxed and until that is done I don't see how the reports can be confirmed. The act of 1813 declares that expenses shall be paid by the Corporation and included in the assessments, (§189) it is said that the act of 1839 only goes to the payment by the Corporation and not to the assessment. But the words are that the costs and charges shall not be paid or allowed until the same shall be taxed. If we confirm the reports the costs will be allowed against the persons assessed for benefit and in a way which will leave them no redress if the bills have been overcharged.

We think the costs should have been taxed. But it is not necessary at present to send back the reports on that ground, the motions may be suspended, until the costs can be taxed, and then if the bills have not been overcharged in the assessments the reports will be confirmed. If the bills have been overcharged, we will then consider whether the reports must go back to the commissioners, or whether the persons assessed must have justice done them in some other form.

The case of Samuel N. B. Norton was before us on a former occasion (matter of 39th street, 1 Hill 191). We then held that by selling his land and bounding the purchasers by the streets he had dedicated his remaining land on the side of the street to public use. Following that decision the Commissioners have now allowed him a nominal sum for the land in the side of the street. But there is a new fact in the case now presented. When Norton sold to Warner he took back a mortgage to secure the payment of a part of the purchase money, the mortgage since has been foreclosed in Chancery and Norton became the purchaser at the master's sale. I think the case is not materially affected by this new fact. The dedication was by deed and the land was not dedicated to Warner, but to the public, so long as the deed remained in force and the public has an interest in the question, the dedication cannot be recalled. The deed is still in force. Norton must now trace his title through Warner, and so far as I can see he stands in the same condition as any other person would who had purchased at the mortgage sale, unless the cases upon dedication by deed are reconsidered the objection by Mr. Norton cannot prevail.

We see no valid objection to the Report except that the costs and expenses of the

proceedings have not been taxed and as to that, the motions may stand over for the present as already suggested when the counsel for the coporation thinks proper to move again in the matter, he must give notice to the Counsel who has appeared for the persons objecting to the confirmation of the report. Ordered accordingly,

ROBERT EMMET, Esq.,
of Counsel for the Corporation.
RICHARD MOTT, Esq.,
of Counsel for the Objectors.

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We next give the opinion of Mr. Justice Cowen delivered at the August Special term of the Supreme Court, reserving our review of the previous opinion of Mr. Justice Bronson until we have made some farther extracts, &c.

CONSTITUTIONAL QUESTION.

A motion was made at the June special term of the Supreme Court, in a street case, on the suggestion of the Court.

The opinion given in this matter was delivered by the learned Mr. Justice Cowen.

The Corporation have insisted that the provision of the act of 1830, requiring the ayes and noes to be taken is merely directory, and their attorney argued that the Court had so held; but Judge Cowen in his opinion says—"that question has never been decided—but he previously states that it was intimated by the court, that the ommission might seriously effect the proceedings.

The Constitution of 1777 provides that the Justices of the Supreme Court, shall hold no other office or trust except that of Delegate to Congress.

The Constitution of 1821 *contains this provision.* "Neither the Chancellor nor the Justices of the Supreme Court, nor any circuit Judge, shall hold any other office or public trust."—Art. 5. SEC. 7, Cons.

This language is too plain to admit of misconstruction, and the learned Judge well remarks, "*It is indeed difficult to see what the provision in the Constitution, against a judge holding any other office, is worth to the people of the State, if it can be avoided by turning him into a Commissioner of Highways,*" *&c.*

The Constitution vests the appointing pow- in the Governor and Senate, but here the legislature vests it in the Supreme Court;—and this patronage is exercised by one of the Justices in the appointment of 27 batches of Commissioners, (81 in number) in a single day; and these Commissioners appoint Surveyors, Attornies, Clerks, Appraisers, &c.—The extent of this patronage may be gathered from the fact, that the fees which a single batch of Commissioners (3 in number) in one proceedings awarded themselves and their *beneficiaries* was near $14,000. This is a patronage that outdoes the Governor of the State.

We dissent from the doctrine that the justices of the Supreme Court act as Commissioners, on these grounds, viz:

1st. The act of 1813, under which the appointments are made, is in these words: "It shall be lawful for the Mayor, Aldermen and Commonalty, to make application, or to cause application to be made, to the Supreme Court of Jurisdicture of his State for the appointment of Commissioners."—2 R. L. of 1813, p. 409, §178.

2d. The Court in making the appointment, enter an order or rule of Court appointing the Commissioners; and also another rule confirming the report of the Commissioners;—which is in the nature of a judgment, being a lien upon the real estate assessed;—upon which in case of non pay ment it is sold without any other form of proceeding.

3d. These appointments are made, and the reports are confirmed by a single Judge If the Judges act as commissioners, one would not form a quorum.

4th. The rules or orders entered in these proceedings are entitled "in the Supreme Court," and the Clerk of the Court enters these in the minutes with the other proceedings of the Court.

The opinion of the Judge in this matter is of very great importance, and we take great pleasure in laying it before the public; althongh the motion was denied, the mover having shown too much, and the Court, as we think, clearly intimating that the act of the legislature is unconstitutional.

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SUPREME COURT.

In the matter of opening 37*th street, New-York.*

OPINION OF THE COURT.

COWEN J.—This case was very fully considered upon the motion to confirm the report, when we refused to act on the objections now taken, (viz: that the resolutions were not published, and the ayes and noes were not called.) The answer given on that occasion was, that the objections could not be made in answer to a motion for confirmation, but that. if available at all, they should have come in answer to the motion to appoint Commissioners, or a motion should afterwards have been made to set aside the appointment. *It was also intimated that the omission might seriously affect the proceedings.* On the footing of this suggestion, a motion is now made to set aside the whole proceedings as null and void.

It has been suggested on several occasions, that the omissions, to publish the ayes and noes, &c., was not vital, but merely the disobedience of a directory provision, though that question has never been decided, nor is it necessary now to decide it. The answer, I think, lies in the relation we hold to proceedings for opening streets. It is that of Commissioners, not a Court. An attempt was made on the argument to show the contrary. It has however been so often held that our powers are summary, those of a more special Commission, like the powers of Commissioners under the act of insolvency, that we are perhaps scarcely warranted in having the question debated.

(In the matter of Beekman street, 20 John, 269-271. In the matter of Third street, 6 Cowen, 571-2. In the matter of Canal street, 11 Wend, 154-5. In the matter of Mount Morris Square, 2 Hill, 14-19.) The principal has been carried out into its consequence by the Supreme Court often granting a writ of *certiorara*, from itself as a Court, to itself as a Commissioner.

It is not now suggested for the first time, that this Court was under no obligation to accept the Commission, that the statute imposing the duty can be sustained only on the assumption that the powers confirmed form a legitimate part of our forensic jurisdiction. The point was noticed in the matter of Beekman street, where the question of constitutional authority in the legislature is adverted to. *It is indeed difficult to see what the provision in the constitution against a Judge holding any other office is worth to the people of the State, if it can be avoided by turning him into a Commissioner of highways, a a trustree of colleges, &c,,* as the legislature have in several instances done. We have also I believe been declared members of the Police Courts in the city of New York. The office of Sheriff for that city or indeed any any county in the State, might perhaps with as much constitutional propriety have been imposed, *as some of the duties I have attended to;* and had the question been made as I admit it should have been, a reconsideration by the Legislature would probably have ensued, and the evil of interruption in the regular business of the Court been prevented. The argument however proves too much for the purposes of the mover. It goes to show that we have nothing at all to do with his case one way or the other. His counsel rely on the words of the Statute, which are that the *Supreme Court* shall act as Street Commissioners. On the words we are a *Court*, it is said, and may act as such on the matter in all repects, including the hearing of the motions to set aside proceedings on the merits, or for irregularity defect or nuility. Suppose the statute had said the *Supreme Court* shall execute process for the city and county, would it have been the less turning us *quoad hoc* into Sheriff beceuse of the title? It is difficult I apprehend to combat the argument of Spencer Ch. J. in the matter of Beekman-street, that by whatever name we may be called in the delegation of power, this cannot vary the nature of the thing, and so long as we act all, it must be as road Commissioners. It follows that we have no more authority to interfere and set aside proceedings on motion, than a Commissioner under the insolvent act. (Stafford vs. the Mayor, &c. of Albany, 7, John 541, 546-7. In the matter of Mount Morris Square, 2 Hill, 19.) There are many departments of the public business in which the lines of Constitutional power have not been so distinctly drawn as to be always kept in view.

In framing a fundamental law, general and sometimes equivocal words are used to which time and observation alone can affix such an obvions construction as shall give them their intended effect either in regulating legislative or judicial action.—

The same remark is applicable to the law dividing the powers of the Supreme Court, as such, from the summary duties which have been HASTILY CONFERRED upon it, and perhaps as hastily assumed by it,

Mixed up as these Street questions are with the hundreds of motions belonging to the Special term, we cannot when speaking of them, at all times conform our expressions to the exact difference between the general and limited duty. Our omission to do so has given occasion for the present motion. It was by no means intended, however, to trench upon the numerous cases which have defined our jnrisdiction ; nor to deny any of the consequences flowing from the definition, one of these is a clear inability to set aside street proceedings for irregularity in the exercise of the power of the Corporation.

If this be made a ground of objection at all, we think it can only be interposed by way of opposition to the appointing Commissioners. A substantive motion to set aside the proceedings, is neither given by the Statute, nor consistent with the nature of the jurisdiction which it confers.

Motion denied.

(Copy,) W. HILL, JR. State Reporter.

We make the following extracts from an opinion given by Mr. Justice Bronson in the matter of the People vs. E. F. Purdy on the question of the right of Mr. P. to sit as a Judge in the court of Sessions by virtue of his office of Alderman of the 10th Ward of the city of New-York.

" We live under a government of laws, reaching as well to the Legislature, as to the other branches of the government ; and if we wish to uphold and perpetuate free institutions, we must maintain a vigilant watch against all encroachments of power, whether arising from mistake or design, and from whatever source they may proceed."

Again, the learned Judge in another part of his opinion states :

" We are not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language."

And again—the learned Judge *remarks :*

" I will not inquire whether this provision be a good or a bad one. Whatever may be my views on that subject, I am not at liberty to set up my opinion against the declared will of the People as manifested in the Supreme law of the land."

" If we may get round this clause of the constitution because it stands in our way, or we do not like it, we may in the same manner get around any other clause in that instrument ; and thus all hope of fixing the boundaries of power by written instruments will be at an end.

In another part of the opinion of the same learned Judge, *he remarks :*

" In this way a solemn instrument, for so I think the constitution should be considered, is made to mean one thing by one man, and something else by another, until in the end it is in danger of being rendered a dead letter ; and that too, where the language is so plain and explicit, that it is imposible to make it mean more than one thing, unless we first lose sight of the instrument itself, and allow ourselves to roam at large in the boundless field of speculation. For one, I dare not venture upon such a course."

" Written constitutions of Government will soon come to be regarded as of little value, if their injunctions may thus be lightly overlooked and the experiment of setting a boundary to power will prove a failure."

In a paragraph of this opinion the learned Judge *uses this language :*

" If the clause can be so construed," (here he refers to a particular case) "it may then, I think, be set down as an absolute fact, that the English language is too poor for the framing of fundamental laws which shall limit the powers of the legislative branch of the government."

The learned Mr. Justice Cowen *in giving his opinion in the same case in which* Mr. Justice Bronson *gave the opinion from which the above is extracted, says :*

" I have thought a good deal upon the question of Legislative power discussed by Mr. Justice Bronson, and perceive difficulties in it which I had not anticipated before I heard his opinion."

We extract from the opinion of Mr. CHIEF JUSTICE SPENCER referred to in the opinions of MR. JUSTICE COWEN on pg. —, as follows :

" The powers possessed by this Court, in appointing commissioners, in reviewing their report, in referring it back to the same commissioners, or substituting new ones, and in finally confirming their report, are derived wholly from the statute. None of these powers exist independently of the *legislative delegation* of authority ; and they are *not incident to our judicial dutics.* It might be a question how far the Legislature can impose such duties on the judges ; but it does not admit of a doubt, that, if we do consent to act, we act under a limited and circumscribed authority ; and our only power to act being derived from the statute, we possess no powers but such as are expressly given ; and those powers must be exercised in the manner designated by the act. It is true, we act collectively, and in term time, and a majority present control the proceedings ; *but we act as commissioners,* and in the same way and manner as we used, individually, to do, under the insolvent act. The statute is our guide ; and we must proceed by the rules, and in the manner it prescribes, The general powers and jnrisdiction of this Court as regards the application now before us, cannot be brought into exercise."

In the month of May 1840, the Commissioners of estimate and assessment in the matter of the assessment for opening 29th street from the East, to the North River, published a notice that they hed completed their report and " deposited a true transcript thereof in the office of the clerk of the city of N.Y. for the inspection of whomsoever it might concern, and that their report of the said estimate and assessment will be presented to the Supreme Court of Jurisdicture of the State at the Capital in the city of Albany on the first Tuesday of June next, and they request all persons whose interests may be effected thereby, and who may be opposed to the same to present their objections " **in writing**" to the commissioners or either of them.

On the 27th day of May, Abel T. Anderson, and Isaac A. Johnson made objections in writing, verified by their several and respective oaths, within the time required and specified by the said commissioners in the said notice and delivered the same as directed to one of the said Commissioners. These objections were made under §182, of the act of 1813, 2, R. Laws, pg. 417.

The provision of law is in these words :

" And any person or persons whose rights may be effected thereby, and who shall object to the same, or any part thereof may, within ten days after the first publication of the said notice, state his, her or their objections to the same **in writing**, to the said Commissioners ; and the said Commissioners, or such of them as shall make such estimate and assessment, in case any objections shall be made to them and stated **in writing** as aforesaid, shall reconsider the said estimate and assessment or the parts thereof so objected to" &c.

The following are the objections.

To the Commissioners of Estimate and assessment for opening 29th street. } In the matter of opening 29th street in the 16th Ward of the city of New York.

Gentlemen,

We object to your award for damage and benefit on our property, situate on the 8th avenue and including 29th street, because—

1st. The procedings have been so long delayed, that a valuation at the present depressed prices of real estate is unjust and inequitable, inasmuch as there are no established data upon which any reasonable calculation can be grounded, and especially where the improvement is not required.

2d. That we are deprived of a piece of ground fronting 60 feet on the public avenue by 300 in depth, fairly worth in ordinary times $4000, and are charged $121 in addition, to accommodate with an opening to the 8th avenue, a piece of ground 100 feet in breadth in the rear of our property, inasmuch as the eastern 400 feet of the block can seek its outlet to the 7th avenue.

3d. Because public *necessity* does not require the opening of 29th street.

4th, Because public *convenience* does not require the opening of said street.

5th, Because the persons interested in the property assessed have not applied or petitioned for the opening of 29th street.

6th, Because the opening of 29th street has not been legally authorized by the Mayor, Aldermen, and Commonalty in Common Council convened, as your objectors are informed and believe.

7th, Because the opening of 29th street and the proceedings had in relation thereto by the Board of Aldermen and Board of Assistant Aldermen, possessing the legislative powers of the Corporation of the city of New York, your objectors have been informed, are illegal and not such as is required by the law of the state of New York and the amended charter of the city of New York.

8th, Because the Board of Aldermen and Assistant Aldermen, composing the Common Council of the city of New York, have as your objectors are informed and believe, proceeded in this matter without having first published the report of the Committees of the respective Boards, which recommended the improvement as required by law, and the charter of the city, and without complying with its provisions by calling the ayes and noes in either Board when the report was adopted, recommending, or when the resolution was passed, authorizing the improvement; and that the same was not published in the newspapers employed by the Corporation under the authority of the Common Council.

9th, Because the application by the counsel of the Mayor, Aldermen and Commonalty of the city of New York to the Supreme Court for the appointment of commissioners, was ex parte, in consequence of the informality of the proceedings of the board of Aldermen, as your objectors are informed and believe.

10th, Because the Corporation of the city of New York have no power by the charter of said city to assess private property for public improvements, and that the only power now exercised by the Common Council of the said city is conferred by statute and regulated by statute.

11th, **Because the fees of the Commissioners of estimate and assessment are, as your objectors are informed and believe, greater than are allowed by law, and that parts of days have been charged as whole days by some of the Commissioners.**

11th, Because the proceedings of the Common Council in this matter have been dilatory and expensive; the first proceedings had been completed, as your objectors are informed and believe, in the month of February, 1836, more than four years ago.

Signed, { ABEL T. ANDERSON, ISAAC A. JOHNSON.

City and county of New York, ss. Abel T. Anderson and Issac A. Johnson being duly sworn, do depose and say, that in their opinion the foregoing objections are true in substance and matter of fact.

Sworn, this 27th day of May, 1840 before me, } Signed { Abel T. Anderson Isaac A. Johnson.

WATSON VAN BENTHUYSEN,
Commissioner of Deeds.

The motion was not brought on at the June Special Term.

Ward Hunt Esq., of Utica, son-in-law of JUDGE SAVAGE late Chief Justice of the Supreme Court of this state, attended the Special Term of the Supreme Court at Albany during the whole of its session in August to oppose the motion for the confirmation of the report of the commissioners of estimate and assessment in this street, but the opposing counsel did not bring it on.

Mr. Hunt attended the September Special Term of the Supreme Court at Albany during the whole term for the purpose of opposing this motion and when everything else was disposed of, and every person but the parties, and one individual member of the bar besides, had left the court, it was moved. Mr. Hunt produced affidavits of disinterested persons as to various irregularities, &c. &c., and also the affidavit of the Chairman of the street Committee, upon the report of which, the proceedings were based, and also affidavits stating that one of the commissioners had publicly stated that fees were included in the expenses for services never rendered, and that the costs had not been taxed under the act, passed April 20, 1839; but the counsel who moved for the confirmation objected to these affidavits being read, and the Court sustained his objections.

Mr. Hunt then read the written objections above, filed with the Commisstoners, and also objected to the report as being unaccompanied by any statement of costs and expenses, and to the *non*-taxation of the costs under Sec. 12 of the act of 1839.

The Court, after hearing arguments, took the papers, and on the 5th of January followlowing, made a decision, overruling the objections. Here it is as follows:

"*In the matter of opening 29th street in the city of New York, from the East to the North River.*

"R. Emmet, for the corporation, moved the confirmation of the report of the commissioners of estimate and assessment, in the matter of opening Twenty-ninth street from the East to the North River.

"Mr. Delaplaine, on behalf of John F. Delaplaine, opposed the motion. The facts, as they were admitted on the argument, were as follows: Mr. Delaplaine owned four adjoining lots on the southerly side of the street, and most of the land in the street in front of those lots. In 1833 he sold and conveyed three of the lots, bounding the purchasers by the street. He also conveyed to the purchasers all his interest in the land in the street adjoining the three lots—the land to be subject to the use of the owners of the lots as a public street. He remained the owner of the fourth lot, and the land in the street in front of it. For the land in the street opposite this lot the commissioners allowed him $79,48, which is less than its value, and on that ground, Mr. Delaplaine objects to the report.

"W. Hunt opposed the motion for confirmation, on behalf of Abel T. Anderson and Isaac Johnson—who have been assessed for benefits—on several grounds: but there was no proof of the facts on which they relied beyond their own affidavit, that "in their opinion the objections are true in substance and matter of fact."

"R. Emmet insisted, that, being parties in interest, their affidavit was not admissible. (John and Cherry streets, 19 Wendell, 659.)

"By the Court, BRONSON, J. There is nothing in the case of Mr. Delaplaine to distinguish it, in principle, from other cases which have been before the court. (32d *street*, 19 *Wend.* 128, *and cases there cited.*) Having sold lots and bounded the purchasers by the street as it is laid down on the city map, he has adopted the map, and dedicated his land in the site of the street to the public use. He could have intended nothing less by his deeds than a declaration, that Twenty-ninth street was, and so far as he was concerned, should remain a public highway. I do not say that this dedication will extend to all his lands in the site of the street, however remote from the lots sold: but it will, I think, extend to all his lands in the same block or in other words, to the next cross street or avenue on each side of the lots sold. The parties must have contemplated an outlet both ways.

Why the commissioners allowed Mr. Delaplaine more than a nominal sum, without giving him the full value of the land, does not appear: but he cannot complain that he has got too much.

In relation to Messrs. Anderson and Johnson the objection is taken, and must prevail, that there is no legal evidence of the facts on which they rely in resisting the motion for confirmation. They are parties in interest, and not competent witnesses in their own favour. (*John and Cherry streets*, 19 *Wendell*, 659. The question of law which their counsel wished to have considered, are not, therefore properly before us.

Motion granted.

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REMARK.

There is, in our opinion an important

omision in the published report of this case. We were in court when this motion was argued. Mr. Hunt counsel for Messrs. Anderson & Johnson, produced affidavits of persons not interested in the assessment, to sustain important objections to all the proceedings, not only to the counsel moving for the confirmation, but also to the Commissioners report, and also to the amount of fees included which affidavits stated that one of the commissioners admitted that fees were included in the assessment for services not rendered. Mr. Justice Bronson said that these affidavits could not be read if the counsel moving for confirmation objected, and he did object.

We will review this opinion in connection with that of the same learned judge in the matter of 37th street, in the subsequent pages of this number.

We extract from the 2d vol. Dalles reports *the following opinions which were given upon an act of Congress imposing particular duties upon the judges of the Supreme Court of the United States in reference to provisions, which are applicable as to the principles discussed, to the acts of the Justices of the Supreme Court acting as* COMMISSIONER *in assessments.*

"As the reasons assigned by the Judges, for declining to execute the first act of Congress involve a great constitutional question, it will not be thought improper to subjoin them, in illustration *of Hayburn's case.*

"The Circuit Court for the district of NEW YORK (consisting of JAY, Chief Justice, CUSHING, Justice, and DUANE District Judge) proceeded on the 5th of April, 1791, to take into consideration the act of Congress entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions;" and were, therefore, unanimously, of opinion and agreed

"That by the Constitution of the United States, the government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from, and oppose encroachments on either.

"*That neither the Legislature or Executive branches, can constitutionally assign to the Judicial any duties, but such as are properly judicial, and to be performed in a judicial manner.*

"That the duties assigned to the Circuit Courts, by this act, are not of that description, and that the act itself does not appear to contemplate them as such; inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the Secretary at War, and then to the revision of the Legislature; whereas by the Constitution, neither the Secretary at War, nor any other Executive officer, nor even the legislature, are authorised to sit as a court of errors on the judicial acts or opinions of this court.

"As therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing commissioners for the purposes mentioned in it, BY OFFICIAL *instead of personal descriptions.*

"That the judges of this court regard themselves as being the commissioners designated by the act, and therefore as being at liberty to accept or decline that office.

"That as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress; and as the Judges desire to manifest, on all proper occasions, and in every proper manner, their high respect for the National Legislature, they will execute this act in the capacity of commissioners.

"That as the Legislature have a right to extend the session of this court for any term, which they may think proper by law to assign, the term of five days as directed by this act, ought to be punctually observed.

"That the judges of this court will, as usual, during the session thereof, adjourn the court from day to day, or other short periods, as circumstances may render proper, and that they will, regularly, between the adjournment proceed as commissioners to execute the business of this act in the same court room or chamber.

"The Circuit court for the district of PENNSYLVANIA, (consisting of *Wilson* and *Blair*, justices, and *Peters*, District Judge) made the following representation in a letter, jointly addressed to the President of the United States, on the 18th April, 1792.

"To you it officially belongs to "take care that the laws" of the United States "be faithfully executed." Before you, therefore, we think it our duty to lay the sentiments, which, on a late painful occasion, governed us with regard to an act passed by the legislature of the union.

"The people of the United States have vested in Congress all legislative powers "granted in the constitution."

"They have vested in one Supreme court, and in such inferior courts as the Congress shall establish, "the judicial power of the United States."

"It is worthy of remark, that in Congress the whole legislative power of the United States is not invested.

An important part of that power was exercised by the people themselves, when they "ordained and established the Constitution."

"This constitution is "the Supreme Law of the Land." This supreme law "all judicial officers of the United States are bound, by oath or affirmation to support."

"*It is a principle important to freedom, that in government, the judicial should be distinct from, and independent of, the Legislative department.* To this important principle the people of the United States, in framing their constitution, have manifested the highest regard.

"They have placed their judicial power not in Congress but in "courts." They have ordained that the "judges of those courts *shall hold their offices during good behaviour*," and that "*during their continuance in office, their salaries shall not be diminished*,"

"Congress have lately passed an act, to regulate, among other things, "the claims to invalid pensions."

"Upon due consideration, we have been unanimously of opinion, that, under this act, the Circuit Court held for the Pennsylvania district could not proceed.

"1st. Because the business directed by this act *is not of a judicial nature.* It forms no part of the power vested by the Constitution in the courts of the United States; *the Circuit court must consequently, have proceeded without constitutional authority.*

"2d. Because, if, upon that business, the court had proceeded, its judgments *(for its opinions are its judgments)* might under the same act, have been revised and contracted by the legislature, and by an officer in the executive department. Such revision and control we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and consequently, with that important principle which is so strictly observed by the Constitution of the United States.

"These, Sir, are the reasons of our conduct. Be assured that, though it became necessary, it was far from being pleasant.—To be obliged to act contrary, either to the obvious directions of Congress, or to a constitutional principles, in our judgments equally obvious, excited feelings in us, which we hope never to experience again."

"The Circuit court for the district of NORTH CAROLINA, (consisting of IREDELE, Justice, and SITGREAVS, District Judge) made the following representation in a letter jointly addressed to the President of the United States, on the 8th of June, 1792.

"We the judges now attending at the Circuit court of the United States for the district of North Carolina, conceive it our duty to lay before you some important observations which have occurred to us in the consideration of an act of Congress lately passed, entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions.

"We beg leave to premise, that it is as much our inclination, as it is our duty, to receive with all possible respect every act of the Legislature, and that we never can find ourselves in a more painful situation than to be obliged to object to the execution of any, more especially to the execution of one founded, on the purest principles of humanity and justice, which the act in question undoubtedly is. But however lamentable a difference in opinion really may be, or with whatever difficulty we may have formed an opinion, we are under the indispensable necessity of acting according to the best dictates of our own judgment after duly weighing every consideration that can occur to us; which we have done on the present occasion.

"The extreme importance of the case, and our desire of being explicit beyond the danger of being misunderstood, will, we hope, justify us in stating our observations in

a systematic manner. We therefore, Sir, submit you the following:

"1. That the Legislative, executive and judicial departments, are each formed in a separate and independent manner; and that the ultimate basis of each is the Constitution only, *within the limits of which each department can alone justify any act of authority.*

"2. That the Legislature, among other important powers, unquestionably possess that of establishing courts in such a manner as to their wisdom shall appear best, limited by the terms of the constitution only; and to whatever extent that power may be exercised, or however severe the duty they may think proper to require, the Judges, when appointed in virtue of any such establishment, owe implicit and unreserved obedieuce to it.

"3. That at the same time such courts cannot be warranted, as we conceive, by virtue of that part of the constitution delegating judicial power, for the exercise of which any act of the Legislature is provided, in exercising (even under the authority of another act) any power not in its nature judicial, not provided for upon the terms the Constitution requires.

"4. That whatever doubt may be suggested, whether the power in question is properly of a judicial nature, yet inasmuch as the decision of the court is not made final, but may be at least suspended in its operation by the Secretary at War, if he shall have cause to suspect imposition or mistake; this subjects the decision of the court to a mode of revision which we consider to be unwarranted by the Constitution; for, though Congress may certainly establish, in instances not yet provided for, courts of appellate jurisdiction, yet such courts must consist of judges appointed in the manner the Constitution requires, and holding their offices by no other tenure than that of their good behaviour, by which terms the office of Secretary at War is not held. And we beg leave to add, with all due deference, that no decision of any court of the United Staes can, under any circumstances, in our opinion, agreeable to the Constitution, be liable to a reversion, or even suspension, by the Legislature itself, in whom no judicial power of any kind appears to be vested, but the important one relative to impeachments."

The above opinions are entitled to great consideration, and are applicable to the exercise of Street powers by the Supreme Court of this State.

The Constitution of the United States does not in express words prohibit the judges of the Courts of the United States from holding any other office, or trust—*not so with the Constitution of the State of New York.* The constitution of this State expressly declares, that:

"*Neither the Chancellor, nor Justices of the Supreme Court nor any Circuit Judge, shall hold any other office or public trust,*—Art. 5, §7, Con. 1823. The Constitution of 1777 declares:

"*That the Chancellor and Judges of the Supreme Court shall not, at the same time, hold any other office, except that of delegate to the general Congress upon special occasions,* Sec. 25 con. of 1777.

From the year 1691 to the year 1823, the Supreme Court of this State was composed of five members—the Chief Justice and any two of the judges could hold a court. By the present Constitution, the Supreme Court is now limited to three members, any *one* of which, may hold a court. This change is a bad one, and it would be better that it should be placed back again to the old order of things.

We next give the opinion of the Supreme Court of this State as to one commissioner acting without the others.

Curia, per SAVAGE, Ch. J. Two questions are raised for the consideration of the Court.

"1. Were the defendants entitled to give in evidence, that the *Locus in quo* was an highway under the plea of the general issue?

"2. If so, were the proceedings of the commissioners regular, they having never, all of them, had a previous meeting, deliberation and decision on the subject?

In trespass on land, the plea of not guilty puts in issue the facts necessary to constitute the trespass; and under it the defendant may shew title or possession in himself, or those under whom he claims. But when the act appears to be, *prima facie*, a trespass, any matter of justification, by virtue of any authority, or any easement must be pleaded, or notice given of it. (Co. *Litt.* 283. *a.* 1 *Ch. Pl.* 492. 2 *Saund.* 402 *n.* 11 *John.* 132, 7 *Mass. Rep.* 387.

The Justice was right in deciding that poseession of the premises might be shewn to be out of the plaintiff; but he erred in admitting testimony to prove an highway.—An highway is a mere *easement.* The public acquire a right of way; but the proprietor retains all his rights not incompatible with public right, and may maintain trespass for cutting timber, &c. (15 *John.* 452-3, and 491. 1. *Con.* Rep. 103.

On the second point, there is no doubt the proceedings of the commissioners were irregular. They must all be present, but a majority may decide. 1st. Cowen's Rep. 238.

We now take up the proceedings in reference to 29th street, as stated in page 284, *and also 37th street, on page* 282.

One of the Commissioners in this very proceeding, was a witness before the Hon. the Senate Committee, appointed to investigate assessment above in 1841, and the following extracts are made from his testimony:

From Senate Document No. 100, *of* 1842, *page* 113.

"John Leonard, re-called on the part of the memorialists, says: he was one of the Commissioners for opening 29th street, his assoeiates were Covell Purdy and George A. Baker; they completed the assessment within a (*the*) year past; Mr. Purdy and witness made the estimate and assessment; Mr. Baker attended a very few times; in the estimate of the expenses, Mr. Baker was allowed the same amount for services as the wit ness, and Mr. Purdy, and that amount assessed on the property; witness delivered the Report to Mr. Emmett, the Counsel; don't know whether the statement of the expenses accompanied the Report, when the same was deposited for examination in the County Clerk's office; don't know what Mr. Emmett done after said Report was delivered to him."

Again, in page 114, *the witness says:*

"The Commissioners allowed Mr. Baker the same compensation for attendance, although he was there but five or six times, as was allowed to witness, who attended all the time; the witness done all he could to arrest these erroneous charges for services not rendered, by stating the fact to the Corporation Counsel, after they had completed their assessment, and after the fees of Mr. Baker were included in the amount; Mr. Emmett, the Counsel, told witness that the Commissioners must swear to their attendance, and witness and Mr. Purdy made affidavit to their full attendance, and left Mr. Baker to take care of himself; witness made no complaint to the counsel about Mr. Baker's not attending, but merely stated the fact, and nothing probably would have been said about it, but that Mr. Emmett, the Counsel, said something about a new arrangement; witness thinks as to the oath required of the Commissioners as to their attendance, and then witness stated to him the fact of their not attending, (page 115,); witness does not know whether the costs in case of opening 29th street, have been taxed, in which witness was a Commissioner of estimate and assessment."

We have here to remark, that frequently, before the month of May, 1840, Mr. Leonard, the witness, complained to us about fees being allowed for services not rendered. One or two of these conversations, were in the office of the Street Commissioner, and prior to the motion being made for the confirmation of 29th street, Mr. Leonard stated to us, that fees were included in that assessment for services not rendered, he also made the same statements as to the second avenue assessment, which he afterwards testified to before the Senate Committee. This statement is due to Mr. Leonard.

John Ewing, Esq., *the Street Commissioner, in his testimony, Senate Doc. No*, 100, *page* 44, *says:*

"The witness does not know whether any bill for taxation in the matter of the 2*d avenue*, was filed; it might be filed in his office without his knowing it; *there are three or four rooms in his office.*"

The law as to requiring the filing a bill, &c., in the Street Commissioner's office, contains these words:

"And a copy of the bill of costs, containing items and particular services performed, *shall* be deposited in the office of the Street Commissioner, at the time of the first publication of such notice."

It is evident to our mind, that if the Commissioners of estimate and assessment, were

to place their bill of costs, &c., in the Street Commissioner's office, in one of the "*three or four rooms*," under the chair cushion of the seat of the autocratic head, that it would not be a filing of the bill in the meaning of the law. Filing is a public act, and could not be very well done in an office of a public officer, by putting the paper in some corner where the head of the office would not be likely to see it.

Mr. Justice Bronson, in his opinion in the matter of 37th street, delivered two years and a half subsequent to that in relation to 29th street, insist on the taxation of the costs before conformation; in the case of 37th street, the affidavit of *non*-taxation was made by a disinterested witness, and filed with the Commissioner of estimates, &c., as an objection to the legality of their proceedings.

We cannot see the distinction which the learned Judge discovers in these two cases, that constitute the great difference which he makes.

The Statute is plain as to the requirement, that the objections shall be *in writing*, the objectors in the matter of 29th street, done more, they verified these by their affidavits. Surely, it seems to us very clear that the Court could not consistently insist on that, which the Statutes do not require. *The objections were in conformity with the notice of the Commissioners.* Judge Bronson holds, that Statutes should be construed strictly. The Chancellor might, with as much propriety, say; that a bill filed in his Court, should not be entertained, for the reason that it was sworn to by the complainant, instead of those who had no interest in the matter.

Mr. Justice Bronson, in his opinion in the matter of opening 37th street, which we have here stated in full, says, that the omission to call the ayes and noes, and publish the same, and the omission to publish the resolutions and Report of Committees, which are preliminary proceedings in these assessments, "is a plain violation of the amended Charter." The Supreme Court have been long and continually pressed upon the point, and this is the first indication of an opinion on that question.

Shortly after the Hon. Robert H. Morris came into office, as Mayor of the City of New-York, proceedings involving assessments, were sent to him by the Common Council, for his approval.

That intelligent and independent public officer, at once endorsed the opinion of the Assistant Vice Chancellor, in this matter, and refused his assent to the proceedings, and returned to the Board of Aldermen the whole bundles together, and members of that Board, who had held seats in that body for years, and continually violated this law, voted the Mayor was right, and the Common Council and the Mayor's predecessors wrong, in this.

The aye and noe question was raised in 1839, and the objection was laughed at, as was testified to by the Assistant Clerk of the Board of Aldermen, before the Senate Committee. *See Senate Document No.* 100, *of* 1842, *page* 37.

The course Mayor Morris took in this matter, gained for him among our intelligent citizens, great approbation, and it has been verified by an increase of their votes cast for him at two successive re-elections, eacn marked by a continued increased majority.

VETO OF MAYOR MORRIS.

Document No. 9—Board of Aldermen, June 14, 1841.—The following Message was received from his Honor the Mayor, and ordered on file—Samuel J. Willis, Clerk.

Mayor's Office,
New-York, June 14, 1841.

To the Board of Aldermen of the City of New-York.

Gentlemen—I return to your body the accompanying reports and resolutions and ordinances, viz: Report of the Street Committee in favor of flagging, &c., in Seventeenth street, between Irving place and Union place. and resolution. Report of same committee in favor of paving Ninth street from avenue C to avenue D, and resolution. An ordinance to pave and regulate Washington street. An ordinance to build a sewer in Morris street. An ordinance for deepening Storm's basin. An ordinance to pave, &c., southerly sidewalk of Twenty-eighth street, between the Third and Fourth avenues. An ordinance for a well and pump in Twenty-third street.

These were originated in your Board; they have been concurred in by the Board of Assistant Aldermen; and by that body sent to me for my approbation. These direct improvements, involving an expenditure of public moneys, or requiring assessments upon citizens, and have been passed without calling or taking the ayes and noes in either brance of the Municipal Legislature. For this omission, I am constrained to withhold my approbation of them, although there is no objection to the improvements contemplated.

The seventh section of the amended Charter of the City of New-York, requires that, "all resolutions and reports of committees, which shall reccommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of the said city, shall be published immediately after the adjournment of the Board, under the authority of the Common Council, in all the newspapers employed by the Corporation; *and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*"

Although some of the legal tribunals of the State, have decided that the omission to take the ayes and noes, upon the passage of such reports and resolutions, and ordinances, does not make them void, while others have maintained a contrary doctrine, still the directions contained in the section of the Charter referred to, are obligatory upon the Common Council, and under no circumstances should they be disregarded.

These provisions were intended to protect the interests of the citizens, by ensuring deliberation and integrity in their representatives, upon subjects involving either taxation, assessment, or an appropriation of public moneys. The authors of the section referred to, wisely determined that the most effeetual method to ensure deliberation and honest action on the part of the agent, was to compel him to record and publish his vote; thereby giving to the constituent, knowledge of the agent's acts, and exposing each agent to the animadversion of his constituents, when he voted incorrectly.

These provisions of the Charter, if strictly enforced, cannot but prove beneficial to the citizen. It cannot be denied that there are individuals, who may be elevated to office, so singularly constituted as to be influenced in their conduct, more by the fear of public censure than by an internal conviction of right, who will vote improperly, and even corruptly, if they can do so without detection and exposure.

To protect the public against the acts of such persons, and to inform the constituents of such acts of the representative, the seventh section of the amended Charter was framed. I conceive it to be the duty of all of us, strictly to enforce observance of every requirement of the City Charter, that uniformly correct precedents may be established; and we may avoid all measures which we have not a clear right to effectuate. That community is most scrupulous in its obedience to the laws, whose officers and legislators are strict in their observance of constitutional and legal requirements. Example from those in authority, is more important than their adjudications or their precepts. We therefore should not only enfore, but obey the law. The City Charter is a Constitution, which we as agents of the people, are bound to obey strictly, not only in its letter, but in its spirit.

Robt. H. Morris.

The omission to comply with this provision of the Statute, in these proceedings, has been made a subject of enquiry and reference, to the Law Committee of the Board of Assistant Aldermen, and that Committee here made a Report, which is from the pen of William Dodge, Esq., a member of that Committee, as follows:

The Committee on Laws, to whom was referred a draft of a rule proposed by Assistant Alderman W. Dodge, for the government of this Board, in these words:

"All resolutions and reports of Committees, which shall reccommend any specific improvement involving the appropriation of public monies, or taxing or assessing the citizens of this city, shall be published immediately after the adjournment of the Board, under the authority of the Common Council, in all the newspapers employed by the Corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in like manner,"

RESPECTFULLY REPORT,

That they have considered the proposed rule, with reference to the various vexed and important questions, which have arisen, by reason of the neglect of the provision of the

amended Charter on which the rule is based, and with a due regard to the obligation they have assumed "to support the Constitution of the State of New York, and faithfully to discharge the duties of the office of Assistant Aldermen, according to the best of their ability."

The citizens of this city having suffered for a number of years, from abuses which crept into the City Government, sought, in the year 1829, to remedy these evils, by calling a Convention to amend the Charter.

A Convention was accordingly formed, whose members, sixty-five in number, were elected, five from each Ward, by ballot.

On the 23d day of July, 1829, the Convention had under consideration the section of the amended Charter which has been referred to; the section originally was proposed by John Duer, Esq., and after some additions and amendments, was adopted in the form in which we now find it in our Statute Book.

It was supposed by the Convention and by the Legislature which ratified the amended Charter, that the adoption of this section would effectually prevent a multitude of abuses, which, during a series of years had been introduced and carried out with impunity, because the actions of the representatives of the people in the Common Council, were unknown beyond the Council Chamber.

That this was the opinion formed cannot be questioned, for at the close of their labors, the Convention, proud as it would seem, of the work they had performed, in their address to the people, thus allude to the subject, and eulogize what was deemed by them one of the most important advantages of the new instrument.

"Another guard to the City Treasury is provided, by recommending that all bills or resolutions, involving the appropriation of public moneys or imposing assessments, *shall be* immediately published in the newspapers; and whenever a vote shall be taken thereon, the ayes and noes *shall be* called, and the names of the members, with their votes, *shall be* published."

"This, it is trusted, will secure at once *publicity and notice* to all concerned, and the strong influence of *personal responsibility* on the vote of every individual member. All propositions involving assessments or burdens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard. Careful and deliberate legislation, strict accountability, judicious economy and perfect publicity—these are the remedies which the Convention have sought, against the evils and abuses to which all wealthy City Governments are subject, of which this city has felt its share, and of which the public voice has, at different times, loudly complained."

These hopes were justly entertained by our representatives in the Convention, but they have never been fulfilled, the evils and abuses for which they fondly believed they had found a remedy, under the actions of the Common Councils since 1830, may have existed, they could have existed from the day the amended Charter became a law, up to the present moment.

These safeguards have been and are now neglected, and matters more important to many of us than the proceedings of our Legislature or of Congress, are hid from view, and transacted as if none were concerned, save the immediate actors.

That provision of the Charter framed to "secure at once publicity and notice to all concerned, and the strong influence of personal responsibility on the vote of every individual member;" that provision for the enactment of which that Convention was mainly assembled—that provision which they deem the very key-stone of the fabric, has been suffered to stand unnoticed, and treated as though it was not made to bind the Aldermen and Assistant Aldermen of the City of New York.

A disregard of this provision, has seriously affected the interests of our city. and her citizens—our citizens are taxed—their real estate, supposed to be unincumbered, is found covered by Corporation liens, year by year their substance is impaired by weighty taxes, and steadily year by year do these taxes increase, and the only notice they have of the proceedings of our City Government, is the demand of payment made by the Collector of Taxes.

The Committee cannot imagine any substantial reasons in favor of the neglect of what appears to be the positive duty of the Common Council.

It is true that several suits are now pending in our Courts and undetermined, in which the effect of this omission will be considered, and we are told that these may be successfully combatted by the Corporation, on the ground that the words of the law are directory not mandatory.

The Committee understand the distinction between words directory and words mandatory, to be this:—Words directory may be neglected, or substantially complied with without affecting the validity of a proceeding under a Statute—words mandatory require a literal compliance with them.

After an act has been performed, and it is found that some irregularity or omission has intervened, a resort may perhaps be rightly had to such a construction as will sustain a proceeding where no injustice has taken place, but the Committee cannot concede the position that an officer sworn to support the law, has the right deliberately to determine that the imperative word "shall," in a Statute, can be read to mean "may," and then act in a manner calculated to sustain the latter meaning.

Let any member of this body carefully read this portion of the Charter, and let him determine with himself, if he has any warrant, if it comports with his solemn oath, to neglect the law and to read the words "shall be published" as though they stood "may publish." No Convention would have been required to grant leave to publish—their intention must have been to compel it.

The expediency of obedience to the law, seems a question requiring no argument—the Committee can only consider that expedient which is right—to debate whether what is wrong should be done, because it may seem to promise the greatest ultimate advantage, would, it is supposed, be insulting to this Body.

As to the suits now pending, the Committee believe, that the rights and liabilities of the respective parties, are fixed and unalterable, and that no action, such as the Committee would propose, can impair any defence which the city or those who represent her, now have. nor strengthen the claims of those who assert that injustice has been done.

It may be urged that the publication demanded by the Charter, would impose an additional expense on the city—this argument partakes of the doctrine of expediency; let us, however, make the trial—the salutary effects of a compliance with the Charter, may save us thousands, while the remedy may cost a few hundreds.

Had this section of our Charter received due consideration, who can tell how many acts of imprudent legislation would have been nipped in the bud; who can tell what additional checks would have been imposed on our Executive Committees.

The reasonings, the arguments and the recommendations of Committees, would have been better digested, and if false in argument, or inexpedient in reccommendation, the public would have been able to interpose their influence; members would have been careful of expenditures, when the ayes and noes brought them face to face with the people, and it may not be asserting too much to say, that our city, which now groans under a mountain of taxes and assessments, might have rejoiced in a comparative freedom from pecuniary liability.

Urged by these considerations, the Committee feel it to be their duty not to allow this Statute longer to remain dormant, they commend it to the attention of every member of this Board, and they trust that, after due deliberation, each one will act, keeping in view his official oath, the sanctity of the law, and the interests of the whole people.

The Committee have prepared a draft of an Ordinance, which is herewith presented; they do not believe it to be perfect, and they submit it to the consideration of this Board, trusting that the co-operation of their fellow-members, and their longer experience, will bring it into a shape best adapted for practical operation.

THOMAS S. HENRY,
WILLIAM DODGE,
CHARLES A. DOUGHERTY.

New-York, August 2d, 1843.

The Report was adopted by a large vote, and sent to the Board of Aldermen for concurrence, *there it will* SLEEP, like other measures that restrain the profligacy of a Corporation, that is, in the exercise of this power, a USURPER.

The learned Judge dwells with much emphasis, on the objection made in the matter

of 37th street, as to the application for the appointment of Commissioners, being unauthorised by the Common Council. We know that the petitions, for the appointment of Commissioners, were signed by the Mayor and Clerk of the Common Council, but we presume that those gentlemen were not, either of them, aware that the report of the Street Committee, contemplated only one set of three Commissioners, instead of 27 sets of 81 Commissioners, and the Committee state the reasons to be, that "nineteen twentieths of the expense" may thereby be saved. Mr. Valentine, deputy Clerk of the Board of Aldermen, and the officer who has almost entire charge of the office of the Clerk of the Common Council, says, in his testimony before the Senate Committee, page 112 of Senate Doc. No. 100, of 1842, that:

"Witness thinks there is no record in the office of the Clerk of the Common Council, of applications to the Supreme Court, for the appointment of Commissioners, in the matter of opening streets and avenues, he has no knowledge of any such record."

This matter was brought before the Senate Committee, and in their report, they say:

"The manner in which the opening of those streets was effected, has been the subject matter of complaint to this Committee. Assistant Alderman Townsend, who introduced the report in favor of opening all the streets up to and including 42d street, testified that it was his intention to have all of them opened in one proceeding, and thus save to the citizens an enormous expense; and for that reason this report *did not* conclude with the ordinary direction in such cases, that the Counsel of the Corporation should take the necessary legal measures to carry the same into effect. But through some misapprehension, the ordinary proceedings were taken for opening each street separately by itself, instead of one set for the whole series, and by that means the expense to be paid by the owners of real estate upon the same, was increased at least ninety-five thousand dollars."

We could have added, that many of the owners of real estate, from the incompetency of the persons appointed Commissioners, or some other cause, were assessed upon their lands, beyond the value of the entire fee.

Anson G. Phelps, Esq., states in his memorial to the Legislature, *see Senate Doc. No.* 100, *page* 306, that he is the owner of a piece of land on the 1st avenue, between 39th and 40th streets, containing in all about one fifth of an acre.

The Commissioners for opening the 1st avenue, from 28th to 42d streets, assessed this land for benefit, three hundred and twelve dollars; and besides, they took 2800 square feet for the avenue, for which they made no award whatever. The Commissioners for making the assessment for 40th street, assessed this same piece of ground for benefit, five hundred and seventy-five dollars; and the Commissioners for opening 39th street, assessed the same land over, for benefit, eighteen dollars and seventy-five cents. Here are three assessments upon one and the same piece of land, in this district, which, by the report of the Street Committee, was to be opened only by one commission, in which case, the assessment on this piece of land, would not have exceeded, at the utmost, *five dollars*, but by this extraordinary proceeding of appointing 81 Commissioners instead of three, is assessed the enormous sum of $905.75, and moreover the land itself is not worth the interest of the assessments, and yet the Court are led into the belief that Commissioners of estimate and assessment, in New-York, are selected with care. Such assessments as these, are so conclusive on this point, that the Commissioners, (some of them,) were so utterly incompetent, that we will not consume the time of the reader, to discuss the danger of such proceedings.

Another.—The case of Messrs. Schuyler, owner of a lot at the corner of 28th street, on the 7th avenue. This piece of ground is 58 feet 16 inches, by 96 feet 10 inches, was assessed for benefit for the opening of 28th street, the sum of $1,039.05, and the same piece of land was again assessed, for the opening of the 7th avenue, the sum of $209,98, making, together, the sum of $1,249.03. This assessment, with the interest, exceeds the value of the land, more than $500. *See Senate Doc. No.* 100 *page*

And yet Another.—A piece of land, belonging to the estate of John Duffie, deceased, was assessed for the opening of 38th street, the sum of $1,287.80, and the same piece of ground was again assessed for opening the 2d avenue, $117.50, making, together, the large sum of $1,407.30, which, with the interest added, now exceed $2,000.

Thomas R. Ludlum, a City Surveyor, in his testimony before the Senate Committee, *see Doc. No.* 100, *page* 151, says:

"Witness thinks the lots of John Duffy, on 38th and 39th streets, in the rear of the Norsworthy estate, before spoken of, are not worth more than $50 per lot; he thinks the whole piece of ground is not worth more than $450, because it is a low, sunken piece of ground, and will require deep filling to bring it to the grade."

These three pieces of ground are all in this district, which was only to be opened by *one sett of Commissioners*, and had that been the case, the assessments on the three pieces of ground named, would not have been, in amount, equal to three months interest on the several sums now so odiously assessed.

Where is that doctrine of the Courts, that there is no wrong without a remedy?

Is the land of boasted freedom, a land that boasts of her Constitution, and her laws! alas!!!

Assistant Alderman Townsend, *in his testimony before the Senate Committee*, see Senate Doc. No. 100, page 96, states:

"Witness asked how the Court charges were so high, and Mr. Smith replied, the Counsel represented that he had to attend at Albany, and sometimes farther west, and the Court charges were sometimes very high. On examining the amount of Court charges, the Street Committee could not feel themselves authorised to report, authorising Mr. Emmet to make application for opening those streets, but that it should all be done at one time, by the Common Council, or by some person whom they should authorise for that purpose. The finishing clause to a report "that the Corporation Counsel be authorised to take the necessary measures to carry the same into effect," *was omitted purposely to save expense.* The testimony of Assistant Alderman Townsend, is stated in full, on page 216 of this volume, and the reports of the Street Committee, on page 219 of this volume.

We have had frequent conversations with Ex-Senator Mynbert Van Schaick, who was also a member of the Street Committee, which made this report, and he fully agrees with Alderman Townsend, in this matter, and is ready to come before a Committee from the Legislature, and state the proceedings.

Mr. Perrine, *in his testimony before the Senate Committee, on page* 80 *of their report*, states:

"There is a book permanently kept in the Street Commissioner's office, and witness recognises the book upon its being shown to him, which contains a list of the names of the persons for Commissioners of estimate and assessments, in opening streets, &c. They are placed in that list in the following manner. Pretty soon after the annual election, *the Aldermen call and enquire for that book*, and each Alderman inserts three names for Commissioners for the ensuing year. This list is made out each year in the same book; it is in columns; first the Ward, second the Aldermen and Assistant Aldermen, third the Commissioners."*

The Senate Committee, in their report, page 12, *in reference to Commissioners of estimate*, &c., say:

"This loose practice has grown up in modern times, for the more guarded one of an application to the Supreme Legislative authority, was in existence in that city, subsequent to 1792, when, to authorise the first widening of John street, an application was made to the Legislature, then in session in that City, and before either house could act upon the petition, they sent a Committee to examine the ground; and upon the report of which Committee, they enacted that the damages to the owners, whose lands were taken, should be appraised by a Jury, who should be composed of merchants, showing how careful they were in former legislation, on this important subject. This appointment is now made by three Commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the Counsel of the Corporation, although there have been instances where one of the Commissioners has been selected by the Court, from names proposed by the Corporation Counsel, and by the opponents to the appli-

* A small book, containing about a quire of paper.

cation, and another has been named by these opponents."

The application for the appoint of Commissioner, so far as we have any knowledge of the Records, has been *exparte*. In case of reports being sent back, the opponents have objected, and we think it is to such case the Senate Committee refer, in the individual exception which they notice.

The words of the Statute are these:

"It shall be lawful for the said Mayor, Aldermen and Commonalty, to make application, or to cause application to be made, to the Supreme Court of Judicature, of this State, for the appointment of Commissioners; and it shall be lawful for said Court, to whom such application shall be made, on any such application, to nominate and appoint three discreet and disinterested persons," &c.

The Constitution, *we say, prohibits the Supreme Court of Judicature, from exercising this power—we have, herein before, quoted the Constitution, on this head.*

It is very evident, that the Justices of the Supreme Court, have been misled as to the qualifications of Commissioners of estimate and assessment, in New-York, generally, for in the 19th vol. of Wendell's Reports, we find in two street cases, in the opinion of the Court, the following:

"So many considerations of time, locality and other circumstances, enter into the estimate, that the only means of finally settling the question is, an appraisal. *That is committed by Statute, to Commissioners carefully selected by this Court,*" 19 Wendell's Reports, page 652.

"Courts seldom set aside the verdict of a Jury, on the sole ground that they may think it against the weight of evidence. And yet there is much less difficulty in such a review, than there is in the one under consideration."

"They are selected not only with reference to their integrity and general capacity for business, but on account of the knowledge which they are supposed to possess, concerning the particular duty which they are appointed to discharge."

"How then, is it possible, that we can disturb the report upon the mere questions of value, on the single ground that five, ten or even twenty reputable men, have sworn to opinions at variance with the judgment of the Commissioners." *Page* 694, 19 *Wendell.*

As a confirmation of the opinion we have above expressed, we introduce two Reports, which go to sustain us, and these Reports the Street Commissioner, in his report on the memorial of Mrs. Amory, page 276, of this number, says: "*The undersigned had the honor of writing these Reports for the Committees on Assessments.*"

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"BOARD OF ALDERMEN."

The Committee on assessments to whom were referred the annexed petition of JOHN R. STUYVESANT of Dutchess county, *respectfully report:*

"That all the facts set forth in the Petition are verified by the Deposition of the Petitioner annexed, and the examination given the subject by the committee

"The facts are fully set forth in said Petition and deposition and papers herewith and to which the committee refer the material evils of which are as follows: The petitioner is the owner of an irregular piece of ground now fronting on the 11th street being in front on said street 38 feet 8 inches and about 98 feet 10 in. deep, extending back in a triangular shape coming to nearly a point, a little beyond half its depth, where it again widens, and connects with two small lots belonging to him which formerly fronted on Stuyvesant street, but which now have no front; Stuyvesant street having been closed by the opening of 11th street. In 1839, 11th st. was opened from the second avenue to the Dry Dock, the whole amount of the awards for opening said street amounted to $2600, the expenses $1193 97, making the aggregate sum of $3793 09, that the above mentioned property of the petitioner fronting on 11th street together with the adjoining lots as above stated and known on the map of said opening as lot No. 4, is assessed for the benefit $1072, being a little short one third the entire amount of said assessment for said improvement the lots in the immediate vicinity and adjoining the property of the petitioner and fronting on said street was assessed as appears from an examination of the assessment about $18 for every 25 feet in front and running back the usual depth, and so in that proportion 49 lots in all were assessed to make up the sum of the awards. They were assessed including the amount on the lot of the petitioner $3801. One of the Commissioners, Mr. Andrew Warner, was noticed to appear before the Committee but he did not attend. The other, Mr. Abraham Lessy was sick, or understood so to be and was not notified. To the petition there is a certificate signed and drawn up by Mr. Warner, dated 1st July 1840, stating that the facts set forth in said petition in regard to the assessment made are true, and that there is an obvious mistake made by the Commissioners stating the assessment on the property of Petitioner at $1072, and that they intended it to have been $10 72, and that the mistake arose from carrying out all the figures in the line of dollars instead of dollars and cents. Your committee state that in this manifold conclusion they arrived on the examination of the subject. The Street Commissioners felt so convinced of this being the fact when the circumstances were brought to his knowledge, he withdrew this property from the sale of property for assessments and for which it had been advertised, at the late sale of property. The petitioner at the time of the assessment and ever since has resided in Dutchess County, and had no knowledge of the assessment or of the great injustice done him until after confirmation of it, consequently had no opportunity to rectify the error, or remedy the evil. Although the Commissioners on street openings are not chosen or selected by the Common Council, or under their direction or control yet, your Committee think that an individual should not suffer so severely from their carelessness or wilful error, as the petitioner would if not relieved. The duties of the Commissioners in this case could not have been intricate or arduos and they were most amply compensated, the amount of their fees being $561. Sufficient certainly to claim attention enough to see that figures were set in their proper "line."

This being a very flagrant case the Committee are of opinion that the assessment should be rectified, That the public should sustain the loss, if it cannot be collected from those who caused it, and for that purpose offer for adoption the following resolutions:

"Resolved, That the sum of $10 72-100 be substituted for $1072, as the assessment on the property of John R. Stuyvesant for opening of 11th street, and known on a map of said opening as No 4, the said sum of $10 72-100 with the interest and costs of advertising, if any, be received in full of said assessment on said lot for said improvement instead of $1072.

"Resolved, That the Comptroller with the advice of the Counsel of the Corporation take such measures, as may be advisable for the collecting from the Commissioners in the matters of opening Eleventh street from the second avenue to the Dry Dock, such amount as may be paid out of the city treasury by reason of the error made by them in making the assessment to pay the awards and expenses for said opening.

Respectfully submitted,
EGBERT BENSON, } Com.
DAVID GRAHAM, Jr., } on
ORVILLE J. NASH. } assess.

Adopted by the Board of Aldermen Jan. 25th, 1841.

Concurred in by the Board of Assistants Feb. 1st, 1841.

Approved by the acting Mayor, Feb. 4th 1841.

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"BOARD OF ASSISTANTS."

The Committee on assessments to whom was referred the annexed petition of BENJAMIN TOWNSEND to be relieved from the payment of his assessment upon the Seventh avenue, Respectfully Report,

"That Mr. Townsend has been assessed in the opening of 7th avenue the sum of Two Hundred and Thirteen Dollars sixty-one cents for benefits on land situate on the easterly side of said avenue, from about the middle of the block between 48th and 49th street, to 50th street, extending back from the avenue two hundred feet, and including two lots on the northerly side of 50th street. Mr. Townsend furnished one half of the ground in the avenue in front of his property. The proprietor of the ground in the westerly side of the avenue directly opposite to the land of Mr. Townsend, and situate like his in all respects, but furnishing rather less ground for the avenue, have been awarded for damages for such land taken, over and above

the benefits derived, the sum of two hundred and ninety three dollars and nine cents and the ground in rear of this land on the block between 49th and 50th street, extending to half the distance to the eighth avenue, has been assessed two hundred and thirty dollars sixteen cents, while the land in the rear of Mr. Townsends ground, on the corresponding block extending to half the distance to the 6th avenue and comprising more ground, has been assessed but the sum of nine dollars and thirty five cents, plainly showing that there must have been a mistake on the part of the Commissioners in making up their assessments; in confirmation of which the Committee have found on examination that other estates situate on the avenue like Mr. Townsends, have been awarded for dumages instead of being assessed for benefits; and in the nature of things it must be so. By law the expense of opening an avenue is to be assessed upon the adjoining ground, extending half way to the nearest avenue on each side. The ground taken for which the assessment was laid belonged to Mr. Townsend who would be entitled to an award of damages over and above his benefits, the same as the owners of property on the other side. and the amount of the damage thus awarded to him would be placed upon those owning in his rear who have only been nominally assessed. Your Committee have no doubt but that it was the intention of the Commissioners to have awarded Mr. Townsend but by mistake in making up their assessment have assessed upon him the sum they intended to award. Mr. Townsend has conversed with Mr Harris the Chairman of the Commissioners who informed him that he was awarded at the same rate as the adjoining land and if it was not so there must have been a mistake. Your committee have endeavored to obtain the notes of the Commissioners but have learned on enquiry that they were consumed by a fire in Fulton street where Mr. Harris kept his office. The petitioner does not ask for any award, although he believes himself to be fully entitled to one, but only asks to be relieved from an assessment for the taking of his own land for the opening of the 7th avenue equal to about six lots of land, of which he has been divested without compensation.

Your Committee on a former occasion adverted to the principle which guided them in their recommendations on these subjects, it is only in a case of the most palpable error in which they can recommend any relief. Believing this case to be one of that description, and one of extreme hardship. They recommend that relief be granted to the petitioner, in part by absolving him from the payment of his assessments in the matter of which he has made complaint. They offer for adoption the following resolution,

Resolved, That Benjamin Townsend be relieved from the payment of the assessment of two hundred and thirteen dollars sixty-one cents on lots 352, 359, and 380 in the matter of the opening of the 7th avenue and that the same be charged to deficiency in the said assessment.

JOHN A. UNDERWOOD, } Com. on
ALFRED ASHFIELD. } assess.

The Committee on Assessments to whom were referred the the annexed papers from the board of Assistants in favor of relieving Benjamin Townsend, respectfully report,

That they have considered the subject therein contained and that they concur with the Committee of the Board of Assistants in their report on this subject and recommend a concurrence in the resolution adopted by that board.

EGBERT BENSON, } Com. on
RICHARD S. WILLIAMS, } assess.

Adopted by the Board of Assistants, March 14th, 1842.

Concurred in by the Board of Aldermen, May 2d 1842.

Approved by the Mayor, May 10th, 1842.

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The Counsel of the Corporation to whom was referred the annexed Petition of Martha Amory for relief from assessments, *and the report of the Street Commissioner thereon*, Reports,

That the Petitioner complains of assessments that have been imposed upon the property of James Amory, her late husband, for the opening of the Sixth and Seventh Avenues and Manhattan Square. The grounds of these complaints are set forth at length in the Petition and in the Report of the Street Commissioner hereto annexed. They arise from the very high valuation of the lands taken for the improvements, the same being estimated, at that time, at the prices of City lots; from alledged exorbitant charges for the expenses of the proceedings and from supposed errors on the part of the Commissioners in imposing assessments upon the said James Amory for land required for the improvement in front of the land assessed and which is stated to have, in fact belonged to the said James Amory.

The question submitted to my consideration, is, whether the corporotion is liable to the party assessed for the supposed error on the part of the Commissioners in making up their assessments, or whether they may rightfully relieve the party from the payment of a supposed erroneous assessment.

Assessments for Street improvements are imposed by Commissioners, appointed by the Judges of the Supreme Court, under a law of the State. The Commissioners, after they have completed their assessment, give public notice that they will present their report for confirmation to the Supreme Court, at a specified day. On such day their report is presented and considered, all objections are heard and decided on by the Supreme Court. The decision of the Supreme Court is final and conclusive, and like a judgment, so that the assessment becomes a lien upon the land assessed, and the party assessed may be sued for it, or his goods may be distrained. On the other hand, by such confirmation, the Corporation becomes liable to pay the award, and may be sued for the same. The assessments are made for the purpose of meeting the payment of the awards and of the expenses, and should balance each other.

The corporation is not answerable for any supposed errors, on the part of the Commissioners. The Commissioners are public agents, acting under public authority, and in relation to the business of the public. Their errors, if any, are subject to correction, by the parties themselves, by a regular legal proceeding. And if the parties in interest forego such remedy, and allow a judgment to go against them, however erroneous, they cannot, upon any *legal* principle, make the Corporation of the City liable for their loss. Nor is there any *equitable* claim to relief from the City Treasury. The corporation have done the parties no wrong. There may have been errors of judgment on the part of the Commissioners; but the proceeding has been regular and according to the due course of law. If the Common Council should now yield to the the application of the Petitioner, and relieve her from the payment of the assessments complained of; who will make up the deficiency to meet the awards, which must be paid? If those who are chargeable with these assessments, had, in due time, pointed out the errors now complained of, and their complaints had been found to be just, the errors conld have been rectified by the proper tribunals, and the awards and assessments might have been equalized, so as to have left no deficiency in the Treasury.—And because the party is now too late to remedy, in a proper legal way, the errors of which she complains, shall an appeal be successfully made to the public treasury, on the award principle, which has sometimes obtained. That "it is better that the whole community should suffer a loss, than that a single individual should be left to bear it alone?"

The undersigned does not so construe the charter of the City, nor the delegated powers of the Common Council. They do not admit the principle of remedying one wrong to the Citizens by doing another wrong to the public.

With regard to the award of $392 05 supposed in the documents annexed to have been wrongfully received by the Corporation, the undersigned is of opinion that no error has been committed by the Commissioners. This award was made to the corporation because they were supposed to be the owner of a gore of land in front of lot No. 181 of the common lands, and which gore was required for the opening of the Seventh Avenue. By a reference to the conveyance of lot 181 to James Amory, it will appear that such lot was not bounded upon the Seventh Avenue, nor any intimation in the conveyance given of an intended grant of the land covered by the Seventh Avenue, which was not then opened; but on the contrary, *all the land over which the streets and avenues as laid out, might run, pass, or extend, was expressly excepted from the grant, and especially reserved to the Cor-*

poration. The Commissioners were therefore, right in making such award to the Corporation.

The undersigned is therefore of opinion that as the Common Council are not bound, and have no legal right to remedy any of the supposed errors of the Commissioners in opening the several streets, &c., referred to in the petition of Martha Amory, **the Petitioner should have leave to withdraw her Petition.**

Respectfully submitted,

P. A. COWDREY.

This report was made after the previous pages had passed through the press.

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The Report of Mr. Cowdrey, is a most singular paper for a legal gentleman to draw up.

It will be seen by referring to the memorial of Mrs. Amory, on page 277, of this number, that the prayer of her petition, is in the following words:

"Your petitioner, therefore, in consideration of the premises, and of the fact that the estate in question, has been in no manner benefited, asks the Common Council to discontinue all further proceedings to collect the said assessments, or any part of them."

"Your petitioner asks that justice and equity may be done in the premises, and she looks to the Mayor and Common Council of the City, for such immediate relief, as will relieve her anxiety, and save her from vexatious and expensive litigation and trouble."

Now Mr. Cowdrey assumes, that the memorial of Mrs. Amory, was referred to him, and he discusses its contents. On looking at the resolution, which makes a part of the Street Commissioners Report, we do not see that this memorial was referred to Mr. Cowdrey, at all; but the Street Commissioner's Report, and the resolution, which makes a part of it, was referred to the Counsel for his opinion, as two matters, viz: 1st, "*as to the liability of the Corporation for the errors in the assessments therein referred to, and 2d, and in case the Corporation should not be liable for said errors, whether or not the Common Council may legally exercise the power to relieve the petitioner, by the payment of the amount out of the City Treasury.*"

The learned Counsel, in his report, says:

"The question submitted to my consideration, is, whether the Corporation is liable to the party assessed, for any *supposed* error on the part of the Commissioners, in making up their assessment."

"The Street Commissioner admits two errors, which amount to $2,138, and calls these '*gross blunders.*'" Why then talk of supposed error, it is certainly a waste of time.

Again, the Counsel, in his report, says:

"Assessments for Street improvements, are imposed by Judges of the Supreme Court, under a law of the State."

It appears by the testimony of Mr. Perrine, before the Senate Committee, which we have quoted on page of this number, that the Commissioners are selected from a book of names, kept in the office of the Street Commissioner, and that these names are put there by the Aldermen and Assistants of the several Wards, respectively, immediately after the election. The Corporation, therefore, indirectly select these Commissioners, and their Counsel nominates them to the Supreme Court. (*See Report of Senate Committee, Doc. No.* 100, *of* 1842,) quoted on page , of this number. The Supreme Court are not, therefore, answerable for these "*gross blunders.*" It is said by the learned Justice BRONSON, in his opinion in the matter of 37th street, that "if the ordinance for opening the streets, was not duly passed, the objection should have been taken on the motion for the appointment of Commissioners." The Counsel well knows that the requirements of the seventh section of the amended Charter, as to giving notice to the persons interested, was not complied with by the Corporation, and therefore, the application for the appointment of Commissioners, *was exparte and without notice*, and for this neglect, the Corporation, or their officers, or both, are liable.

And again, the Counsel, in his report, says:

"The Commissioners, after they have completed their assessment, give public notice that they will present their report for confirmation, to the Supreme Court, at a specified day."

Now let us see how far right the learned Counsel is, in applying this to the case of the 6th avenue, in which Mrs. Amory complains of abuse, and in which the Street Commissioner admits the Commissioners committed "*gross blunders.*"

Mr. Paige, Clerk of the Supreme Court, in his testimony before the Senate Committee, *Senate Doc. No.* 100, *of* 1842, *page* 85, *says:*

"Witness produced the Report and additional Report, of the Commissioners of estimate and assessment, in the matter of opening of 6th avenue, in the city of New-York, which was filed in his office, June 6th, 1839, and appears, by endorsement, to have been confirmed on that day. There does not appear to be any evidence that said notice of presenting such report for confirmation, was published in hand-bills annexed to said Report or additional Report."

This notice was required by the Act of April 20th, 1839, and here there was another failure, on the part of the Corporation, for they were the sole movers in the matter, and they moved in the Report, in the application for the appointment of Commissioners, for the confirmation, &c., as is here shown in all cases *exparte*, and without notice to the persons interested."

And again, the Counsel, in his Report, says:

"On such day their Report is presented and considered, and objections are heard and decided on, by the Supreme Court."

If no other party has any knowledge of the presentation of the Report, but the Corporation Counsel, who moves it, and the Commissioners, who move it, how shall the party interested make objections? and if none can be made, how can the Court consider and decide?

The Counsel in such case, takes the order of confirmation at his peril, and his client must respond.

The Counsel, further remarks:

"The decision of the Supreme Court, is final and conclusive, and like a judgment, so that the assessment becomes a lien upon the land assessed, and the party assessed may be sued for it, or his goods may be distrained."

If "*the party may be sued for it,*" it so far, is but a claim, the legality of which, would be determined on the trial of such suit, and if sustained, then the decision of the Court becomes a judgement, upon which an execution may issue—and so far, the assessment is not *conclusive*—the word "conclusive" has been construed differently from what the learned Counsel would have it, on several occasions. If the officer distrains the goods of the person assessed, for such an assessment as that of the sixth avenue, complained of, he would be liable to heavy damages in an action of trespass, and as to the assessments being a lien upon the land assessed, if it should be a CLOUD upon the title, it would be the duty of a Court of Equity, to remove it, and to grant the owner a perpetual injunction, restraining the Corporation from any proceedings to collect the assessment.

Again, the Counsel, says:

"On the other hand, by such confirmation, the Corporation becomes liable to pay the awards, and may be sued for the same. The assessments are made for the purpose of meeting the payment of the awards and of the expenses, and should balance each other."

By section 12, of the Act passed April 20th, 1839, it is provided, that "no costs or charges to the said Commissioners, their Attorney, Counsel, or others, shall be paid or allowed for any services performed under this Act, or the Act hereby amended, *unless the same shall be taxed by the said Court*, &c.

The Court could not allow, nor could the Corporation pay the expences in the 6th avenue, without violating this provision of the Statute, until the same had been taxed. Therefore, so far as the expenses are concerned, the assessment has never been consummated, as the Report, if confirmed, must be confirmed as a whole, or not at all.

The Counsel further states:

"The Corporation is not unswerable for any supposed errors, on the part of the Commissioners. The Commissioners are public agents, acting under public authority and in relation to the business of the public."

If the Commissioners are public agents, the public is answerable for the acts of such agents, if other parties are sufferers by the agents acts. If these agents meddle with private property, the owners of such private property, have not only a legal, but also an equitable and valid claim for "due compensation," as provided by the Constitution, "*and in relation to the business of the public*" there are individual and private interests involved, which are invaded in the acts of the Commissioners.

Again, the Counsel, says:

"Their errors, *if any*, are subject to correction by the parties themselves, by a regular legal proceeding. And if the parties in interest forego such remedy, and allow a judgement to go against them, however erroneous, they cannot upon any legal principle, make the Corporation of the City liable for their loss."

The words "*allow a judgment to go against them,*" the Counsel should have placed alongside the words first quoted, in which he says, "*the party assessed may be sued.*"

With regard to their errors, which in this case the Street Commissioner admits, which make the words "*if any*" very much out of place, the Counsel says, "are subject to correction by the parties themselves, by a regular legal proceeding."

What legal proceedings are regular? The opinions of the Justices of the Supreme Court, in the cases cited in pages 249 to 252 inclusive, of this number, so plainly answered, that it becomes the duty of the learned Counsel, as a public officer, to have noticed them in his Report, and thus made the Board of Aldermen acquainted with the position of the question.

Again, the Counsel proceeds:

"Nor is there any equitable claim for relief from the City Treasury."

We will not trifle with our readers so much as to discuss this sentence, after having stated what is in the preceding pages of this number.

Again, he says:

"The Corporation have done the parties no wrong."

We make the same remark as is stated in reply to the next previous quotation.

Again, he remarks:

"There may have been errors of judgment, on the part of the Commissioners; but the proceeding has been regular and according to the due course of law."

The same remark as in the reply to the two preceding quotations.

With regard to the application of the petitioner, the learned Counsel proceeds to say:

"If the Common Conncil should now yield to the application of the petitioner, and relieve her from the payment of the assessment complained of; who will make up the deficiency to meet the awards which must be paid."

What awards? we answer—to Counsel, to Commissioners, to Surveyors, &c., and while upon this portion of the Report, we will quote the resolution adopted in the Report of the Assessment Committee, in the case of Stuyvesant.

"Resolved, That the Comptroller, with the advice of the Counsel of the Corporation, take such measures as may be adviseable, for the collecting from the Commissioners, in the matter of opening 11th street, from the 2d avenue to the Dry Dock, such amount as may be paid out of the City Treasury, by reason of the error made by them, &c."

We will quote another:

"Resolved, That the Counsel of the Corporation, under the direction of the Law Committee, take measures to obtain a revision of assessment, mentioned in the annexed schedule, as may be judged expedient and agreeable to law."

This last resolution was passed by both Boards, and approved by the Acting Mayor, Jan. 25th, 1841.

Both of these resolutions have been wholly disregarded—not a step taken in either—this is the way public business is managed by the City officers.

Again, the Counsel says:

"If those who are chargeable with these assessments, had, in due time, pointed out the errors now complained of, and their complaints had been found *to be just*, the errors could have been rectified by the proper tribunals, and the awards and assessments could have been equalized so as to have left no deficiency in the Treasury."

The Counsel may call to his memory the application to the Assistant Vice Chancellor in 1841, for an injunction to restrain the Corporation from collecting this very assessment, and his own opposition to that application.

That very able and independent public officer, Assistant Vice Chancellor Hoffman, to that application very properly granted an injunction against the Corporation, to Mrs. Amory, and the opinion which he gave in the case, is this:

"But I am thoroughly satisfied that a more palpable and pernicious violation of law, has never marked the course of any corporate body, than characterises the proceedings complained of."

Mrs. Amory has twice memorialized the Legislature, and repeatedly memorialized the Common Council, and the Supreme Court have been repeatedly applied to in analagous cases, in which she considered the principles involved in her case, were involved.

Again, the Counsel says:

"And because the party is now too late to remedy, in a proper legal way, the errors of which she complains shall an appeal be successfully made to the public treasury on the *award* principle which has sometimes obtained that it is better that the whole commnunity should suffer a loss than that a single individual shoule be left to bear it alone."

The position which is here taken for a "*free city of itself*" to plead statute limitations to the claim of a widow and her fatherless children, *is too low*, to be seen by the lights with which justice illuminates the claim.

Again he says:

"The undersigned does not so construe the charter of the city, nor the delegated powers of the Common Council *they do not admit the principle of remedying one wrong to the citizen* by doing another wrong to the public"!!!!!

We quote from the Federalist No. 78 as applicable to this case, in connection with what is herein before stated, the following: "*There is no position which depend on clearer principles than that every act of a delegated authority, contrary to the tenor of the Commission under which it is exercised,* IS VOID."

If therefore these acts are in violation of the charter, and the common council have transcended the persons delegated to them—their acts are void, as is the case in the present instance. But the doctrine contained in: "they do not admit the principle of remedying one wrong to the citizen by doing another to the public." This is the quoerest doctrine that we have ever seen from the pen of a public officer. That a wrong to a citizen should not be redressed by the aggressor!!!

With regard to the award of $392, the Court for the correction of errors have settled that, in the case of Livingston, the Street Commissioner is therefore right in this, and the counsel wrong. The Commissioners should have made the award to Mrs. Amory instead of the corporation.

The Counsel with these words concludes:

"The Petitioner should have leave to withdraw her petition."

Shame, shame!!

We have thus placed in promiscuous order in this number divers matters having a bearing upon the passage of the **confiscation act** authorising the Mayor, Aldermen, and Commonalty to purchase land at their own assessment sales, for assessments for pretended improvement never made, and for pretended benefits never conferred, but before proceeding to make our remarks will first give the copy of a letter received from the Hon. John B. Scott, in reply to a letter addressed to him, a copy of which is on page 270 of this number. Mr. Scott's answer would have been placed in connection with that letter but it was not received until after that sheet had passed through the press. We now give it, and also the letter of Mr. Meech in connection with it.

We also add the copy of a letter to H. N. Wales Esq., Clerk of Assembly in reference to the passage of the act by that house authorising the Mayor, &c., to purchase at their own assessment sales, and his reply thereto. Also a letter in answer to his reply and his answer thereto. Also a third letter to that gentleman and his reply thereto.

FURTHER CORRESPONDENCE.

After the pages, upon which our letter to Hon. John B. Scott, of the 7th inst. was printed, had passed through the press, we received his reply, which we here give. It is very much to be regretted that the desire for public office should be so great that members of the Legislature are so run down with applications that they are unable to attend to the important interests of their constituents which are of far more consequence to the people. Such, however, is the case, on every change of political power in the State. These letters are not published to complain of individuals, but to bring before the citizens, the operations, results and consequences of hasty legislation and to show the great danger of our State Government becoming very deficient in its practical operations from what is contemplated by the constitution.

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Letter from HON. JOHN B. SCOTT, to E. Meriam.

"NEW-YORK 15th Nov. 1843.

"E. MERIAM, Esq.

"Dear Sir—In answer to your note, I can only repeat the idea I always intended to convey, in my former communications—That I never received the memorials to *my knowledge*. That I have no doubt a package was delivered to me from Mr. Meech *because he says so*—but not from any recollection and I supposed I pursued my uniform course to lay letters, newspapers, packages and documents of every kind sealed or unsealed on the table until I had time to read them. I appropriated generally the time the house was in not session to 12 at night sometimes I was not able to read them all on the day received because they were so numerous. I brought with me home all papers *after reading them* I thought it of any importance to retain. I never read or saw or had any impression ever on my mind that there were such memorials in existence until I received your first communication. When I said "I cannot doubt but this package was taken from my table or mislaid," I meant nothing more but to endeavor to account for an event which I thought so extraordinary. Not that I had taken or mislaid a package which I dont know I ever had—but that it was taken or mislaid by some other person—how and in what way mislaid by servants cleaning the room, or taken by design. I know nothing more than you do. If the Packages were in the form of Newspapers then it is probable I might have neglected to read them, for I received a great many from every part of the country without having time to read them. If Mr. Meriam had called upon me immediately at Albany when you discovered they were lost, or at any time after, I was always ready to hear him and explain all in my power. No person can regret more than I, this unpleasant event. If Mr. Meriams mind is not now satisfied I despair of effecting it.

"Very respectfully yours,

"JOHN B. SCOTT."

Letter from E. Meriam to Wm. Billings Meech, Esq.

"NEW YORK, Nov. 25th 1843.

"Dear Sir—I hand you enclosed a letter which I received some days since from the the Hon. John B. Scott. I should have sent it to you sooner, but having been much engaged I had not time to compare it with your letter to me of the 30th of May last, and your respective letters of the 9th and 10th of March written from Albany after your arrival there. I have now made these comparisons and hand you the letter of Mr. Scott which letter please return to me with such remarks as you deem it calls for at your hands. Very respectfully yours,

"EBEN MERIAM."

"W. B. Meech, Esq."

Secretary of the Merchant's Exchange meeting and a member of th. Citizens Committee, delegated by that meeting to proceed to Albany in reference to the Tax and Assessment bills pending before the State Legisluture.

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Letter from Wm. Billings Meech Esq., to E. Meriam.

"NEW YORK, Nov. 28th 1843.

"Dear Sir—Your letter of the 22d inst., enclosing Hon. John B. Scott's letter of 15th instant and asking for additional information in relation to the package of Memorials presented by myself to Mr. Scott last winter, has just reached me. In addition to my former communication on this subject I can only say that the memorials were handed to Mr. Scott a few minutes after nine o'clock of the morning of my arrival at Albany: *in the Hall of the Franklin House* at which I was informed Mr. Scott boarded. Being only acquainted with Mr. Scott by reputation, I was obliged to request the clerk of the Franklin House to point him out to me. I saw Mr. Scott at the Senate Chamber on the same day and have seen him frequently since and *he is the gentleman* to whom I handed the memorials and the letter of introduction from yourself. As I have before stated Mr. Scott appeared to be engaged at the time and I had therefore only time to observe to him, "Mr. Scott I have some petitions in relation to Assessments which *Mr. Meriam* of New York wishes you to present this morning," to which he replied "I will do so" or equivalent words.

"On the same morning and before the meeting of the Legislature all the petitions and papers (upon the same subjects) entrusted to me by the Citizens Committee reached their respective destinations and all the others were duly presented to the Legislature,

"Respectfully Yours,

"WM. BILLINGS MEECH."

"E. MERIAM, Esq."

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Letter from E. Meriam to Hon. John B. Scott.

"Nov. 30th, 1843."

"HON. JOHN B. SCOTT.

"Dear Sir:—Your letter of the 15th came duly to hand and I should have replied to it earlier but being much engaged I was not able to bestow upon it that attention which its importance demanded.

"I have since, enclosed the letter to Mr. Meech, and have received his reply, which is here subjoined.

"In forwarding important papers to Albany the committee have been very particular. The memorials forwarded to your address, and that of the Hon. Robert Smith, and others in January, were forwarded by Express, and receipts in every instance taken, which we now have.

"Mr. Meech was despatched to Albany in March at an expense of near twenty-five dollars purposely to deliver to his Hon. the Lieut. Governor, to yourself, to Hon. Messrs. Rhodes, Dixon and R. Smith, letters and memorials.

"These memorials were of great importance, were collected together with great labor and trouble and the loss of the forty is very severe.

"When these memorials were put up to be forwarded to you, I first attempted to enclose these all in a sheet of white foolscap paper, but found it would hold but a part of them, I then divided them and put twenty in each envelope and then wrote a letter addressed to you which accompanied them. I at the same time addressed a letter to His Honor the Lieut. Governor, to the Hon. E. Rhodes, Hon. A. Dixon, and Hon. Robert Smith, to each of which one or more memorials were sent, those gentlemen each and all presented the memorials sent them.

The night prior to the morning of Mr. Meech leaving New York for Albany, I spent the entire night in preparing these communications and in endorsing the memorials which were all 61 in number and went myself with the clerk of the Committee to the Bridgeport steamboat and there met Mr. Meech and delivered the letter into his own charge.

"Mr. Meech in his letter to me dated Albany March 9th advised the committee of his safe arrival and states that he had delivered all his letters, &c.

"My object in addressing you the note of the 7th instant, was to ascertain if these memorials had since been met with, concluding that if mislaid, that they would have been found, but if they were taken from your table, all hopes of getting them again, is at an end, as those who would take them, would most undoubtedly destroy them, hence we shall be under the necessity of getting them *re*-signed.

"I was in the Senate Chamber when Mr. Franklin from your committee reported upon the same class of memorials, which had been presented by His Honor the Lieut. Governor, Mr. Rhodes, and Mr. Dixon, *and he moved to lay them on the table*, and it was then I noticed the bundle was smaller than the packages sent. I was surprised at this course of proceedings with these important memorials, and as the previous vote upon the Bill authorising the Corporation to purchase at their own assessment sales, and particularly at your own vote on that bill, and at the introduction by yourself of a res-

olution to refer it to a select Committee to report complete, while the Bill was under consideration with the Committee on the Judiciary, and had not been reported upon by that Committee.

In looking through your letter of the 15th inst., I noticed your remark "If the packages were in the form of Newspapers then it is probable I might have neglected to read them." These memorials were neatly put up in white paper and could no more be mistaken for newspapers than any other letters. You also remark: "If Mr. Meriam had called upon me immediately at Albany when you discovered they were lost and at any time after I was always ready to hear him and explain anything in my power."

"Mr. Meech, when he left N. York for Albany took with him written instructions–when the committee separated the night previous to his departure for Albany—it was arranged that Mr. Meech was to get ready for to leave town at six o'clock in the morning and myself to have all the papers he was to take with him in readiness and meet him on board the boat the next morning with the papers and with a letter of instructions.—This was done. In these instructions Mr. Meech was requested to call on the members at their rooms before the hour of meeting of the two houses in the morning after his arrival in order that the memorials might be presented that morning. He was also requested to procure the Albany Evening Journal of that day on which the memorials were presented and the Argus and Advertiser of the next day and forward them by the Express that the Committee could see what was done in the two houses with the memorials &c. He sent these papers and they came to hand, in looking over these I did not see any mention made of the presentation of the 40 memorials by Mr. Scott, I at once wrote Mr. Meech a letter of which the following is a copy:

"*New-York, March* 13, 1842.

"MR. MEECH:

"Dear Sir,—The Committee will set out to-morrow morning. We were disappointed in not hearing from you by the express on Saturday. I see by the evening Journal of Friday that Mr. Rhodes presented several memorials but I do not see that Judge Scott has presented those sent to him. Will you call on Judge Scott and make enquiry of him on the subject. Forty memorials were sent to Judge Scott which some of the memorialists are anxious should be presented.—Perhaps he may be waiting until the bills are referred to the New York delegation before he presents them, if so they will be in time, but if he declines to present them you will please ask him plainly and in that case request him to return them to you and give them to Mr. Dixon or Mr. Rhoades and ask them to present as 40 memorials. Be careful not to offend Judge Scott in relation to these memorials, say to him that I wrote to ask you if he had presented these memorials but if you know that he has presented them, do not ask him."

This letter was forwarded by express on Monday morning and a receipt taken for it. A snow storm had set in that morning and the cars did not get through until two days to Albany. In the meantime Mr. Meech had left Albany for New York. On my arrival at Albany, I called at the Express office with the receipt and received the package again and its re-delivery is marked on the face of the receipt which I have. The memorials were frequently spoken of by the Committee at Albany from the fact that no notice of the presentation of them was to be found in the newspapers, but from what you said to the Committee when they called on you they supposed you friendly to their mission and it was for that reason the subject was not mentioned. When the Legislature adjourned I called on the clerk of the Senate and examined the journals and also examined his files, and not finding the memorials in the files nor any entry of them in the Senate Journal I at once addressed you a note dated 19th April and called with it myself at your lodgings and to which I received no reply. On the 23d of May I addressed you a second note asking for a reply to my note, and this will explain, I trust, the reason of my not saying more, than here stated on the subject. You will find in the letter addressed to you, (early in January) which covered a memorial in relation to the taxing the Banks on lost capital allowing the tax books to remain in the hands of the Ward Collectors for a longer period, to prevent a large arrear tax, and declaratory of the tax law of the previous year, stated, that I should send you these memorials, and I sent you about the same time a printed copy of these memorials, with the names of some 12 or 1500 of the signers printed thereto. In looking through the printed Journals both of the Senate and Assembly you will perceive that both are erroneous in reference to the bill authorising the Corporation to purchase at their own assessment sales, and the Remonstrances against it. The Standing Committee on the incorporation of cities and villages amended the bill in the Assembly and so reported it, but the Journal has it down, as reported *without amendments*. I have been quite lengthy in my communication, but it seemed necessary. You will notice that Mr. Meech reached Albany, March 9th, and the Legislature adjourned April 18th.

Yours Respectfully,

EBEN MERIAM,

of the New York Citizens Committee.

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Letter from E. Meriam to H. N. Wales, Esq., Clerk of Assembly:

NEW-YORK, Nov. 8th, 1843.

H. N. WALES, Esq.,
Clerk of Assembly.

"DEAR SIR,—I have above, given you the extracts from the Assembly Journal, and also herewith, a copy of a letter from the Hon. E. H. WHITE, and also a copy of a letter received by me from a very distinguished member of a former Legislature of this State, and of the Senate branch.

The bill to which these proceedings refer, is one of a very extraordinary character in the annals of legislation; and as the proceedings in the Senate, as well as the Assembly, have, with respect to it, been had without a compliance with the rules of either house, I am under the necessity of applying to you for information. I was standing alongside Mr. Redington, when he reported the bill in question, and he reported it with amendments, and I remained in the House of Assembly that entire day, and I heard of no motion of a reference to a Select Committee, to report complete, and Mr. Redington was also in his seat all that day, and he informed me that he had heard of no motion, but on enquiring at the Clerk's desk, I learned that the amendments had been struck out. The Journals of the Assembly are silent as to the bill being reported with or without the amendments, by the Standing Committee, but state that the Select Committee reported the bill *without* amendment, in which case, the amendment made by the Standing Committee, should have been with the bill, requiring engrossment.

Will you have the goodness to refer to your manuscript journal, and state to me what that says, and how this bill could be referred to a Select Committee, to report complete, without a motion.

Very respectfully,

Yours, &c.,

EBEN MERIAM,

Of the Committee of Citizens, delegated to proceed to Albany, by the Merchants' Exchange Meeting, of March 6th, 1843."

The Extracts from the Assembly Journal, referred to in the first paragraph of the above letter, are to be found on the Assembly Journal, pages 880 and 894, and page 264 of this number; and the letters referred to, on pages 272 and 273, also of this number.

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Letter from H. N. Wales, Esq., to E. Meriam:

SCHAGHTICOKE, 15th Nov., 1843.

DEAR SIR,—Yours of 8th instant, with copies of letters from the Hon. E. H. WHITE, and another, came duly to hand. The answer to your enquiries, will be found in Mr. WHITE's letter; and if you will search the Journal, you will find parallel cases on the same page, where bills reported by a Standing Committee, were immediately committed to a Select Committee to report complete. This species of reference is very common near the close of the session, in order to save time.

The bill you refer to, went through all the *forms* necessary, and the letter of your correspondent does not touch this case, although strictly right. When a bill is reported by a Standing Committee, the question is, on agreeing with their Report, and a motion to refer, re-commit, or order immediately to a third reading, is universally practiced. Upon the Report of Mr. Redington, Mr. Jones moved its reference to a Select Committee, of which he, of course, was Chair-

man, and he reported the bill as it was passed.

Yours truly,
H. N. WALES.

E. MERIAM, ESQ., New-York.

Letter from E. Meriam, to H. N. Wales, Esq.:

"NEW-YORK, Nov. 18th, 1843.

"DEAR SIR,—I have by this morning's mail, your letter of the 15th instant. I regret that I did not see you when in town.

I hand you annexed, a copy of a letter to Hon. D. R. F. JONES, and his reply.

We wish you would examine the manuscript Journals of the Assembly, and see if they correspond with the printed copy, as the printed copy is evidently wrong.

You refer to other bills. The New-York Tax bill, which was reported at the same time, by Mr. E. Strong, was not at that time, referred to a Select Committee, to report complete, and the printed Journal is wrong in that. I was present when both of the bills were reported by the respective Standing Committees, and the next day, Mr. Palmer, who was a member of Mr. Strong's Committee, went to the Clerk's desk with me, in reference to the Tax bill, for I learned of a person at the Clerk's desk, whether yourself, or deputy, or assistant, I cannot say, that the amendments had been struck out. I watched these bills myself the whole day, on which they were reported by the Standing Committee, that objections should be made to a reference, and the merits of the bill discussed, before such reference should be had.

We will feel much obliged by your early reply.

Very respectfully,
E. MERIAM,
Of the Committee, &c.

Mr. WALES," Clerk of the Assembly.

Letter from H. N. Wales, Esq., to E. Meriam:

ALBANY, 21st Nov., 1843.

"DEAR SIR,—Yours of the 18th came to hand yesterday, and I hasten to answer it, although I have nothing new to communicate.

The printed copy of the Journal is correct and in the usual form, and tallies exactly with my recollection of the matter, and as you will discover, is corroborated by Messrs. White and Jones, the former of which was in favor of Mr. Redington's amendment. The fact of the bill having been amended by the Standing Committee, does not appear upon the Journal, because in the turmoil usually attendent upon the press of business, at the close of a Session, it is sometimes utterly impossible for the Speaker or Clerk, to understand distinctly, what or how the Chairman reports a bill, and the Clerk is compelled to examine the bill itself, in order to know whether it was reported with or without amendments. In this case, the bill passed out of our possession, before we knew what amendments, or whether any amendments had been made, and when the bill was reported back again by the Select Committee, as it was the same day, (see page 895,) we had to take the bill as we found it coming from the last Committee.

All the business of the Clerk's table, was done by myself, and all the records of the proceedings, (i.e. the Journal,) was kept by my deputy, Mr. Lott; the Committees are made by the Speaker in this manner, immediately after a motion is made to refer a bill to a Select Committee; the bill is passed up to the Speaker by the Clerk, who writes the names of the Committee upon the back of the bill, the bill is then passed into the hands of the Clerk who keeps the Journal, the blanks which he has left for the names, is filled over the bill handed by him to the Chairman named on the bill. You will, therefore, discover that it is hardly possible to make a mistake in the direction of a bill, although, as I before remarked, he may err in relation to the manner of the report, *whether with or without amendments.*

The motion, whether heard by yourself, or even if not heard by five members in the House, *was* made, and the bill *was* reported by Mr. Jones, exactly as it came from the Senate, and so passed, and no Parliamentary rule violated, *and even a motion made out of order, or an hour after* Mr. Redington reported the bill, would have been in order unless objected to, for unless objections are made, it is done by unanimous consent.

Yours truly,
H. N. WALES.

E. MERIAM, ESQ., New-York."

Letter from E. Meriam, to H. N. Wales, Esq.:

"DEAR SIR,—I have the pleasure to acknowledge the receipt of your favor of the 21st inst., and should have replied to it earlier, but I have been so much engaged, that I had not time to give it that attention, which its importance demanded.

You will perceive that we alledge three errors in the printed Journal of the Assembly.

1st, That the bill was reported by the Standing Committee, with amendments; whereas, the printed Journal states the contrary.

2d, That the Select Committee reported the bill *with amendments*, (viz: striking out the amendments of the Standing Committee,) whereas, the printed Journal has it, that that Committee reported the bill without amendments.

3d, That no motion to refer the bill to a Select Committee, was made, at the time stated in the Journal.

In your reply, noted above, as your letter of the 21st instant, you say:

'The fact of the bill having been amended by the Standing Committee, does not appear in the Journal, because the turmoil usually attendent upon the press of business, at the close of the Session, it is sometimes utterly impossible for the Speaker or Clerk, to understand distinctly, what or how the Chairman reports a bill, and the Clerk is compelled to examine the bill itself, in order to know whether it was reported *with* or *without* amendments. In this case, the bill passed out of our possession, before we knew what amendments, or whether any amendments had been made, and when the bill was reported back again by the Select Committee, as it was the same day, (see page 895,) we had to take the bill as we found it coming from the last Committee.'

You admit in this, that we were right in the first and second allegations. We have, therefore, the presumption in our favor as to the third allegation, independent of any thing else.

With regard to the *third allegation*, we have to say, that we were at Albany attending especially to this and four other bills; that one of our Committee, (the writer,) was within about fifteen feet of the Clerk's desk, when Mr. Redington reported the bill with the amendments, and a motion to refer it to a Select Committee, could not have escaped being heard. The Chairman, Mr. Redington, heard no such motion, neither did Mr. E. Strong, Mr. Hutchinson or Mr. Palmer, and all of these gentlemen were attending near the desk in reference to this and the associate bill. I was standing by the side of Mr. Redington, at the time he made the report, and any motion to make such reference would have been at once objected to.

Mr. Jones, in his letter to me of the 3d of Nov., says:

'I have to say, that as I am named in the Journal as Chairman of the Select Committee, to which was referred the bill to authorize the Mayor, &c., to purchase lands, &c., it is very probable that the motion to refer to a Select Committee, was made by myself.'

You will perceive, by the above quotation from Mr. Jones' letter to me, that he has no recollection of ever having made such a motion, or of a motion having been made by any other member. He merely says it *is* probable, because the Journal names him as Chairman, &c.

It is not our purpose to find fault with the excellent Clerk of the House of Assembly, on the contrary; when we had occasion to enquire about this bill, at the Clerk's desk, we found him both frank and obliging.

We understood Mr. Jones to make a motion to refer this bill to a Select Committee, to report complete, the day the bill was referred to the Standing Committee, and immediately upon that reference; but such a motion, at that time, was as much out of place, as if it had been made the first day of the Session, before the bill was introduced into either House.

If the mark of the names of the Select Committee, were your guide in making your entry in the Journal, could not some person other than yourself, or the Speaker, or a member of the House, have placed the names upon the bill?

Your letter details the mode of proceeding by yourself and assistant, and then remarks:

'And even a motion, made out of order, or an hour after Mr. Redington reported the bill, would have been in order, unless objected to, for unless objections are made, it is done by unanimous consent.'

If a motion was made one hour after Mr. Redington reported the bill, would not such a motion appear in the Journal, in the order of time in which it was made, and as being made subsequent to other motions, which had in fact preceded it in the actual business of the House?

You say:

'The printed copy of the Journal is correct and in the usual form, and tallies exactly with my recollection of the matter, and as you will discover, is corroborated by Messrs. White and Jones, the former of which, was in favor of Mr. Redington's amendment.'

I cannot see anything in either Mr. Jones' letters, or those of Mr. White, copies of one of each, of which, were sent you, which corroborates the Journal as printed, for Mr. White says: 'that Mr. Redington reported the bill with amendments,' and the Journal says the very reverse, and Mr. Jones is very far from being positive in either of his letters as to the correctness of the Journal; he says: 'he believes, however, the report in the Journal is correct.'

In another letter, he says:

'I have to say, that as I am named in the Journal, as Chairman of the Select Committee, to which was referred the bill to authorize the Mayor, &c., to purchase lands, &c., it is very *probable* that the motion to refer, was made by myself.'

We shall feel obliged for your early reply.

Yours truly,
E. MERIAM,
Of the New-York Citizens' Committee.
H. N. WALES, Esq.,
Clerk of Assembly."

—

Letter from H. N. Wales, Esq., to E. Meriam:

ALBANY, 30th Nov., 1843.

"MY DEAR SIR,—Yours of yesterday is at hand: I regret exceedingly that I have not made myself understood in my two former communications. I have conceded in both, that it was not only possible, but very probable, that an error might be made upon the Journal in relation to the *manner* in which a member reports a bill, for the reasons before stated, while it is almost impossible that an error of reference, and appointment of a Select Committe, can be made; the one case being the sin of omission, and the other of commission: the former being accidental, and therefore pardonable—the latter intentional and criminal, and a Clerk who would do it, perjures himself.

Since the above was written, I have been to the Secretary's office, and examined the original bill. I find upon it, in pencil, in my own hand writing, the following endorsement, in the usual form: "Select, Messrs. Jones, White and Haight," without amendment, "Table."

These endorsements mean the reference to the Select Committee: the report of said Committee, (for the bill as it then was, was without amendment,) and the result of the first vote upon the bill when there was no quorum in the House.

So much for the Record: now for my own recollection of the matter, which I have not before given you. The bill was reported by Mr. R., with an amendment, a motion *was made* by Mr. Jones to refer, &c., and the bill was reported by Mr. Jones without amendment. Not exactly understanding myself what condition the bill was in, I sent for Mr. Jones to my desk, and enquired what he meant by this report, to which he replied, that "he had struck (taken) out the amendments of Mr. R.

Now, the printed Journal does not say what you alledge "that Mr. R. reported the bill without amendment," although it ought strictly to say that it was amended. This I have explained before, and the presumption is, that my deputy never saw the bill to make his record from, until it came from Mr. Jones' hand; and finding it without amendment (as it was,) so entered the report of both Committees.

Mr. Jones actually reported the bill without amendment, as stated in the Journal, although in fact he amended it, and that was the reason I sent for him to my desk.

You say the Journal shows the motion was made immediately, when it was not. In this I think you are mistaken, my impressions are, that the motion *was made* immediately, although I do not pretend to be positive on this point; *that it was made I do know*, for no such endorsements as those alluded to, on the first page of this letter, could or would have been made without it.

This motion could have been made some little time after Mr. R.'s report, and still appear as it does; for, if the motion had been made shortly after, the deputy would very likely turn back and place it there: that it was not made long after, is very apparent, for I should think Mr. Jones' report was made in an hour or hour and a half after Mr. R.'s.

Any motion is in order *practically*, at any time, unless objected to, as the Speaker never interposes his authority in these matters, so near the close of the session.

When I said the printed Journal was correct, I meant it was in conformity to the manuscript, as you had raised that enquiry. I also stated that it was corroborated by Messrs. Jones and White, so far as relates to the reference of the bill. If any chicanery had been practised, Mr. White, who was on both Committees, would have been very likely to have ferretted it out.

I have two substantial reasons for being thus prolix in explaining this matter:—*first*, as a public officer, I feel bound to furnish any one with full answers, to any and every enquiry addressed to me in my official capacity; *second*, my reputation as a Clerk, of which I am rather chary, is in question, and I feel an interest in placing that above reproach, it being the only capital I have.

Hoping the annexed will prove satisfactory, I remain as heretofore.

Your's truly,
H. N. WALES.
E. MERIAM, Esq., New-York."

—

Letter from E. Meriam, to H. N. Wales, Esq., Clerk of Assembly:

NEW-YORK, Dec. 2d, 1843.

DEAR SIR,—Your letter of the 30th ult., came duly to hand, and I hasten to reply to it.

The whole tenor of my several letters to you, are very far from imputing any blame to the worthy Clerk of the House of Assembly.

Your frank and very full answers to our numerous enquiries, place us under obligations to you for the favors thus conferred.

It is due to yourself, from us, to point out to you, the *entree* of this monster bill into the Legislative Halls of the Commonwaalth, to mark its progress, and note its final *exit*. In the annals of legislation, there is not to be found a bill any thing to compare to this in its deformities.

In the Senate Journal, page 301, you will find the mention of a memorial, purporting to be that of the Mayor, Aldermen and Commonalty, of the City of New-York, asking for the passage of this bill.

If you refer to the files of the Senate, you will find this memorial thus endorsed, but on opening it, you will find it is signed by Joseph R. Taylor, Clerk of the Board of Aldermen, who, by virtue of suct office, was also Clerk of the Common Council.

Petitions to the Legislature from the Corporation, are uniformly signed by the Mayor, not so with this.

In Senate Journal, page 316, you will find a report of Mr. Franklin, upon this memorial, and he states it to be a memorial of the Common Council.

In the Senate Journal, page 389, you will find a record of the presentation of a remonstrance against the passage of this bill, from the 'Citizen's Committee,' and the Journal should also state, that the bill was re-committed to the Committee on the Judiciary, on the motion of Mr. Rhoades, *this is omitted.*

On page 407, of same Journal, you will find a resolution of Senator Scott, to refer this bill to a Select Committee to report complete; this resolution was not in order: the bill at that time was in the hands of the Committee on the Judiciary, and that Committee had not made their report.

In Senate Journal of April 5th, page 415, you will find it stated, that 'Mr. Dixon presented the memorial of Phelps, Dodge & Co., and 312 others, in relation to land sold for taxes and assessments, in the City of New-York, &c.'

In the Albany Daily Advertiser, of April 6th, you will find under the head of Senate proceedings, of April 5th, that it is stated that '*Mr. Dixon presented* 30 *memorials from New-York, signed by* 2,500 *citizens, that the Corporotion may be prohibited from*

purchasing under sales and assessments.'

I presume you will find the same in substance, in the Evening Journal or Argus—one or both.

You will find, on examining the Senate files, that the daily Advertiser is *right*, and the Senate Journal *wrong*, in this particular.

You will find the Senate Journal of the 5th, contradicted by the same Journal, of April 14th, page 508, and your own Journal of same day, page 904.

Now sir, this is a brief account of the track of this bill in the Senate, before it took its departure for the Assembly. With its movements in that branch of the legislature, my previous letters have made you acquainted.

On the 18th of April, the Legislature were, by concurrent resolution, to terminate the session at 12 o'clock, M. The session was, on that day, extended, to 4 o'clock, P. M., by a concurrent resolution.

Previous to 4 o'clock, the members were, many of them, packing their trunks and getting ready for home, and in the midst of this confusion, and in the absence of the Chairman of the Standing Committee, who reported the bill with amendments, it was called off, and decided to be passed, sent to the Senate, where it lay quiet during the discussion about the Recorder ship. of Troy, and finally, at past the hour of 4 o'clock, P. M., found its way into the Executive Chamber.

Now sir, with all your experience in the proceedings of legislative bodies, I think you will say with me, that its like never was before known. Sometimes this bill was moving with the rapidity of thought, and at other times it seemed to be extinct.

You have, sir, in the archives of your department, a commentary upon this bill, and although brief, is pertinent; it is the memorial of Mr. Benson, who, complains of an assessment imposed upon a piece of salt meadow, by the great officers of this very Corporation, of the city of New-York, which amounts to 26 times the value of the land, and it is to legalise this very outrage, and some others, that the officers of the Corporation of the City, asked for the passage of this act.

You have other memorials, viz: that of James McBride, John H. Tallman, Joseph Alexander, Martha Amory, and divers others. Please cast your eyes over these memorials, and you will see what this bill developes.

There is not a civilized government on the face of the whole earth, that ever exercised power to the extent which this bill reaches.

We cannot believe that there is a single member of the government of this State, that would have given this bill his support, had he first carefully examined and deliberately considered its provisions, but it went through the houses like the gust of a tornado.

I have been thus profuse, that you may have some idea of the *de*merits of the bill authorising the Mayor, Aldermen, &c., to purchase at their own sales for assessments, assessments generated, perpetrated and consummated by themselves, in spite of the protestation of their unfortunate victims, and wholly regardless of their lamentations.

The Legislature have been imposed upon in reference to this bill. Shamefully imposed upon.

The assessments for which they ask for authority to bid off the land, thus imposed upon, are, in a majority of the cases, for fictitious improvements; for the pretended opening of streets, which are still in the same state that the island of New-York was found in, when it was taken from the possession of the red men of the forest—nothing more nor less than sham assessments, and it is these, which they have the audacity to ask the Legislature to legalize.

Many, many are the individuals who have been utterly ruined by these odious and wicked assessments. Yes sir, I can point you to a venerable citizen, whose head is whitened with the frost of more than three score years, who has been made a beggar by these detestable assessments, and of him I could say to you, '*pity the sorrows of the poor old man, whose trembling limbs have borne him to your door, Oh! give relief and Heaven will bless your store.*' That man cast his eyes toward the Legislative Halls of the Commonwealth, and asked for the protection of his home, of the graves of those who gave him birth, alas! his petition was passed unnoticed, while that of the oppresser found favor; and instead of giving relief to the humble suppliant, an act was passed authorising the Corporation to take from him the ground on which the ashes of his kindred sleep.

I could point you to the widow and her helpless children, whose home has been desolated by Corporation assessments. She has petitioned, but her application was of no avail, for with the oppressor there was power, and it was intimated that relief in her case, would '*inconvenience* the Corporation.'

Had the bill in question been a meritorious bill, we would not have troubled you with enquiries as to its history and sojourn in your department, but lamentable as it surely is, it has not a redeeming feature in its whole body.

In order that you may know the importance of the amendments proposed by the 'Citizen's Committee,' to this bill, I will copy these from the New-York Journal of Commerce, of April 14th.

'§ 7. This act shall not be construed to alter or change the term of time during which lands may be redeemed from assessment or tax sales, to any shorter period than heretofore provided by law, whether the certificates of sale have been assigned or not; nor to legalise or confirm any assessment not made in accordance with the laws of this State, any thing herein before contained, to the contrary in any wise, notwithstanding.'

'§ 8. The moneys authorised to be raised by tax, on the estates, real or personal, of the inhabitants and freeholders of the City and County of New-York, shall in no case be used, appropriated or applied to the purchase of any lands sold for taxes or assessments in the said city.'

'§ 9. This act shall not be construed to authorise the purchase of any lands for unpaid assessments, in any case where the improvement was not made on the petion of a majority of the owners of the land affected thereby: nor shall it authorise the purchase of any lands which are assessed more than ten times the actual value of such land; nor in any case where the members of the Common Council of the City of New-York were interested directly or indirectly in the contract work; nor in any case where the Mayor, Aldermen and Commonalty of the City of New-York, have not complied with the provisions of the Statute, under which the proceedings were had; nor in any case where the fees or charge for advertising such property for sale, for such assessment, exceed the actual value of the land; nor in any other case, where the fees of any one of the officers, which are assessed in part thereon, exceeded fifty thousand dollars per annum.'

I will also give you an extract from a remonstrance of the public meeting held at the Merchants' Exchange, on the 6th of March, 1843, the original of which is in the Archives of the Senate, signed by Preserved Fish, Chairman, and twelve Assistant Chairmen, all of whom are men of great purity of character, and who are, in moral worth, second to none in the United States.

This meeting, in the most emphatic language, remonstrate against this odious bill, in the words following:

'The remonstrants suggest that the application of the Common Council, for a law to authorise the Corporation to become purchasers at assessment and tax sales, ought not to be granted; that it is bad as a principle, and will be worse in practice. That the Corporation have not the means of paying for such purchases, except by taxing the citizens for the amount of the purchase money; that the Corporation should not be allowed to hold any real estate, not required for public use, that it will be a wrong done to the owners of such lands, will lead to expensive litigation, for which the citizens must also be again taxed, and thus *indirectly sanction assessment abuses of an agravated character*, and give to contractors, at exorbitant and improper prices, the public money, and to public officers fees and charges *for services never rendered.*'

I give you also, an extract from 60 memorials, signed by several thousands of the best men in the City of New-York, men of both political parties, without distinction of party, and composing the greatest portion of the most respectable inhabitants of New York, some of which were presented in the Senate by Senators Rhoades and Dixon, and some presented in the Assembly, and upon one of those presented in the Assem-

bly is the signature of an old fashioned public officer George B. Smith Esq., formerly Street Commissioner of the City of New York and his assistant Mr. Doughty. These memorials were also signed by the venerable Jonathan Thompson the distinguished Ex-Collector of the Port of New York, by Stephen Allen and Phillip Hone formerly Mayors of the City of New York, by Peter A. Jay, formerly Recorder of the City of New York, and numerous others including Citizens who pay three fourths the aggregate tax of the City. This memorial is also signed by that distinguished Citizen Ex-Senator Gulian C. Verplank who was a member of the Special Committee appointed by the Hon. the Senate of the State in 1841 to investigate the assessment abuses and depredations in the city of New-York. The following is the extract :

'Your Memorialists, citizens of the city of New York, most respectfully represent to your Honorable Body, that the great and arbitrary power now and heretofore exercised by the Corporatien of the City of New York their officers and servants, in the imposition of fictitious and ruinous Assessments upon private property for what are miscalled public improvements, has had the effect to lessen and depreciate the value of real estate; and the loose and reckless manner in which these extraordinary proceedings have been carried on has had the effect to impair real estate securities, and to render titles doubtful and insecure.'

I give also the extract from 32 Remonstrances presented in the Legislature signed by about 2,700 Citizens of New York against the passage of this odious and abominable bill, as follows:

"The undersigned Remonstrate against the conferring of any authority on the Corporation of the City of New York, or any of its officers to become purchasers at assessment or tax sales."

I give also an extract from a written opinion from that distinguished Equity Judge, the Hon. Murray Hoffman, in one of these very proceedings for an assessment for which the bill in question is applied for to consummate—as follows:

"But I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body, than characterises the proceedings complained of."

I will give you another from the memorial of the Mayor, &c. in 1841 *to the Legislature as follows:*

"But the amount of said assessments being more than the present market value of the said property so liable."

I will give you further illustrations from the Report of the Special Commitcee from the Senate appointed to investigate assessment abuses in the city of New-York in 1841. *See Senate Doc. No.* 100 *of* 1842, *pages* 13, 15, 16, 17.

"It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so very great as they were represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the Commissioners for the same exhibited before the committee. In the opening of the seventh avenue, from 21st street to 129th street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was $28,241.41, while the fees and expenses of that opening amounted to the large sum of $12,435.70, and if to that is added the collector's fees for collecting the assessments $1,115.00, it will show a total of expenses paid by the owners of land on that portion of the seventh avenue for its formal opening, amounting to $13,550.70.

The amount paid to the commissioners on that avenue for their services, at the rate of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen months*' services for each commissioner, in making the estimate of the land taken for opening that avenue, and assessing that value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, the commissioners were each engaged three times the whole period that the Legislature is employed in legislating for the State, and each of them received about three times the compensation that is paid to a legislator for passing the whole winter from his home in attending to the public business. And in addition to that it was shown to the committee that commissioners were frequently engaged on several streets or avenues at the same time, taking their four dollars per day on each of those improvements; and that they received and were paid that compensation in some instances where they did not attend to the duties of their appointment, and in others where they attended but once or twice. If the case of the seventh avenue had been a solitary instance the committee might have supposed that it had taken place through some mistake; but they found the same principle of enormous expenses to extend throughout the whole system of street openings in that city, and that to such an amount that the surprise should be not that the inhabitants now complain of it, but that they had not done so at a much earlier period".

"If the citizens of New-York are laboring under an erroneous impression in believing that they have been greatly oppressed and injured by the course pursued by those commissioners, that belief is, in the judgment of the committee, very extensive."

"On that branch of the complaint as to the imposition of heavy and oppressive assessments for improvements never actually made, the committee ascertained that a very large portion of the streets and avenues formally opened from 1836 to 1839, were not actually opened; that nothing has been done beyond making awards and assessments by the commissioners and the confirmation of their reports by the Supreme Court; and that although the assessments have been collected for such improvements in many instances and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the same condition as they were before the taking of any proceedings for their opening; and in some cases such lands remain in the occupancy of their original owners notwithstanding they have been paid for the same. And in numerous other instances where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

"Out of a list of eighty-one streets and avenues, or parts of such highways, the reports for the opening of which had been confirmed in 1837, 1838 and 1839, fifty-seven have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others, a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation. This attempt to collect assessments not only by voluntary payment but by enforced sales of the lands charged, without actually opening the streets or avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters. The committee therefore submit this subject to the consideration of the legislature.

"Several instances were shown to the committee where property had been offered for sale for the payment of assessments at two or three successive sales without being able to get a bid, the amount of the assessments being more than the estimated value of the property."

With regard to errors in your Journals, I have to remark that the wonder is not that these exist, but the wonder is that they are not ten times more numerous. I do not see how a clerk of the House of Assembly can know any thing about his papers. One comes to his desk to look for one paper and another for another, and instead of putting the same papers in the same order in which they found them they most likely put them some where else. We should be very slow to find fault with the clerk of the Senate or Assembly for errors, or to lay those we may find at their doors.

Legislation to be safe should be deliberate and such is the whole force of the Constitution in detailing the proceedings required to be gone through with before a bill becomes the law of the land.

The respective houses in the forming of their rules contemplate order and system but in practice oft times how widely different is the fact.

The associate bill of this of which we

complain shared the same fate, as the present one, and those who were opposed to any amendments to it by the standing committee caused all the amendments to be struck out in mass, and by so doing, nullified the whole bill, and were subsequently obliged to ask the unanimous consent of the house to put one of these very amendments back again.

Before closing this communication, allow me to call your attention to the vote recorded upon the passage of this bill, in your house, you will find this, on page 1022, of the Assembly Journal. You will perceive that it is there stated that the vote was taken after 3 o'clock P. M., the Assembly closed its session, *by concurrent resolution of both houses*, at the hour of 4, P.M., of the same day.

This bill, you are aware, is a bill requiring a vote of two thirds the members to pass it. 86 votes, were therefore necessary to pass the bill in the assembly, and the journal states the names of 91 as voting in the affirmative. It is almost certain that some of the gentlemen whose names were recorded in the affirmative, voted thus, under an impression that the Select Committee had returned the bill in the same state that Mr. Redington's committee had left it—as his report signified that much, thus, you will see the consequence of this error, and the importance of the position we assume.

At the session of the Legislature of 1842, the delegates of the anti-assessment committee from this city, found a bill which had been passed in the Senate by a vote of 22, to 3, on their arrival at Albany on the desk of the clerk of the Assembly, ready for a third reading. That bill was at that time, out of place. and Mr. Townsend, a member from this city of great energy and promptness of action, took hold of the matter and put the bill as it should be. This bill in the shape it passed the Senate authorised *two annual taxes to be collected in the city of New York, within the space of* 8 *months and* 21 *days.*— The Assembly, on Mr. Townsend's exposeing this deformity, slid the tax forward, in the order of time, to its appropriate year, and by that means, the citizens of New York were relieved of this extraordinary imposition. When this bill went back to the Senate for their concurrence in the all powerful amendment' which changed the whole character of the bill, every Senator present, recorded his vote in favor of the amendment of Mr. Townsend. This plan of collecting two taxes in one and the same year, was a deep laid scheme of the Corporation of the city of New-York to cover up the issue of floating bonds without exposing their extravagance to the tax payers. This matter you will undoubtedly remember, as it created quite a sensation in the house of Assembly at the time.

In speaking of these matters, I wish to be very explicit, in saying that we impute no blame to the worthy clerk of the house of Assembly, on the contrary, and I will add, that in a conversation which I had this day with the Hon. Robert Smith, chairman of the Anti-Assessment Committee, who was a member of the House of Assembly from the city of New York in 1843—he, Mr. Smith, spoke in the highest terms of commendation of the worthy clerk of the House of Assembly, whom I have now the honor of addressing, and this commendation is enhanced by coming as it did from the lips of a political opponent—and enhanced, also, by coming from the lips of a man of high standing in this great city, a man beloved and respected by all who know him.

There is another matter pertaining to this bill which involves important considerations.

On the Assembly Journal, pg. 904, you will find the following:

"On motion of Mr. Haight, and by unanimous consent,

Resolved, That the Hon. the Senate be requested to send to this house the remonstrance of Jonathan Thompson, and others of Andrew Foster and Sons and others; and 30 other Remonstrances of 2,500 Citizens of the City of New-York against the passage of the act authorising the Corporation to purchase lands for assessments and also the Remonstrance of the meeting held at the Merchant's Exchange in the city of New York, upon the same subject, which have been received in the Senate and referred to the Judiciary Committee, and which are not yet reported upon."

"Ordered, That the clerk deliver the said resolution to the Senate." This was April 14th.

On page 905, of the Assembly Journal you will find this entry:

"A message from the Senate was read, informing that they had agreed to the resolution of this house requesting the transmission of certain remonstrances to this house, and have transmitted the same accordingly."

These remonstrances were set up endways on your desk, during the remainder of the session, which terminated four days after, viz; on the 18th April.

When Mr. Haight asked unanimous consent to offer this resolution, Mr. Jones objected—after some discussion with the mover, Mr. Jones withdrew his objection, after this, Mr. Hibbard of New York objected, and after some parleying, he withdrew his objections.

The 30 Remonstrances which are referred to, are those that the Senate Journal, page 415 shows entered as the "memorial of Phelps, Dodge, & Co., and 312 others. in relation to lands sold for taxes and assessments in the city of New York, &c., which **were** read and referred to the Committee on the judiciary," but the Albany papers, have them as, "30 memorials from New York, signed by 2,500 ciitzens, that the corporation may be prohibited from purchasing under sales and assessments," &c.

I have indulged in some recapitulation for the reason that it seemed necessary to illustrate the subject matter.

The bill, left your house in time to reach the Exective Chamber before the termination of the session, but it lingered in the Senate waiting the termination of the secret setting which lasted till the session of the Legislature had expired, and by this means it was (as we say,) too late in reaching the Governor's hands. The present Constitution, as to the approval of the Governor of a bill which has passed the Senate and Assembly, is the re-enactment of the Constitution of 1777, with certain alterations.

The Constitution of 1777, states in the preamble of the Section, as follows:

"And whereas, laws inconsistent with the spirit of this Constitution, or with the public good, may be hastily and unadvisedly passed."

The next paragraph of the same section, states:

"And in order to prevent any unnecessary delay, be it further Ordained, That if any bill shall not be returned by the Council within ten days after it shall have been presented, the same shall be a law, *unless the Legislature shall, by their adjournment, render a return of the said bill, within ten days, impracticable, in which case, the bill shall be returned on the first day of their meeting, to the Legislature, after the expiration of the said ten days.*"

In the present Constitution, the words are:

"If any bill shall not be returned by the Governor, within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, *unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.*"

Now sir, allow me to give you another reference: in the Journal of the House of Assembly, of 1691, (see copy in the State Library,) and under the head of

"Die Veneris, 10 ho, A. M., Sept. 25th, 1691.

The bill for regulating the buildings, &c., read a third time and passed, and ordered to be sent up to the Commander-in-Chief and Council, for their assent.

Ordered, That Alderman Merrett, Mr. Courtland, Mr. Beeckman and Mr. Rensaleer, do carry up the two bills (*ut supra*) to the Commander-in-Chief and Council, for their assent."

"The gentlemen returned from the Fort; say they delivered the *two* bills, *(ut supra,)* and the Commander-in-Chief and Council, say, *it is very well*, they will make all speed imaginable."

"Die Jovis, 10 ho, A. M., Oct. 1st, 1691.

Upon reading the petition of the Mayor, Aldermen and Commonalty of the City of New York, together with the proviso transmitted to the House by the Commander-in-Chief and Council, for consideration; *Ordered*, that the *proviso* be annexed to said bill, and sent up to the Commander-in-Chief and Council, for their assent, &c."

This proviso was in the words following:

"Always provided, and be it further enacted, &c., That nothing herein contained,

shall be construed to change, alter, shorten, lengthen, narrow or enlarge any of the streets, al*lies*, and lanes, as they are now laid out, and remain at the publication thereof, nor to break through any person's ground, now in fence or enclosed, or to take away any persons' house or habitation, any thing herein contained, to the contrary hereof in any wise, notwithstanding."

You will find in an old volume of laws, now in the State Library, published in London about 1718, the act in question, with this *proviso*, both of which, it is therein stated, were approved by King William, May 11th, 1697, *old style*. You will, in the Constitution of 1777, in Section 35, see that this act was confirmed by that instrument, and made a law of the State of New York. It is very instructing to compare this ancient law, passed in 1691, for the protection of private property, with this modern bill in question, of 1843, for the destruction of private property, for such is the practical working of the two bills. Now, had his Excellency been allowed time to have examined this bill and remonstrances, &c., and the amendments agreed to by the Standing Committee on the incorporation of cities and villages, we have no doubt he would have returned the bill to the Senate for re-consideration. The amendments which we have before given copies of, were, two of them, reported with the bill, by Mr. Redington. Mr. White says, in his letter, that he advocated one of them, which was reported with the bill by Mr. Redington. In your letter of 30th ult., you say: 'Not exactly understanding myself, what condition the bill was in, I sent for Mr. Jones to my desk, and enquired what he meant by this report, to which he replied, that he had struck (taken) out the there amendments of Mr. R,' admitting that were more than one.

The amendment designated in this communication as §9, if attached to the bill would have nullified it, and besides, it would have exposed the features of the whole bill upon its very face, and would present a sad picture to look at a century from this, if our government should last so long, a result which is quite uncertain, when hasty legislation brings it to the very verge of despotism.

I dwell long upon this matter, because it is important, and because what is here chronicled is admonitory, our desire is not to speak unkindly of any individual, it is the promotion of public good we aim at.

Legislation is the foundation of law, and although in the revision of the Constitution, first formed, the Legislative department of the government is increased in power, yet the frequency of elections is some check upon arbitrary legislation, and the Executive has the means to check hasty legislation.

Where responsibility is divided, as it is in legislative bodies, by the increase of numbers, there is little fear of blame, as it is shared by all, and therefore heeded by none.

In order that you may form an idea of the opinions of men of standing and respectability in this community, of the provisions of the bill authorizing the Mayor, Aldermen and Commonalty, to purchase at their own assessment sales, I have here inserted the copy of a remonstrance, presented in the Board of Aldermen, on the 3d of July, 1843, by Alderman Tillou, against the appropriation of near one quarter of a million of dollars, by Alfred A. Smith, City Comptroler, for the purchase of lands to be sold for assessments. It is in the words following:

"To the Common Council of the City of New York:

"The undersigned represent that they are informed that an application has been made by the City Comptroller to the Board of Aldermen, for an appropriation of Two Hundred and Forty Thousand Dollars, to pay for land bid off at the Assessment sale.

The undersigned remonstrate against any appropriation whatever of the mony of the people for such **UNWORTHY PURPOSES.** against the increase of city debt, against the increase of county taxes, against the attempt to increase the amount of public property not absolutely necessary for public use, and ask the Common Council to discountenance the odious assessment abuses, which are notoriously of an aggravated character.

The undersigned disapprove of the application to the Legislature for the passage of a law to authorize the Corporation to become purchasers at assessment sales, AND OF THE MEANS AND REPRESENTATIONS MADE, TO PROCURE THE PASSAGE OF THE SAID ACT, and they believe that the law is disapproved by the good men of all parties in the city.

And your Memorialists, &c."

This remonstrance is signed by the venerable Jonathan Thompson, one of the most inteligent and upright men in the land, a man full of experience; and by William B. Crosby, Robert C. Cornell, William W. Fox, George Griswold, John Haggerty, Brown, Brothers & Co., John M. Bradhurst, Robert Smith, Burtis Skidmore, John Anthon, Abraham G. Thompson, James Fellows, and James A. Burtis, gentlemen of the highest standing in this community. Men, whose opinions in matters of this kind, in the community in which they live, are considered conclusive.

Alderman Tillou also presented several other remonstrances of the same tenor, at the same time.

This bill, which authorizes the Mayor, Aldermen and Commonalty, to purchase at assessment sales, indirectly, indeed I think I may say *directly* sanctions assessments which have been imposed upon private property in violation of the Constitution of this State, which is the fundamental law of the Commonwealth. Some of these assessments are claimed to have been made by officers appointed by the persons exercising the office of Justices of the Supreme Court, of this State, which the Constitution prohibits from exercising '*any other office or trust*" but such as are incident to their judicial duties. In this view of that question, I am sustained by the learned Mr. Justice Cowen, who, in a recent opinion given by that distinguished Jurist, he says:

"It is indeed, difficult to see what the provision in the Constitution, against a Judge holding any other office, is worth to the people of this State, if it can be avoided by turning him into a Commissioner of highways, a Trustee of Colleges, &c., as the Legislature have in several instances, done. They have also, I believe, been declared members of the Police Courts, in the City of New York. The office of Sheriff for that City, or indeed any County in the State, might perhaps, with as much constitutional propriety have been imposed, as some of the duties I have attended to, and had the question been made, as I admit *it should have been*, a reconsideration by the Legislature would have probably ensued, and the evil of interruption of the regular business of the Court been prevented."

Now sir, this able opinion of this learned Jurist, is precisely to the point, and besides, it is given in a case in which the assessments on these very lands, which the Mayor, Aldermen, &c., have bid off, at their own sale, under this very act, were in controversy, and had this bill been sent to his Excellency the Governor, before the adjournment of the Legislature, this very objection would have been brought to the notice of His Excellency, and we are confident, that after looking deliberately and carefully into the unconstitutionality of the bill, he would have returned it with the objection named, and the Legislature would have put the bill among the waste papers. But the Legislature having become *functus officio*, in the eye of the Constitution, it was no use to return to that body, a bill of this kind, and therefore we say, it was extinguished by the Constitution.

Another objection to this bill in its operations and principles, viz: some of the assessments imposed on the lands sought to be bid off by the Corporation under this bill, were assessed by officers appointed by the Common Council of New York, and the assessments ratified by such Common Council, which act they claim to be legislative. Now, sir, the legislative power of this State, is vested by the Constitution in a Senate and Assembly, the Senate is to be composed of freeholders elected at a certain time, for a specified term, by persons having certain qualifications, who are on a certain day to perform this duty. The Assembly is to be composed of a certain number of persons, elected for a certain term, on a certain day, &c. These persons elected, are to assemble at a certain place, on a certain day, and

these respective bodies of Senate and Assembly, are to make rules, &c., keep a journal of their proceedings, and publish the same, &c. Then the Constitution goes on to point out in what manner a bill is to be passed, &c. &c.

Here is a special power given to a select class of persons, to perform certain duties of themselves, in the proper persons of their several respective members. There is no officiating by proxy, no clause in the grant of power, authorizing any other persons, or body politic or corporate, to pass laws. Therefore, the Senate and Assembly cannot delegate their legislative powers, or any portion of them; and the legislation of the Common Council of this City, therefore, in reference to these assessments, is a violation of the Constitution of this State.

This bill, authorizing the Mayor, Aldermen, &c., to buy land for their own odious and mischievious assessments, indirectly sanctions the taking of private property without first making just compensation therefor, which is a violation of one of those great principles on which our government is founded, for without security to private property, liberty is but a name. Now sir, look at the case, complained of to your House by Mr. Benson; here is stated a most flagrant violation of the Constitution, his land assessed 26 times its worth: can you imagine a more flagrant case, and yet Mr. Benson's land, thus assessed, has been already bid off by the Mayor, Aldermen and Commonalty, under this very act, for the term of 1000 years. Sir, the English language lacks words to convey a proper expression of indignation in this case, under the circumstances.

Under this bill, the Corporation may, in a twelvemonth, assess every estate on the island of New-York, ten times the value of the estates, set them up at auction, and buy all themselves, and thus become lords of the soil.

You may search the annals of legislation, throughout the records of every legislative Assembly on the globe, for a law to be compared to this in its grant of power, and I may add that the combined powers of every written Constitution now extant, does not, in the vast aggregate, contain as much power as this *manuscript* bill.

And yet this bill has found its way through the halls of legislation—a perfect mute until the last finish—when it assumes the attitude of a devouring monster, I may say a perfect cannibal, for it gloats on human misery, which, in its origin of suffering, extinguishes mortal life.

Picture to your own mind the home of the aged, the infirm, desolated by this monster law, and then you will with me say, that it would have been better that it had never been thought of.

One of our Committee remarked, that there was but one case that could come any thing near this in comparison, and this is, that of the government of Egypt, in the days of the Pharaohs, but that case grew out of a famine: first, the government obtained all the money, next the cattle, then the land, and after this, the people themselves, for slaves. This bill consummates all of these but the last, and yet this bill is the act of the government of one of the States of the American Republic.

I cannot close this communication without first calling your attention to several memorials presented in the house of Assembly from the Chapel street sufferers in the city of New York. The citizens inhabiting a small district, were assessed near three hundred thousand dollars, some of the proceedings complained of are of a most reprehensible and shameful character. The citizens in a considerable portion of the assessed district were actually injured, including the assessment they were called upon to pay more than a quarter of a million of dollars, and it was to consummate this most disgraceful and wicked assessment that some of the officers of the corporation were anxious for the passage of this act. More than one hundred thousand dollars worth of property was advertised for sale for this odious assessment. In order that you may form some opinion of the injustice of this proceeding I will make a quotation from three, distinct and separate official reports, made by Committees of the Common Council, which are now in the archives of the Senate and Assembly.

First, for the Report of the Committee on assessments of the Board of Assistant Aldermen, known as doc. No. 9, of 1338, *as follows:*

"That the Committee devoted much time and labor in examining the subject submitted to them, that they have had before them several persons who fully set forth all the facts and circumstances connected with this subject, and have fully established the fact that the laying of the new sewer was entirely unnecessary, and consequently an expenditure without any possible good to the parties interested, who are now called upon to pay large sums of money without the least equivalent therefor."

The Report was signed by all the Committee and concluded with the following resolution:

"Resolved that the expenses of repairing chapel street be paid by the common council and that the Comptroller allow a warranty for the amount thereof."

This report was recommitted and a second unanimous report made which contains a section in the words following:

"Mr. Shepherd, the Superintendent to the building of the new sewer in Chapel Street, appeared before your committee and stated that the old sewer was as good when it was taken up as any new one could be made. It was larger than the new one now is, being six feet square, and the new one but four feet six inches in diameter, consequently was an unnecessary expense of $16,571,00 and paid, and cannot carry off near as much water as the old one."

This report concludes with the following resolution:

"Resolved that the Comptroller draw his warrant for $30,413,34, being the amount for repairing" &c.

This report was unanimous, and was again recommitted on the application of the sufferers, so as to include the sewer, and the committee on laws was also added to the reference, with the committee on assessments making a joint committee.

The Joint Committee made a report known as Document No. 22 of 1839, which more than sustains the report previously made and concludes with two resolutions in the words following:

"Resolved, That the Comptroller draw warrants in favor of the owners of property on Chapel street between Canal street and the center of the block, between Franklin and Leonard street; and also on the intersecting street intermediate, for the sums paid by them for building the new sewer and the recent regulating and paving of Chapel street and streets intersecting the same."

"Resolved, That the assessments upon property as above, which have not been paid, be remitted and that the Comptroller draw his warrant for the amount in favor of the Contractor."

This report was signed by all the Committee and was adopted by the Board by a vote of 11 to 2.

It was then sent to the other board for concurrence where it remained without having been acted upon by the management of some reckless persons belonging to the corporation.

It was property on which this assessment was imposed that the bill in question was passed to authorise the Corporation to bid off.

I forbear to comment—my pen is inadequate to express the measure of astonishment that fills my mind in comtemplating the enormities which this act is sought to cover.

I could lengthen out this detail until the recital would cover scores of reams of paper and then should only but be at the beginning.

You saw the lobby that was in attendance on the Legislature to procure the passage of this act—it is an offspring worthy of its parentage, but it is astonishing that the members of the legislature should have been so deceived.

The Legislature will be asked to investigate the passage of the bill, authorizing the Corporation to buy lands for assessments, in reference to the movements made by others in the matter, not connected with the Legislature.

I will send you a printed copy of our correspondence upon this important subject.

In the mean time,

Believe me to be, sincerely,

Your Friend,

E. Meriam,

Of the New York Citizens' Committe.

H. N. Wales,

Clerk of Assembly.

ASSESSMENTS ILLUSTRATED.

Document No. 48.

BOARD OF ALDERMEN,

DECEMBER 18, 1837.

Report of the Commitee on Assessments, in favor of confirming the assessment for filling the low grounds, between 108th and 124th streets, andbetween the 5th and 8th avenues. Laid on the table and ordered to be printed for the use of the members.

THOMAS BOLTON, Clerk.

—

The Committee on assessments, to whom was referred the annexed assessments for filling low grounds, between 110th and 111th streets,and between the 7th and 8th avenues, together with a remonstrance against the same, respectfully

REPORT:

That in pursuance of a resolution and ordinance passed by the Common Council, in March 1836, contracts were made by the Street Commissioner to fill in low or marshy grounds, as described in the ordinance, lying between 108th and 124th streets and between the 5th and 8th avenues, in which were included the filling embraced by the assessment. The filling, as will be seen by the maps attached to the assessment, comprises about thirty lots, within which was contained a pond, occupying about six lots within which received the greater proportion of the filling. The number of loads filled is 28,932, amounting to $2,972 10. The objections are from the executors of the estate of Valentine Nutter, who contend, that although the ground filled is within the limits described in the ordinance, it was not the ground intended to be filled by the report upon which the resolution and ordinance were founded; that the report had special reference to the meadow marsh, on the line of the Harlem Canal, which is stated was about the level of high water; and that consequently it could not have been supposed to apply to the land of the estate which is about nineteen feet above high water; and that although the resolution and ordinance was so drawn as to probably lead the street Commissioner into error, yet that such error ought not to prove their misfortune. They also state that they called at the Street Commissioner's office to inquire the object of this ordinance, and was there informed that it had reference only to the creek along the canal; and, that being thus unintentionally misled, they had no knowledge of the work until the time when they remonstrated, which was by accident, and that they therefore had it not in their power to offer a more seasonable remonstrance.

The Committee remark, that if such information was obtained, it must have been prior to the time of the present Street Commissioner, as he states that no such information was given by him; that he never saw the report on this subject until since the ground has been filled, it having been made, and the ordinance having been passed, before he came into the office, and that he was not aware of any objections being made until the work was nearly completed.

The Committee have had several deliberations upon this subject, and had been attended by the remonstrants, and they are constrained to say that the case is a hard one for the estate; they are, however, decidedly of opinion that the grounds in question are embraced by the ordinance and resolution, which without reference to the reports, to which they are attached, are in all cases intended as guides to executive officers, in making their contracts; and that although the report refers particularly to the marsh along the line of the canal, they cannot presume, from that circumstance, to say that it was not the intention of the Committee who made the report, to include the ground under consideration, which though not the low or marshy ground alluded to in the report, is nevertheless low ground in comparison with the ground adjacent, and was of a marshy character. Your Committee have therefore come to the conclusion that as the ground was filled, in pursuance of a resolution and ordinance of the Common Council which embraced it, and which, without reference to the report, are considered as fully expressing the intentions of the Common Council in the matters to which they relate, that the assessment ought to be confirmed, and they recommend its confirmation accordingly and offer the following resolution:

Resolved, that the assessment for filling the low ground, between 110th and 111th streets. contained in the assessment list be confirmed, and that C. S. Van Winkle be appointed Collector.

ISAAC L. VARIAN,
EDWARD TAYLOR.

—

REMARKS.

This Assessment is stated to have been upon 30 lots, which is less than two acres of farming land, situate about six miles from the City Hall, worth less than five hundred dollars.

On this piece of ground was a fancy fish pond, fed by living springs; this the Corporation, by sheer gross blundering, filled up, and also levelled the land, changing the natural surface to a Corporation surface, and a more scandalous proceeding is hardly any where else to be met with, and yet, notwithstanding, two men who ought to know better, report in favor of confirming the assessment. Such kind of proceedings are really what may be called a monument of shame to a great city, possessing men of intelligence and understanding to manage its public concerns, in a different manner from what is here illustrated in the filling up of a fish pond of a country residence.

The Corporation might, with as much propriety and as much justice, made an assessment for filling up Long Island Sound, as to have assessed this estate, in the manner here set forth. There is no safety to the title of private property, under such a state of things. If lands can thus be depradated upon, they will cease to have any value. We will refer to this again.

We presume that the ordinance to authorize *Corporation Improvements*, was signed as approved upon wrapper. When will such proceedings have an end.

—

CONSTITUTIONAL QUESTION.

Resuming this question, which we had commenced on page 274, we proceed:

The approval, by His Excellency GOVERNOR BOUCK, of the act entitled "*An act to authorize the Mayor, Aldermen vnd Commonalty of the City of New York, to purchase lands for taxes and assessments, in certain cases, and for other purposes,*" as contrasted with the refusal of the Governor and Council of the Colony of New York, in 1691, in reference to a bill entitled "An act for regulating the buildings, streets, lanes, wharfs, docks and allies, of the City of New York," shows so great a contrast, that we deem it instructive to place these together in the examination. One hundred and fifty years intervened.

In 1691, the Mayor and Aldermen of New York, petitioned the General Assembly of the Colonies, for the passage of a bill which they presented, in relation to street improvements. Two members of the Common Council of New York, at that time, were members of the Assembly, the bill was passed in the Assembly in precisely the form and shape in which the Mayor and Aldermen of New York asked; a committee was appointed to carry the bill to the Governor and Council, consisting of Alderman Merritt, Mr. Courtland, Mr. Beeckman and Mr. Rensaleer. The committee returned and reported to the Assembly, that they had delivered the bill to the Governor and Council, and that they said "*it is very well, they will make all speed imaginable.*" This was on the 25th of September; on the 1st of October, the Governor and Council returned the bill to the Assembly, with a *proviso* in the words following:

"*Always provided, and be it further enacted, &c., That nothing herein contained, shall be construed to change, alter, shorten, lengthen, narrow or enlarge, any of the streets, allies and lanes, within this city, as they are now laid out and remain, at the publication thereof, nor to break through any person's grounds now in fence or enclosed, or to take away any person's house or habitation, any thing herein contained to the contrary hereof, in any wise, notwithstanking.*"

Upon reading the petition of the Mayor, Aldermen and Commonalty of the City of New York, together with the *proviso* transmitted to the House by the Commander-in-Chief, for consideration.

Ordered, That Alderman Meritt, Aldermen Kipp, Mr. Van Schaick and Mr. Whitehead, do carry up the said bill and *proviso*, &c."

Here is seen, calm, deliberate examination of a bill, passed by the Assembly by an unanimous vote, and a bill against which no remonstrance had been presented, but the

Governor and Council refused their assent to the bill, and returned it with a *proviso* which would protect private property. The Assembly reconsider the bill, pass it with the amendment suggested by the Governor and Council, and again send it to the Governor and Council for their assent, and this assent to the amended bill was given. On the 11th of May 1697, the King gave to this bill his Royal assent, and it became a law of the colony, and remained on the Statute Book near one hundred years. It was recognized and confirmed by the Constitution of 1777, but was repealed in 1787 by the Legislature.

This is the first exercise of the *Veto* power of the Colonial Government of New York.

Now let us state the approval by His Excellency Gov. Bouck, of the bill which authorizes the Corporation of New York, to buy lands for assessments.

This bill was petitioned for by the Clerk of the Common Council of the City of New York, but the petition is endorsed as that of the Mayor, Aldermen and Commonalty of the City of New York. The petition is presented by an Ex-member of the Common Council of the same city, and referred to a Committee of which he is Chairman, and another Ex-member of the Common Council, a member. In two days after this Committee report the bill presented from the Clerk of the Common Council, and in this report, the Committee state the petition to be a petition of the "Common Council."

As we have given the various proceedings in reference to this bill, in the Senate and Assembly, in the preceding pages, we will at once proceed to discuss the approval of this bill by His Excellency the Governor.

The Constitution allows the Executive ten days to examine a bill which the Legislature have passed through the respective branches, and this is a short time to examine an important bill, considering the other labors constantly pressing upon the Governor. It has been the practice, both in the National and State Legislature, near the close of the Session, to send important bills to the Executive, in bundles, and so numerous and so lengthy, that that officer must be very industrious even to read the bills that he is required to sign and return to the Legislature.

The framers of the Constitution, had a great object in view, in the framing the clause giving the Governor a qualified negative upon the acts of the Legislature, viz:

To check hasty and inconsiderate legislation.

In contrasting the provisions of the Constitution of 1777, with those of the present Constitution, we find this difference, which constitutes a great distinction.

In the former Constitution, the Executive had the power to prorogue the Legislature, and send the members home to their constituents, *this was a guard against, and a restraint upon, arbitrary legislation.* Under the former Constitution, a bill passed by the Legislature, must, before it could become a law, be submitted to the Council of Revision, composed of the Governor, the Justices of the Supreme Court and Chancellor, or the Governor and any two of the officers last above named; if the bill was not approved by them, it must be returned with the objections, within ten days, to that House in which it had originated: these objections must be entered at large upon their Journal, and then that House must proceed to consider the objections, and also reconsider the said bill! If, after such reconsideration, *two thirds of that House* agree to pass it, notwithstanding the objections, then they shall send it to the other House with the objections, and if two thirds of all the members *present* in that House, agree to pass it, notwithstanding the objections, then it shall be a law.

In the former Constitution, the preamble to the clause, declares the purpose, and it is in these words:

"*And whereas, laws inconsistent with the spirit of the Constitution, or with the public good, may be hastily and unadvisedly passed.*"

An additional paragraph, in the same section, says:

"*And in order to prevent any unnecessary delays;*

"*Be it further ordained, that if any bill shall not be returned by the Council, within ten days after it shall have been presented, the same shall be a law, unless the Legislature shall, by their adjournment, render a return of the said bill, within ten days, impracticable; in which case, the bill shall be returned on the first day of the meeting of the Legislature, after the expiration of the said ten days.*"

The present Constitution contains this clause:

"*If any bill shall not be returned by the Governor, within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return; in which case, it shall not be a law.*"

We have here, in the various provisions which we have quoted, the mischief suggested and the remedy provided, and although in the present Constitution, the preamble suggesting the mischief, is omitted, yet the provision providing a remedy, is given with great particularity, and a marked difference is to be seen by comparing the provisions in the two Constitutions together as to the force of a bill remaining in the hands of the Executive, after the adjournment of the Legislature. Under the former Constitution, it could be returned on the first day of the next Session, but under the present Constitution, a bill under such circumstances, is prohibited from becoming a law.

The Constitution makes no provision for a bill being signed, under any circumstances, by the Executive, after the Legislature have adjourned, and its provisions imply that all bills, whether approved or disapproved, shall be returned to the House in which such bill originated, and the practice has been uniform as to the return of all bills.

If we look back to the Colonial Government for a commencement of this system, we shall find in the Journal of Assembly, of 1691, (which is the first printed Journal extant in the Colony,) as follows:

"Die Jovis, 10 ho., A. M., October 1, 1691.

"*Ordered, That Alderman Merritt, Alderman Kipp, Mr. Van Schaick, and Mr. Whitehead, do carry up the said bill and proviso, and acquaint the Commander-in-Chief and Council, that the House waits their commands, when to attend the publication of acts passed this Session.*"

The practice in these early times, was to assemble the people together, in front of the Government House, by the ringing of three bells, on which occasion, the Governor and Council, and Members of Assembly, attended, and the acts passed, were publicly read, this was termed the publication, here was deliberation and caution.

The provision of the Constitution, which allows the Executive ten days, exclusive of Sundays, has no force in cases like the one in question, where the Legislature are actually adjourned before the bill is sent for the approval of the Executive; for, instead of ten days, he was not allowed ten minutes. Surely, those who are to frame laws, should be more careful of keeping within the provisions of the great fundamental law, which is the foundation upon which our Statutes rest.

The qualified negative possessed by the Executive of the United States, is expressed in the same words as that of the Executive of this State, and the provision of our State Constitution is copied from that of the United States Constitution, except that our Constitution specifies that the vote of two thirds, shall be of the members *present*, whereas, that of the Constitution of the United States, designates that it shall be two thirds of the House, &c.

The qualified negative of the President, is a subject which has excited intense interest, and not on the ground that it is insufficient to correct hasty legislation, but with a view to restrain arbitrary legislation. One of the great political parties, wish to make the negative more qualified, and only allow it to correct hasty legislation, while the other party insist that the existing provision should be retained to restrain arbitrary legislation.

Hasty legislation could be corrected by a majority vote.

A very important bill was passed by both branches of the Legislature of the State of New York, near the close of the Session of the Legislature of 1842, in reference to the sales of lands to pay assessments. This bill was passed by both Houses, by a unanimous vote, and was sent to His Excellency Gov. Seward, for his approval. One of the delegates of the Anti-Assessment Committee, was at Albany at the time the bill reached the Executive Chamber, and he at once represented to His Excellency, that the bill contained provisions which ought not to be-

come a law. These representations were reduced to writing, and placed in the hands of the Executive. The gentleman who was in attendance upon the Legislature, to procure its passage, learnt that objections in writing were in the hands of the Executive, and he called on Gov. SEWARD. His Excellency gave him the written objections, and the gentleman called on the Delegate of the Anti-Assessment Committee, with them, and urged their withdrawal, but not succeeding, he applied again to the GOVERNOR, and stated, that if an opportunity could be afforded him, he would convince the Executive that the objections to the bill becoming a law, were not well founded. His Excellency appointed to hear both parties, at his residence, that evening; both gentlemen attended, and the matter was discussed at great length, and resulted in the refusal of approval of the bill, unless an alteration was made in its provisions, which was decided on. His Excellency returned the bill to the Senate and also to the Assembly, with a special message, making a suggestion as to the alteration, which was unanimously agreed to by both Houses. Had this bill been sent to him after the Legislature had adjourned, he could not have bestowed this labor and time upon it.

The negative vested in the Executive department of most governments, is absolute; but in the Government of the United States, it is greatly qualified, and besides, the frequency of elections, add an additional qualification. We have discussed the Veto power in the previous pages of this volume, to which the reader is referred.

A strict construction of our Constitution, is insisted upon by our high Judicial officers. We have, previously, quoted Judge Bronson's opinion, on page 284, of this number, in a particular case, and we now quote the opinions of two other Senators, in the same case, delivered in the Court for the Correction of Errors, which we ask the reader to apply in this case—as follows:

We also quote,

SENATOR RUGER,

"To maintain the Constitution, is our first duty; and if the Legislature has, for any cause, encroached upon that sacred instrument, or if an erroneous construction has been given to it, we are imperatively called upon to declare its meaning, and to assert its supremacy. Nothing can be more dangerous to our free institutions, or to the rights of the people, than to encourage doubtful interpretations of the Constitution, contrary to its more plain and natural import, as understood by the great body of its readers. The view taken of this question, by Mr. Justice Bronson, should be attentively read by every individual in our State, who considers the Constitution worth preserving."—4, Hill 418.

The Senate and Assembly, are required, by the provisions of the Constitution, to make rules for the government of their respective Houses, to keep Journals, and publish the same. They have done all this, and none of these Journals show that this bill was sent to His Excellency, the Governor, after 4 o'clock, although such is the fact. The concurrent resolution, which limited the Session to 4 o'clock, P. M., of the 18th of April, stands upon both the Journals of the Senate and Assembly, unrepealed, and this, of itself, is conclusive as to the period of the termination of the Session.

There is nothing to justify a presumption of an extension of the Session, until that resolution should be first rescinded.

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SENATE DOCUMENTS.

Vol. 3, Doc. No. 81, p. 23 to 28 of 1843.

COURT CHARGES.

Resolution addressed to the Clerks of the Supreme Court at Albany and New-York.

"IN SENATE, March 2d, 1843.

"Resolved, That the Clerks of the Su- York, re-
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ports of commissioners of estimate and assessments, for the opening of streets, avenues and public squares in the city of New York, subsequent to April 20, 1839, specifying each proceeding, the charges made in each, to whom and when paid, I beg leave respectfully to

REPORT:

That I have examined the minutes of the Supreme Court in this city, and find that proceedings have been had in the said court in the matter of confirming the report of commissioners in two cases only, to wit: one relative to widening Anthony-street from Hudson-street to Orange street, and extending it from Orange-street to Chatham-street, in the fifth and sixth wards of this city; and another relative to the widening of William st. from Maiden lane to Frankfort street, and extending it from Frankfort street to Chatham street, in the second and fourth wards of this city; which proceedings were had on the twenty-fifth day of May, 1839, and no account of the fees and court charges therefor was kept; it being more than a month before the law of 1839, requiring an account to be kept, went into effect. Said charges were made to Robert Emmet, Esq. and paid by him, but I cannot say when."

—

Report of J. K. Paige Clerk, Supreme Court Albany.

"SUPREME COURT CLERK'S OFFICE,
Albany, 6th March 1843.

To the Hon. the Senate:

The Clerk of the Supreme Court at Albany, respectfully reports:

That he does not understand what is intended by the term "court charges" contained in said resolution, and in relation to which he is required to report. All, therefore, that he can state on this subject is, that no "*court charges*" appear on any of the files or records in this office, in the matter of confirming reports of estimate and assessment.

The 'clerk's fees' for services rendered in this office since the 20th April, 1839, are as follows:

1839		
June 5.	Entering rule, opening a new street in 12th ward—confirming report of commissioners, fol. 33, and certified copy ½ fees	$5.94
" "	Entering rule, opening Art.—street—confirming report, fol. 3, and copy. ½ fees,	81
" "	Do. 85 street—appointment of com'rs, fol. 6, $1.08, and copy ½ fees, $0.54,	1.62
" "	Do. Avenue A—appointment of com'rs, fol. 9, $1.62, and copy ½ fees, $0.81,	2.43
" "	Do. 18th street—appointment of com'rs,	

		fol. 5, $0,90, and copy. ½ fees, $.45,	1.35
"	"	Do. 97th street—appointment of com'rs, fol. 5, $0.90, ½ fees for copy,	1.35
			—— $13.50
"	"	Art street, extended rule to confirm, fol. 454, ½ fees,	40.86
"	"	Certified copy of the same, ½ fees.	40.86
June term.		Filing 37 term papers in these cases,	2.22
			—— 83.94
			$97.44

The above charges of $97.44 were made to G. F. Tallman, Esq., the Attorney, and the amount was paid by him to John K. Paige, Clerk, &c., on the 12th day of February, 1840.

1839.		Mount Morris Square entering rule suspending confirmation of report and copy ½ fees,	$0.27
June 6.			
"	"	123d and 131st streets and 12th avenue, report and copy ½ fees,	27
"	"	39th street—entering rule, suspending confirmation of report, and copy ½ fees,	27
"	"	Avenue A.—rule confirming report & copy do.	81
"	"	Sixth Avenue do.	81
"	"	83, 84, and 85th streets entering rule to confirm report and copy ½ fees.	81
"	"	90th street, do.	81
"	"	94th, do do	81
"	"	36th, do do	81
"	"	1st avenue, do	81
"	"	12th street, do	81
June term.		Filing 83 papers in the above	4.98
			$12.27

The above amount of $12.27 was charged to the attorney, and has not been paid. A part of the business, of June term 1839, in extending the rules for confirmation in the above cases, and copies of same is not completed; and the amount to be charged for the same, cannot be stated until the number of folios is ascertained. The fees for entering the rules are eighteen cents for each folio, and the same for copies.

By an arrangement between the attorney and the clerk, the attorney is allowed to retain one-half the clerk's fees, for entering the extended rules and copies, to defray the expenses of having them written out to furnish to the clerk. The attorney is then charged with the remaining half of the clerk's fees allowed by law.

1839.			
Sept. 3.		John Street—entering rule to confirm and copy,	$0.36
"		Filing 34 papers in same,	1.36
"	4	30th street entering rule to refer back and copy,	36
		Filing 36 term papers,	1.44
"		Anthony st., entering rule to discontinue,	12
"		William street, entering rule to discontinue,	12
		Filing 28 papers in same,	1.12
"		2d avenue—filing 11 papers,	44
"	4.	Anthony and William streets certified copies of rules	24
"	4.	Mount Morris Square—filing 9 papers	36
Dec.	4.	11th avenue, 12th avenue, 123d street and 131st street—entering rule, vacating and discontinuing proceedings and copy,	36
1840.			
June	3.	Cherry street—entering rule to suspend motion to confirm report and copy,	24
"	"	29th street, do.	24
"	"	30th street, do.	24
"	"	39th street, do.	24
"	"	12th street, entering rule to confirm and copy	24
		Filing 7 term papers,	28
			—— $7.76

The above sum of $7.76, was charged to Robert Emmet, Esq., the Attorney and was by him paid to John K. Paige, clerk, &c., on the 4th day of September, 1840.

1840.			
Aug.	7.	Cherry street—entering rule to confirm and copy	$0.24
"	"	29th street, do.	24
"	"	30th street, do.	24
"	"	39th street, do.	24
	7.	Cherry street—entering rule to discontinue proeecdings and copy,	24
		Filing one term paper,	04
			—— $1.24

The above sum of $1.24, was charged to Robert Emmet, Esq. the Attorney, and became payable on the 1st day of January, 1841, and the same not having been paid in the office, was in the month of April, 1841, transmitted to the Clerk of the Supreme Court in the city of New York for collection, pursuant to the act of 1839, sec. 13, chap. 288, and by the books of this office, it does not appear that the same has been paid.

1841.			
Jan.	4.	39th street—entering rule to refer back report and copy	$0.30
"		30th street—do. to confirm report and copy,	30
"		29th street—do.	30
			—— $0.90

The above 90 cents was charged to the attorney, and became payable on the 1st of July, 1841, and not being paid, was in the month of October, transmitted as before for collection, and it does not appear that the same has been paid.

" JNO. KEYES PAIGE, Clerk.

Extract from the testimony of John Ewen Street Commissioner, from Senate Doc. No. 100 of 1842 pg. 43.

Opening Second avenue from Twenty-ninth to Eighty-sixth street.

October 31st, 1839.

" Received from the street commissioner, bond A 27, for seven hundred and sixty dollars being the amount of fees to Henry P. Robertson, in the matter of opening the Second avenue from twenty ninth to Eighty-sixth street.

$760.

(Signed,) FRAS. FICKETT.

December 20.

" Received from the street commissioner warrant 3,605 for $33.55, and bonds A No. 41 and A No. 42, for $1000 each, making twenty hundred and thirty-three dollars and fifty-five cents, for attorney's fees and court charges in the above matter.

$2.033.55.

(Signed) R. EMMETT.

December 20.

" Received from the street commissioner warrant No. 3,608 for four dollars and seventy-two cents, and bond A. No. 75, for seven hundred and fifty dollars, and bond A No. 76 for eleven hundred and fifty dollars, making nineteen hundred and four dollars and seventy-two cents; being in full for fees and expenses in the matter of opening the above.

$1.904.72.

(Signed,) JOHN LEONARD, for self and A. MILLS.

December 20.

" Received from the street commissioner bond A No. 77, for seventen hundred dollars in full for surveys and maps in the above matter.

$1,700.

Signed for EDWIN SMITH.
GARDNER A. SAGE.

" The commissioners' fees, counsel fees, and other expenses on said avenue, were principally paid by Richard I. Smith, the assistant street commissioner, whose duty it is by an ordinance of the common council to apply for the warrants for these moneys, and to pay over all moneys on assessments. That ordinance is an old one of fifteen years standing. The witness paid some of the items in those during the absence of the assistant street commissioner; he paid the commissioner Robertson's fees to Mr. Fickett, who had an assignment of the same and the expenses of the surveyor to Mr. Sage. The witness produced a copy of the original receipts for the expenses on Second avenue, on file in his, witness's, office, which are marked A, and signed G. F.—The present counsel of the corporation was appointed two years last May. The notice which that counsel gave to witness's office, not to pay such bills unless taxed, was after the payment of the above bills. The bills which the witness so paid were not taxed to his knowleege. The abstract of the report signed by the commissioner, containing the

aggregate amount of the expenses, awards and assessments, is the only voucher on which such payments were made; the claimants for such expenses were never in the habit of presenting any bills. Taxed bills for such proceedings have been paid in witness's office, but he cannot say that he has paid them, because it is not his duty to do so.—The witness thinks such taxed bills in the case of Cherry street, Anthony street, William street and the Bloomingdale road.—Witness is not certain as to Anthony or William street, or the Bloomingdale road.—Such however, is his impression. They were all cases in which the proceedings were discontinued and the report not confirmed. The witness has no knowledge of taxed bills in case where report was confirmed; his assistant has charge of that branch of the business: they might have been paid and the witness not know it. These expenses are paid upon the abstract of the commissioners' report; no bills of particulars are required further than is stated in that abstract. The witness does not know whether any bill for taxation in the matter of the Second avenue was filed; it might be filed in his office without his knowing it; there are three or four rooms in his office."

"The witness supposed that upon presenting the abstract of the report of the commissioner the expenses therein mentioned had been taxed by the Supreme Court as required by law, and that the officers of the corporation had no power to withold their payment. The first knowledge witness had such bills had not been taxed and the legal requirements complied with, he had from the present counsel of the corporation, (the witness does not recollect the time when he received such information, he recollects the circumstance,) since which the witness does not believe that any such charges have been paid without taxation. These charges are made upon the general authority of an ordinance passed some fifteen or twenty years since, and revised some three years. The ordinances were revised every three years until the passage of a law allowing them to remain in force until repealed.

REMARKS.

It will be seen by a comparison of the proceedings before the Senate Committee that, in the matter of the 2d avenue, the Attorney's fees and Court Charges amounted to $2.033.55, and by the returns made by Mr. Paige, Clerk of the Supreme Court, he says that he knows nothing about Court charges, and specified but one item of Clerk's fees in the matter of the 2d avenue, and this of only 44 cents.

Mr. Paige also states that the rules which belong to the the June term of 1839, were on the 6th of March 1843, near four years after, not yet entered. It is a matter of utter astonishment, that such important proceedings as these, which involve millions of dollars, should be thus managed.

The records of the Supreme Court of this State, to be thus unmade, years after the proper time, in fact that this record is wholly omitted, not only in this case, but in vast numbers of others, is a matter of perfect wonder. Surely, when this matter comes to the knowledge of the Supreme Court, we think that they will take measures in the premises. This report of the Clerk of the Supreme Court, sustains the view which Alderman Townsend took of these matters, in his examination before the Senate Committee, in 1841.

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BOARD OF ASSISTANTS.

FILLING UP THE EARTH TO A DEAD LEVEL.

"To The Honorable,
The Common Council:

"The undersigned respectfully remonstrate against the proposition to fill up the low grounds, between 4th avenue and 8th avenue, because we are in favor of opening the Harlem Canal, from river to river, and the excavation of the same will serve to fill said grounds; but we do not object to the filling of the low grounds, near the route of the Canal, between 4th avenue and 108th street, to about 116th street, to prevent stagnant water from injuring the neighborhood.

Jno. R. Peters,
R. Stebbins,
William Wagstaff,
John Brower, by J. R. P.,
Jacob Brower, by J. R. P.,
Samuel Stebbins, Jr., by R. Stebbins,
O. Holmes, by R. Stebbins.
New York, February 8th. 1836."

The Committee to whom was referred the several petitions for the opening of the Canal or Sewer, from the North to the East river, between 108th and 127th streets,

Respectfully

REPORT,

"That the regulation of that portion of the City, lying between 109th and 113th sts., and extending westerly to the 8th avenue, which has been adopted by the Common Council, is based upon the proposition of making a Canal or Sewer, to carry off the surface water from the centre of the island, without a resort to high filling in that neighborhood, which would be, not only destructive to the property from the expense, but almost impossible from a deficiency of earth to fill up the same.

Your Committee are convinced of the necessity of some measure of this kind, to carry off the water, whenever the land shall have been graded for City purposes. In consequence of the opposition of some, largely interested in a portion of the land, adjoining the route of the proposed Canal or Sewer, they have postponed a decision on this part of the subject, with a view of obtaining additional information, and procuring some estimates of the expense of the proposed Canal.

In the meantime, however, they deem it necessary, that measures should immediately be adopted for the removal of a very serious evil, connected with this subject. The land through which the proposed Canal or Sewer was to run, was low ground, nearly, if not quite on a level with low-water-mark, so that formerly, the salt water at every tide would flow over the same. Since the avenue has been filled up over the same, and the working of the roads, as well as the improvments in regulating portions of the ground in that neighborhood, the ordinary water courses have become obstructed, and the flow of the salt water over the same, in a great measure, prevented. The consequence has been, that the accumulation of stagnant water, and the consequent decay of vegetable matter, has rendered this low ground a source of disease to those living in that neighboorhood, and during the past season to a very great extent. This your Committee believe, can be remedied, by filling up the same to the height of three feet. The law of the Legislature, authorizes the Common Council to order this done, independent of the regulation which has been adopted, and your Committee deem it to be the imperative duty of the Common Council, to take the necessary measures to preserve the health and lives of the citizens, even at some expense to individuals. But the course which the Committee propose in this matter, cannot be productive, in the end, of any injury to the owners of the land, inasmuch as the filling of three feet, will not raise the ground above the regulation, and the expense must be incurred in a short time, to bring the ground to a proper grade; nor will it interfere with the proposed Sewer or Canal, should it be found necessary to construct the same.

The Committee have had this measure advertised for objections, in the usual manner. They have received but one remonstrance, which is hereto annexed, and which is made, not from objection to the proposed filling, so much as from fear that it may prevent action on the subject of the Canal itself.

Believing this measure to be both expedient and necessary, your Committee offer the following resolutions, for the adoption of the Common Council.

Resolved, if the Board of Aldermen concur, That all the low and marshy ground lying between the fifth avenue and the eighth avenue, and between one hundred and eighth street and one hundred and twenty-fourth street, be filled up with good and wholesome earth, to the heighth of three feet above the present surface, that the same be done at the expense of the owners of the land so filled up and benefitted, according to the provisions of the Statute, in such case made and provided, and the Street Commissioner is hereby directed, to prepare and present the Ordinance proper for that purpose.

D. P. INGRAHAM,
A. STEWART,
JOHN V. GREENFIELD,
Committee on
Roads and Canals."

BOARD OF ALDERMEN,

FEBRUARY 29, 1836.

Present—ISAAC L. VARIAN, Esq., President.

"The Street Committee, to whom was referred the report, &c., of the Board of Assistants, to fill up the low grounds between the 5th and 8th avenues, from 108th to 124th street, presented the following report of concurrence.

The Street Committee, to whom was referred the report from the other Board, on the proposition to fill up the low grounds between the 5th and 8th avenues, from 108th to 124th street,

Respectfully

REPORT,

That your Committee have examined the within report, and are fully satisfied of the expediency of filling up the low grounds in the section of the island above named, and therefore recommend a concurrence in the resolution adopted by the Board of Assistant Aldermen on this subject, which is as follows:

Resolved, That all that low or marshy ground, lying between the fifth avenue and the eighth avenue, and between 108th street and 124th street, be filled up with good and wholesome earth, to the heighth of three feet above the present surface; that the same be done at the expense of the owners of the land so filled up and benefitted, according to the provisions of the Statute, in such case made and provided, and the Street Commissioner is hereby directed to prepare and present the Ordinance necessary for that purpose.

FRANCIS FICKETT,
SAMUEL PURDY,
EDWARD TAYLOR.

Which was adopted, and ordered to be sent to His Honor the Mayor, for approval."

REMARKS.

The above are the proceedings of the Common Council, which are the foundation of the assessment complained of, by the Executor of the Estate of Valentine Nutter, and upon which, Isaac, L. Varian and Edward Taylor, made the report, which is set forth in full, on page 304, of this number. We ask the reader to compare these proceedings with that report. Such ridiculous proceedings were never before known among men, who lay claim to the least share of common sense.

The present Street Commissioner, came into office on the 4th of May, 1836, and these proceedings were approved by Mr. Lawrence, the Mayor of the City of New York, in March, 1836.

The work must, therefore, have been done under the general superintendence of the present Street Commissioner.

The filling up of a fancy fish pond, at a country seat, under such proceedings, is a wonder of wonders.

The foregoing proceedings are the foundation of the measures subsequently carried into effect for making an assessment upon a salt meadow, to the amount of sixteen thousand and sixty three dollars, belonging to the estate of Sampson Benson.

The property assessed, was about ten and a half acres of salt meadow, worth less than one thousand dollars.

Under the same proceeding, the fancy fish pond, part of the estate of Valentine Nutter, deceased, was filled up at an expense of near $3,000.

Is there a Government on the face of the Globe, which boasts of a written Constitution, and a written code of Laws, that would for one single moment, attempt to justify such proceedings? We answer yes, and refer to the report signed by Messrs. Varian and Taylor, which Report is set forth on page 304.

These assessments were made by assessors, who were appointed by the Common Council, from among their own officers. The Street Commissioner, his Assistants and Clerk, were the assessors who made the assessments.

The Committee on Roads and Canals, in their Report, (see page 308,) in reference to this Salt Meadow, state, "*that formerly the salt water at every tide, would flow over the same.*"

Thus we have an admission, that public health did not require the filling of these salt meadows, and it might, with as much propriety, be urged that "BOREAS," in sweeping over them, generated miasma, as that salt water generated disease.

The Committee, however, admit, that the Corporation have filled up avenues over these meadows, and by that means, they say, "*the ordinary water courses have become obstructed, and the flow of the salt water over the same, is, in a great measure, prevented.*"

What an admission this, to base such proceedings as these upon! Proceedings, did we say? we might, with propriety, give them another name.

A stream of water, running through two tracts of land, belonging to different owners, which should be dammed up by the proprietor of one tract, so as to overflow the land of the other, would make the person causing the obstruction, liable for all damages arising from such overflow. This is well settled law.

In this case, the Corporation are liable, clearly so; and every decision of competent, intelligent Courts, have been in accordance with this principle.

None but ignorant public officers will hold any other doctrine.

The history of the World, from the period of the birth day of our great common ancestor, does not furnish a case which equals in absurdity, these proceedings, here under consideration.

These assessments are imposed upon the lands of the owners of the salt meadows, and of the fancy fish pond, for alledged BENEFITS conferred upon the property, and the interest on the amount of the assessment, for eight months, exceeds the whole value of the land, after this so called improvement, is made. What an absurdity! What a perversion of language, to call such a proceeding an improvement. Yet these proceedings, it is urged by some, are tolerated by public officers, who claim to be intelligent.

These proceedings are of too flagrant a character, to comment upon; and we are obliged to restrain our pen in the very commencement of our setting ont in these remarks. The law, under which these proceedings were had, should be forthwith repealed.

ORGANIZATION OF THE CITY GOVERNMENT.

This subject has been recently discussed among intelligent citizens, but not for the first time.

We leave off the use of the term "reorganize," and use the more appropriate word "organize."

It matters not what form of government we have, what laws are enacted to restrain the exercise of power; ignorant men will not understand them, and bad men will not obey them.

In New England, an individual would not be permitted to superintend a District School, without having first passed an examination before the Pastor of the Parish, as to his fitness; but in our City Government, men who could not pass muster at even such an examination, are placed in public office, the discharge of the duties of which, require a far more cultivated mind.

It is from this one cause, that our City has suffered greatly.

Our City Government, as to its powers, is precisely that of a Village Corporation, and nothing more.

The State is a Sovereignity, and not the City. The City Charter is mere Statute Law, passed by the State Legislature.

Some gentleman, in speaking of the powers exercised by the Common Council, in assessment matters, treat the City Charter as a Constitution. This is not a proper view to take of it. It is not a Constitution.

Assessments are imposed by the Common Council, in pursuance of some express Statute law, and the power might as well be conferred upon the Coroner of the County, as upon the members of the two Boards, composing the Common Council. Whichever perform the duties, authorized by the law, must keep within the letter of the law, otherwise their acts are void, and they become trespassers, and are liable to prosecution.

The amended Charter, as chapter 122, of the Session Laws of the State, of 1830, is called, is in practice, a dead letter.

There is not a single section in that Act, that has not been violated thousands of times, and where is the remedy? None. The members of the Common Council, or at least, one branch of it, by virtue of the office of Alderman, set as Judges upon the Bench of Criminal Courts, and form a ma-

jority of the members of those Courts. This we have no hesitation in saying, is a violation of the Constitution, opinions to the contrary, notwithstanding.

If the Act of 1830, cannot be enforced, of what use is it, to enact a new law to restrain the members of the Common Council and officers of the Corporation, from acting wrong.

There was a strong desire manifested, prior to 1830, to elect Aldermen for longer terms. Experience has shown that the members who have been in the Common Council, longest, have been those whose acts have met with little public commendation. *Re*-elections have not been the result of public approval, but of party management.

It becomes the people to arouse from their slumbers, and stand forth for the preservation of the Constitution and the Laws.

If our influential citizens would join in a public recommendation to the people, of suitable persons as candidates for the Common Council, it would be the best mode of proceeding. There will be no difficulty in getting men of honest purpose, to serve in the two Boards, provided a list is made up without reference to party, containing the names of thirty-four persons, as Aldermen and Assistants of the seventeen wards Take such a list to Jonathan Goodhue, of the 1st Ward, and say to that gentleman, "Sir, will you consent to become a candidate for Alderman, if the other thirty-three gentlemen, whose names are on the list will, each and all, also consent to be candidates?" and no doubt that this appeal to the patriotism of Mr. Goodhue, would receive an affirmative reply. Next, James Donaldson, for the Assistant. Then the 2d Ward, and here is Abraham G. Thompson, for Alderman, and William Gale, for Assistant. After this, the 3d Ward, and here is John Anthon, for Alderman, and John D. Wolfe, for Assistant. After this, the 4th Ward, and here is John Targee, for Alderman, and Richard S. Williams, for Assistant. We could continue our list for the seventeen Wards, giving to the Whigs, the Whig Wards, and to the Democrats the Democratic Wards; and where the vote is doubtful, give one to each party. Let the meetings of the respective Boards take place on the 1st and 3d Monday, in each month, in the day time. Of the Aldermen, the first Monday, and the Assistants the third Monday. The Comptroller's office should be placed under the supervision of Saul Alley or Robert C. Cornell; and the Street Commissioner's office under the control of Burtis Skidmore.

Select JONATHAN THOMPSON, or JOHN M. BRADHURST, for Mayor of the City, if Mr. MORRIS will not serve longer; make STEPHEN ALLEN, County Treasurer; create a Board, to dispose of the public property not in public use, and place PRESERVED FISH, at the head of it, and we venture to say, that taxes would decrease faster than they have ever increased.

If the independent party expect to succeed, they must select such men as are named above. Men in whom the public have confidence, and who will do their duty without fear or favor.

Our citizens are disgusted with politics and politicians, they have no confidence in either of the two political parties; both parties have been tried, and both have abused the confidence which has been reposed in them, and have brought the City to a deplorable state.

The Street Contract, for example, was made by the Whig party, when largely in the majority, and a more shameful proceeding is scarcely to be found, unless we take up the assessment plundering, or the price paid for printing the City Comptroller's Report, of 1841, and these are a match for any thing.

Look at the nocturnal sittings of the two Boards, composing the Common Council, and to their feastings in the "tea room." The office of the Clerk of the Common Council, is made a sort of bar room of, where loungers may be seen at almost all hours of the day and evening.

This is not the way in which an important public office should be kept.

In Governments, system and order are the verry foundation on which the superstructure rests, without this, government is a mass of confusion, and the acts flowing from it, will be as loose as those of our own City Government are found to be.

Take for example, the public Corporation Bonds, which amounts to millions of dollars. The Assistant Clerk of the Common Council, was examined before a Committee of the Hon. the Senate of this State, as to any record existing in the office of the Clerk of these Bonds, which are signed by the Clerk of the Common Council, and his answer is to be found in Senate Document, No. 100, of 1842, page 105, and is as follows:

"*The Clerk of the Common Council, signs various Bonds, but witness has cognizance of the matter. There is no record in the office of the Clerk of the Common Council, of Bonds signed by that Clerk.*"

These Bonds amounted to more than twenty-five millions of dollars. Did any body ever hear of such a loose way of transacting financial concerns, of great magnitude?

MEMORIALS TO THE COMMON COUNCIL.

In the month of May, 1843, a Memorial, signed by John M. Bradhurst, and others, was presented in the Board of Aldermen, asking for an investigation into the charges for public printing, and that the public printing be hereafter done by public contract. No Report has yet been made upon this Memorial, although the members of that dignified body, have already sat out half their term of office.

The City Comptroller, the head of the City Treasury, should be called upon to report the why and wherefore of his paying $1107.75 for printing his report for 1841, for the printing of which $153.75 would be a fair price.

The City Comptroller owes it to his office to make a full statement in reference to this expense.

RESOLUTIONS.

In 1840 a resolution was passed by the Board of Assistants calling upon the Street Commissioner to report a list of all the contracts made by him, specifying the names of the contractors, the dates of the contracts the prices of the various materials and work, and also whether any other persons are or have been interested either directly or indirectly, to the best of his knowledge, information or belief.

On the 23d Nov. 1840, he made a report which is to be found on page 247 of this number, in which he says "that immediately upon the receipt of the resolution, he placed the same in the hands of the first clerk in the department, with instructions to devote himself exclusively to the preparing of such information called for as could be obtained from documents in the office. The said clerk has proceeded in the work, but he has not yet accomplished it; and judging from the progress that has been made, compared with what is yet to be done, the undersigned is of opinion that he will not have canvassed all the matter committed to him, for a month to come."

This report it will be seen was made three years ago, and where is the information which the first clerk was devoting himself exclusively to preparing and which would require but another month?

A statement of the prices of the work and the name of the contractors, would be an exhibit that would astonish the citizens but it will not be made, such proceedings, on the part of public officers, should be investigated.

CLEANING STREETS.

It will be seen by the proceedings set forth on page 247, that in 1818 the sum of $8,500 per annum was paid for the street dirt by Messrs. Edward and William M. Hitchcock, and they also swept the streets and removed the dirt at their own expense. Contrast this with the present wateful expenditure.

PUBLIC PRINTING & STATIONERY.

In 1830 the public printing and stationery of the Common Council was but $2327.09. See City Comptrollers report of 1830, pg. 27

In 1840 the same items of expenditure cost $23.800.55. See City Comptrollers report of 1840, page 93.

In 1830 the printing and stationery of the departments, &c., was $4299.62. In 1840 the same class of expenditures was increased to $22.682.44.

WATCHMEN'S WAGES.

In 1830 the wages of the Watchmen were but $86.592.27. See Comptrollers report of 1830, page 31.

In 1840 the Watchmen's wages were $231.942.59. See City Comptrollers report of 1840, page 81.

PAVING STREETS.

In 1819 the expense of repaving Chapel street was but 8 cents per square yard. In 1836, 40 cents was paid for the same work.

CROTON WATER.

The change which the introduction of the Croton Water into the city of New York will cause, will be very great.

The water arising from rain and snow will be left to accumulate in the earth, and added to this, the water from waste waters of the Croton, will so much increase the water with which the ground will be saturated, that the sub-cellars will be spoiled in many sections of the city, and the common cellars and basements, will also, in many locations, be rendered useless.

It has been suggested that a remedy may be had by placing sewers in the streets. We would enquire what use will a sewer be to a sub-cellar, and what use will a sewer be to any cellar unless the top of the sewer is placed lower in the ground than the bottom of the apartments to be drained. The Chapel and Thomas Street sewers are evidence conclusive in these matters.

The wells are the drains to the waters beneath the surface, and if the water of these reservoirs is not used, the ground will become wet.

Cisterns have been made bottomless, and others suffered to overflow. These add to the accumulation of water in the ground, and the consequences yet to result from this change, will be found very disastrous.

STREETS AND AVENUES.

The avenues in that portion of the Island of New York laid out by the Commissioners appointed to lay out certain parts of the Island into streets and avenues in pursuance of an act of the Legislature of this State, possed in 1807, are as follows:

Spaces between the avenues south of 23d-st.

D	and	C	676	feet.
C	"	B	676	"
B	"	A	666	"
A	"	1	613	"
1	"	2	650	"
2	"	3	610	"
3	"	4	920	"
4	"	5	920	"
5	"	6	920	"
6	"	7	800	"
7	"	8	800	"
8	"	9	800	"
9	"	10	800	"
10	"	11	800	"
11	"	12	800	"

Spaces between the avenues north of 23d st.

C	and	B	646	feet.
B	"	A	636	"
A	"	1	603	"
1	"	2	650	"
2	"	3	610	"
3	"	4	920	"
4	"	5	920	"
5	"	6	920	"
6	"	7	800	"
7	"	8	800	"
8	"	9	800	"
9	"	10	800	"
10	"	11	800	"
11	"	12	800	"

All the avenues are 100 feet wide except south of 23d street, where avenues A and C are 80 feet feet, and avenues B and D each 60 feet. We are inclined to think that avenue D has been widened.

All the streets named below are 60 feet wide, except

14	42	79	106	135
23	57	86	116	145
34	72	96	125	155

These 15 streets, named above, are each 100 feet wide.

The blocks between

1st	and	3d	streets	are	each	211 feet	11 inch.
3	"	5	"	"		192 "	1 "
5	"	6	"	"		194 "	1½ "
6	"	7	"	"		181 "	9 "
7	"	8	"	"		195 "	
8	"	9	"	"		187 "	10 "
9	"	10	"	"		184 "	6¼ "
10	"	11	"	"		189 "	7 "
11	"	16	"	"		206 "	6 "
16	"	21	"	"		184 "	
21	"	42	"	"		197 "	6 "
42	"	71	"	"		200 "	10 "
71	"	86	"	"		204 "	4 "
86	"	96	"	"		201 "	5 "
96		125	"	"		201 "	10 "
north of 125			"	"		199 "	10 "

The monuments on avenues A. B. C. and D., 1, 2, 3, and 4, stand in the angle of the north-westerly corners.

The monuments on avenues 5, 6, 7, 8, 9, 10, 11 and 12, stand in the angle of the north easterly corners.

All the above distances are horizontal measure of a medium temperature.

The above statement is copied from what is called the red card, published by the corporation.

Madison avenue, and Lexington avenue two fancy streets, have since been laid out.

It will be seen by the above tables of distances, how the Surveyor's bills average per acre. We take for illustration, the surveying of the 7th avenue from 21st, to 129th street.

From a line drawn through the middle of the blocks half way between the 7th and 8th avenues, to a line drawn through the middle of the blocks half way between the 7th and the 6th avenues, is 900 feet. From the northerly line of 21st street, to the southerly line of 129th street is 28,628 feet. For this piece of ground the surveyor received for a *re*-survey, (it having been already surveyed and a map made of it for the Commissioners in 1807), two thousand eight hundred and one dollars, which at four dollars per day, is pay for 700¼ working days—allowing six working days to a week, it makes 116 weeks, and 4¼ days, which is equal to two years and three months, solid time. If the Government of the United States had paid at this rate for surveying the public lands, where would it have found money enough to pay the surveyor's bill? The expense of the survey alone at the Seventh avenue rates, would have exceeded the public debts of all the governments on the face of the whole earth, and if paid in silver coin, would require all the ships that float upon the whole surface of the waters, in all and every portion of the globe, to stow it away, and if put out at compound interest for two hundred years, at seven per cent, would exceed in amount the value of all the property upon the face of the earth. So much for the survey of the notorious seventh avenue.

The Senate Committee when they examined the expenses upon this avenue, state that they should have supposed the charges were a mistake, but a further examination developed the same extravagant charges throughout all the street openings in the city, and that to such an extent, that the wonder is not, that the people now complain, but the wonder is, that they had not complained before.

FENCING VACANT LOTS.

The practice of putting board fences around uncultivated ground, by the order of corporation officers, is one which ought to be prohibited by law. Owners of lands, which are for the produce of them, not worth fencing, are continually called upon to pay for these public fences, put up at extravagant prices to give jobs to favorites, and these fences are generally but temporary, and are often carried away the very first winter after being put up.

PATCHING PAVEMENTS.

There is no law to authorise the collections of the bills for patching pavements.—The only law in existence in relation to making an assessment for paving is the 175th and 176th sections of the act of April 9th 1813, page 407–8, of the 2d volume of the Revised Laws of 1813.

Some reckless public officers have imposed on the citizens in this matter and they deserve to be puuished, and severely too, for such imposition.

UNDERMINING BUILDINGS.

It has been the practice of late, to make deep sub cellars, and if a building upon the

immediately adjoining lot, has a foundation which is only the usual depth, the excavation will take away its support. This kind of proceeding, in our opinion, clearly lays the excavator liable to all damages, some judicial dicta, to the contrary, notwithstanding.

Where two farms adjoin each other, and a stream of water runs through both, any obstruction of that stream by one, which would inundate the land of the other, would make the obstructor liable for all damages.

The doctrine, that a man can dig a pit alongside of his neighbors house, and bring it down, because he owns the ground in which the pit is dug, is absurd. It may, with as much propriety, be urged, that he could burn a coal pit alongside his neighbor's dwelling, because he owns the ground upon which the pit is sunk.

Sub-cellars have found a check in the introduction of the Croton. These appendages to modern dwellings, will become useless, and more, they will become nuisances, if the surface waters on the Island of New York, continue to accumulate for a year to come, as they have done for a year past.

Suppose that the owner of a lot of ground filled with rock, should choose to excavate that rock by the use of gunpowder, and this rock should join his neighbors dwelling, will be contended that he could explode this rock by gunpowder, and blow up his neighbors house, without being answerable for damages. Surely not, and where, then, is the difference between an excavation, and an explosion, that result alike in the destruction of the property of others.

In 1691, a bill was introduced into the Colonial Legislature, of the Province of New York, in reference to buildings in the City of New York. Such a law is now needed.

It may be said, that a man may build his house as high as he pleases, none can hinder him. We think otherwise, and believe that an individual, who should rear his house so high as to endanger the lives of his neighbors, by the great heighth of the structure, would be answerable for the damages which a downfall might occasion to others.

PAVING ON LOOSE SAND.

Chapel, and the adjoining streets, was repaved in 1836. Previous to the putting on the pavement, the street was raised three feet, and the paving stones laid upon the loose filling. What sagacity!

BUILDING SEWERS.

Some persons have imagined, that a new plan of building Sewers, has been discovered; but we apprehend that experience will prove that the application of this new plan, to all sorts of localities, indiscriminately, is a great error.

The new fashioned Sewers, are of circular orm. If a Sewer of this shape is entered at any other place than the top, it will be like attempting to fill a barrel by perforating the side of it. Such Sewers are only fit for the conduits of surface water, and in that case, the work should be as tight as a Croton water pipe, otherwise the leaks will produce inundations.

Sewers, which are intended to drain water from wet grounds, should have a broad surface at the bottom. The Expansion should be in width and not in heighth, and the size of the Sewer, in both cases, should be proportionate to the volume of water the Sewer is to collect, and the Sewer should increase in size, in proportion as the length of the distance it extends to, receives additional water.

Sewers generate mephetic gases, and should never be made unless absolutely necessary.

REVIEW OF THE OPINIONS OF JUDICIAL OFFICERS, IN ASSESSMENT CASES.

We intended to have given a review in this number, but it requires the appropriation of more time than we are at present able to spare. We will, therefore, defer it to a future number.

NEW PARTIES.

Measures have been taken to organize a new party, and the recent election shows most clearly, that if they had selected suitable persons as candidates, they would have succeeded. The Whigs and the Locofoco's, as political parties, have, in the City, as to its local concerns, lost the confidence of the People. The Democrats have allowed the Locofoco's to have rule, and their party will be overthrown, unless they move at once to counteract their measures. The Whigs have allowed a set of political office hunters to break them down, and unless they rally and bring forward better men, to fill important public offices, they will not succeed. Look at the street cleaning contract, and the continuance of the assessment abuses, and their miserable appointments to public office. Good men, capable and honest, irrespective of party, can be elected to office, and none others should be permitted to hold office.

TAXATION.

We were present, a few days ago, during a discussion between a landlord and his tenant. The landlord offered the tenant a renewal of his lease, on condition that the tenant would pay the City and County Taxs, the tenant was unwilling to pay so high a rent, as the Taxes amounted annually to about two hundred dollars more than the rent of the premises is worth. Comment is needless.

WARD COLLECTORS.

In the early part of this month, we were furnished by Alderman Brady, Supervisor of the 15th Ward, with a copy of a communication, addressed by the Corporation Counsel, to A. A. Smith, Esq., City Comptroller, and by that gentleman delivered to the Board of Supervisors.

"A. A. Smith, Esq., Comptroller.

"Sir,—I find the provisions of the Revised Statutes, for the issuing of a warrant to the Collectors, are declared, by Act of April 18th, 1843, to be *no longer* applicable to the City of New York. However difficult it may be to determine what is meant by not abolishing the office of Collector, until April, 1844, it is perfectly certain that *all power* is taken away of conferring any authority upon them by *warrant* of the Board of Supervisors."

PETER A. COWDREY."

Contrast this opinion with the ridiculous vote of the Board of Supervisors, of Oct. 3d, 1843, as set forth on page 257, of this number.

Thus we are sustained in our construction of the Tax Act, by the Counsel of the Corporation.

RECEIVER OF TAXES.

Much complaint has been made by our citizens, of the practice of the Receiver of Taxes, to compute the interest to be deducted from Taxes, for advance payment upon each separate item, instead of taking the sum total at the foot of the bill, as every business man would prefer. We were shown one bill with ninety-nine items in it, which had ninety-nine calculations of interest, instead of one. This practice increases the trouble ninety-nine fold, and the expense in the same ratio. It is like a hardware merchant, selling an assorted bill of merchandize, at a discount of five per cent. for cash, and deducting the discount from the amount of each item, instead of the whole bill.

CHAPEL STREET ASSESSMENT.

Several months ago, Mrs. Woodard petitioned the Common Council for redress, for the damages done to her house, at the corner of White and Chapel streets. The Memorial was referred to the Street Commissioner. This Memorial was accompanied by several public documents. No report has yet been made upon it.

THAT SALT MEADOW.

Mr. Benson memorialized the Common Council, some months ago, relative to the assessment upon his Salt Meadow. No report has been made upon this Memorial.

It is said that the Common Council can do some things, as well as others.

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MOST IMPORTANT DECISION.

THE

CONSTITUTION,

THE GREAT CHARTER OF CIVIL LIBERTY,

THE FUNDAMENTAL LAW OF THE

COMMONWEALTH,

SAFE!

The Supreme Court of the State of New York, after hearing argument of ROBERT EMMET, Esq., for the Corporation of the City of New-York, and RICHARD MOTT, Esq., for the persons whose estates were under assessment sequestration; and after mature deliberation and advisement, have decided that the Justices of the Supreme Court of this State, have no right, under the Constitution, to discharge the office of Street Commissioners in comfirming the Reports of Commissioners of Estimate and Assessment, or in nominating and appointing such Commissioners, and refused to confirm five street Reports moved for by Mr. Emmett.

The following is a copy of a letter addressed by the Honorable GREEN C. BRONSON, one of the Justices of the Supreme Court, to RICHARD MOTT, Esq., of New-York, the Counsel who so ably argued this great Constitutional Question before the Court:

"ALBANY, Feb. 12th, 1844.

"SIR:

"Your letter, of the 10th instant, is received. In consequence of a division of opinion among the Judges, the Street Cases were not decided until near the close of last week. Two of the Judges held that they had no right, under the Constitution, to discharge the office of Street Commissioners, and therefore, declined making any order on the motion to confirm the Reports.

The Opinion of the majority, is in the hands of the Reporter.

Respectfully yours,

GREEN C. BRONSON.

"R. MOTT, Esq.

"P. S.—The Chief Justice dissented, but has not, I believe, written an Opinion. He probably *will*."

The grounds upon which the parties opposing the confirmation of the Report of the Commissioners, relied, is to be found in No. 16, of this volume.

This is by far the most important decision ever made by the Courts of our State; it is a decision that goes far, far beyond the mere matter of dollars and cents; it is a decision that affects the great principles of Civil Liberty, that sustains the foundation upon which rest the whole superstructure of our Government.

The doctrine of strict construction of the great Charter of Freedom, of the fundamental law of the Commonwealth, is here sustained and exemplified.

Written Constitutions have long since ceased to be regarded as they ought; their doctrines have been trampled under feet and disregarded: yes, the Liberty which was purchased with the blood of the patriots of the Revolution, was being held for nought. This decision, *which covers the Court with glory*, has reinstated the pages of that sacred instrument, and they now shine with glowing lustre.

Hundreds of families which had been reduced to poverty, to want, and to suffering, by acts of Municipal Assessment Depredators, have, by this decision, been raised to affluence, to ease, to competency.

We know of one case where a veteran citizen, whose

"Grey hairs were going down in sorrow to the grave,"

has been, by this decision, raised as it were, to life. Yes, the patrimonial estate of that venerable man, which had been improved by his family for more than one hundred and fifty years, and on which sleep in silence the ashes of his kindred, has been by this decision, snatched from the *sacriligous hands* that were making merchandize of the ashes of mortality, who in this case, were raising their impious hands in defiance of the laws of the ruler of the Universe, in defiance of the laws of the land, and the Constitution of the Commonwealth.

The lonely widow and her fatherless children, have been gladdened by this blessed decision of the Court; the tear of joy which is the gem of gratitude, gushed from the fountains of the bosom warmed by the glow of sweet satisfaction, that this promulgation of Justice and Equity has created.

The humble occupant of the cold garret, shivering at every chilling blast of the whistling wind, will now be able to obtain the comforts of the warm fire-side, and to exchange the bed of straw, the scanty meal, and a thin covering, for a comfortable couch, a plentiful table, and a dwelling in which the cold, cold wind, will not intrude its chilling, freezing blasts.

The patriot who mourned over the subversion of law, and the trampling under feet the Constitution, will rejoice in this event.

Never, never have we before known a decision to give such general satisfaction among the good, the virtuous, the best men of our city, as this has done.

Many of our readers abroad, are not aware that most of the Assessments complained of, are for fictitious improvements, for the pretended opening of Streets, Avenues and Public Squares, that exist only upon a painted map, the mere making of which was charged at thousands of dollars, and this expense assessed upon land.

The farm of the venerable sufferer, of whom we made mention, was assessed for one of these Phantom Streets, about four thousand dollars, and the interest and expenses have now risen to near eight thousand dollars, and for this imposition the farm was sold for the term of one thousand years, and yet the improvement was never made. What an impious act, to thus sport with futurity. Some lands have been sold for the term of two millions of years. Who dare look beyond the boundaries of time with such a title, based upon such proceedings? We should think the public depredators would not dare to lay their heads upon their pillows, with such a load upon their minds, as an act like this must make, that their lonely hours would be haunted by spectres, and their very dreams filled with midnight "horrors."

When the cold wind whistles past their princely dwellings, it bears on its wings the moaning of their victims, the sobs of the tender offspring pining in want, the children's cry for bread. Can a monster depredator sleep in such an atmosphere, can he look beyond the end of years without dread, without a chill of horror pervading his mortal frame?

Kind reader, this is not imagination—it is sad, mournful reality. We can point to the grave of a citizen once in affluence, who was loaded and goaded with assessments until he became exhausted, and was at last driven to a bed of sickness and to death.

What cruelty—what injustice—and we must add, what wickedness!

We hear of movements to amend the Constitution, this is not a work for politicians; their tinkering of the Charter of Liberty, will be the destruction of that instrument. Let the doctrines of the Constitution be respected by those who have, under the solemnity of an oath, promised to support it. This will be the most important amendment which can be made, an amendment that will, of all others, be the most satisfactory to the people.

The question is asked, what will be the result of this decision to the City? We answer. By the Assessors return, there is estimated to be upwards of one hundred and

sixty millions in value of real Estate, in the City of New York; this is increased in value by this decision, twenty-five per cent., here then, is a gain of more than forty millions of dollars by this decision of the Court.

The lands purchased by the Corporation at their own Assessment sales, under the Confiscation Act, of April 18th, 1843, will remain with the legitimate owners, and the moneys of the Sinking Fund which were appropriated to this unhallowed use, have been sunk forever.

Some persons talk of the Public Treasury being called upon to make restitution to the sufferers. The City might, with as much propriety, take the goods in the Police office, which have been rescued from the hands of the midnight robber, sell them, and put the avails into the Public Treasury, instead of returning the plundered property to the owners, as to seek to keep the price of the lands of the widow and the fatherless, that have been depredated upon by Municipal freebooters.

In no other country, civilized or savage, was there such abuses practiced and submitted to for years, as has been the case with these assessment depredations. Citizens by scores were ruined by these nefarious proceedings, and hundreds upon hundreds brought to poverty, to want, and to suffering. But thanks to the Supreme Court, a stop has at last been put to these depredations, which have made our City Government a bye word and a reproach among the people and throughout the land.

Men venerable in years, whose heads where whitened by the frost of near four score winters, plead with the despots for the little home purchased with the toils of a long life, might be spared to them. Yes, and the emotions of their bosoms forced the tear of grief down the furrowed check, but it was in vain, their remonstrances, their objections, and their entreaties, were all in vain.

The up-turnings of the eye of such a victim, has a force that will reach the remotest region of the celestial world.

The furrowed check of a veteran victim, moistened by the tear of suffering; the silver locks; the tottering frame, with only strength to bear it to the tyrant's door, is a mournful, sad, and heart moving spectacle.

The odious, the shameful Street Assessments in New-York, have for years been the act of the despot, and our City Government has been a perfect despotism, and more tyranical than the most barbarous government on the Earth.

These Reports, which were moved for by Mr. Emmett, are the Reports of the Commissioners for opening 37th, 39th and 128th streets, also 11th avenue, and a fancy street called Madison avenue. They were appointed near eight years ago. In the 39th street Report, a piece of land belonging to Anson G. Phelps, Esq., is assessed. This piece of land is not worth $200, and has already been assessed for the pretended opening of 40th street, $575, and for the pretended opening of the first avenue, $312, besides taking one-third of the land for the avenue. The land is not worth the interest of the assessment. This is a specimen of the proceedings which this decision of the Court has put a stop to.

SENATE COMMITTEE.

The Senate Committee, appointed to investigate Assessment abuses, in the City of New-York, in their Report to the Legislature, say:

"*It is well known that the Judges of the Supreme Court, in confirming these Reports, do not act as a Court, but as Commissioners under the Statute.*"

This Committee consisted of the Hon. Gabriel Furman, Hon. Gulian C. Verplanck, and Hon. John B. Scott.

STRICT CONSTRUCTION.

This is a doctrine on which depends the existence of this Government as a Republic.

The Constitution was designed to fix boundaries to the exercise of Executive, Legislative and Judiciary power; to seperate each from the other in such a way, as that the Executive branch shall be a check upon the Legislative, and the Judiciary a check upon both.

The experience of mankind has taught them that power is of an encroaching nature, and that in Governments, unless regulated and restrained, it becomes so concentrated as to be destructive.

The little time our Republic has been in being, is sufficient to demonstrate the danger of allowing one department of the Government, to usurp the powers which belong to the others.

The Legislative department is reaching forward and endeavoring to bring within its grasp all the other departments, and when that shall be accomplished, we shall behold a Legislative despotism, more tyranical and more despotic than any Monarchy that ever existed upon the face of the globe.

The moment the Legislative controls the Executive department, the Judiciary power is prostrated, and the balances are destroyed.

Constitutions are instruments framed with care, with deliberation and patient consideration, and are destined to be the guide book of Executive, Legislative and Judiciary Officers, and which they, each and all, under the solemnity of an oath, are bound to obey, support, and maintain.

In the forming of the Constitution of the United States, the design was to restrain arbitrary, as well as to check hasty legislation.

That provision of the Constitution of the United States, which requires a two third vote to pass a bill which has been disapproved by the Executive, is one which is not misunderstood, and so plain that it cannot be evaded, and therefore those who are in favor of what they call liberal construction, wish to qualify this provision to that extent that will make it useless and destroy the whole of the checks and balances of power. The moment this is accomplished, our Government ceases to be a Republic.

It matters not whether the whole powers of the Government are vested in one man, or in one body of men, for where it is vested in a single branch, composed of numerous members, the responsibility of their acts is so divided, that there exists no responsibility.

In the former Constitution of this State, Judiciary Officers of the Government were associated with the Executive in the approving of laws, and that provision of the Constitution which vests them with this power, recites in the Preamble the object, viz: to prevent the passing of unconstitutional acts. The Executive of this State, under that Constitution, was vested with an absolute control over the Legislature in the power he possessed of proroguing that body. This was a restraint upon arbitrary legislation.

The Judiciary department, in this arrangement, had the power of preventing a violation of the Constitution, by returning such bills as should be passed, that were repugnant to the fundamental law; and if the Legislature persisted, the Executive had the power to suspend their proceedings. The remedy here was preventative.

The present Constitution separates the Judiciary wholly and altogether from the Executive and also from the Legislative, and declares in express and unequivocal terms, that cannot be misunderstood, if there is any force in the English language or meaning in plain words that the Justices shall hold no other office or trust.

Expediency is the great canker which is eating up the Constitution, and it has become so prevalent as to be truly alarming. Politicians and speculators are making inroads upon the Constitution to answer their own present selfish ends. These two classes forget their children who they are thus cutting off from the rich possession which they themselves inherited from the patriots of the Revolution, the fathers of the Constitution.

The Judiciary is that branch of the Government which is vested by the Constitution with the interpretation of the Fundamental Law, but in the case under consideration, the provision of the Fundamental Law is so clear, so emphatic, and so positive, that it interprets itself.

The multitude of laws which now encumber the Statutes, "darken Counsel by words," and very many of them are nulities, from the fact that their provisions are not within the rule, and therefore repugnant to the Fundamental Law of the Commonwealth.

The great Law Giver has, in the Statute of Sinai, given to man an example; that Statute is brief and ample, and has not undergone any amendment or change.

OBITUARY.

ESEK COWEN.

One of the Justices of the Supreme Court of Judicature, of the State of New-York, has departed this life.

On Sabbath evening, Feb. 11th, at eight o'clock, his earthly pilgrimage terminated, his age was fifty-eight years.

He died at Albany, after an illness of four days.

Both Houses of the Legislature adjourned on the anouncement of his death, and each appointed a Committee to take order for his funeral.

The death of public men at the seat of the National and State Governments, have been very frequent of late years. These dealings of Providence are solemn and admonitory.

On the 65th page of this volume, we recorded the death of six individuals, who had held the office of President of this Republic, each and all marked by circumstances calculated to impress the human mind with the fact that GOD overrules the doings of men

WASHINGTON, JEFFERSON, ADAMS, MONROE, MADISON, and HARRISON, are the names of those whose exit has each been marked by peculiar circumstances.

The decision of the great Constitutional Question, which is here noticed, was among the last of the Judicial Acts of him whose name heads this Obituary notice, and of his useful life. He has left in this his written testimony in favor of the great doctrines of the Charter of Civil Liberty, a legacy to the People of this State, A RICH BEQUEST.

Judge COWEN was endowed by Nature with a great mind, which he cultivated with diligence, with care, and with success.

His place upon the Bench cannot easily be filled. It is a serious, a solemn act, to select a man to fill a station which makes him the guardian of the CHARTER OF FREEDOM.

Politicians hanker for place, for power; not for the sake of the good they may do, but for the sake of the patronage it places at their command, of the power with which it clothes them.

There are but few men in our State, who are qualified for the seat which Death has made vacant, in the Bench of the Supreme Court of this Commonwealth.

PETER A. JAY,
AND
PETER LORILLARD.

These two distinguished citizens, of the City of New-York, were in the year 1843, numbered with those who have rested from their labors. They both lived to a good old age, beloved and respected.

They were among those who sustained the Anti-Assessment Committee, in their public labors, and their names are appended to all their Memorials to the Legislature.

The bills which were submitted to the Legislature by this Committee, on behalf of the Citizens of the City of New-York, were, before they were placed before the Legislature, submitted to the supervision of Mr. Jay.

The bill that was discussed before the Hon. the Select Committee of the Senate, appointed to investigate Assessment Abuses, in the City of New-York, at their last sitting at Clinton Hall, was drawn up under the advice of Mr. Jay. The draft of the bill was placed in the hands of Mr. Jay, for a careful, and deliberate examination, and after that the proof sheets of the printed copy, and in both he made but a single alteration, and that only to correct a clerical error.

The approval of such men, is the greatest commendation a bill like that could have. The approval of a man who had capacity, integrity, and experience, and withal a noble patriotism, a love of Liberty, a respect for the Constitution, and a reverence for its great doctrines, is a rich commendation.

Mr. Lorillard, who, although not a member of the legal profession, was nevertheless, learned in the school of experience. By a life of industry and economy, he amassed a princely fortune; he had an interest in the prosperity of the City of great pecuniary magnitude, and a still greater one in the blessings of a good Government, the benefits of which were to be enjoyed by the beloved children which he left behind, who are the inheritors of his virtues as well as his estates.

Mr. Lorillard was practically conversant with all those provisions of law which affected private property, and he had become convinced that the barriers for the protection of private property had been broken down, and it was at the mercy of a set of lawless mercenaries.

During the Session of the Hon. the Select Committee of the Senate, appointed by the Legislature, to investigate Assessment Abuses in the City of New-York, Mr. LORILLARD addressed them a written communication, which that Committee regarded of so much importance, that they made it a part of their Report to the Legislature, and it is to be found on page 14 of their Report, Senate Document No. 100, of 1842. The Committee say that: "During the Session of the Committee in New-York, Peter Lorillard, Esq., submitted to them a communication on this subject, in which he stated that '*in many cases the injustice was so great, that he had firmly made up his mind to sell all his property in this State, and remove to where his property would be protected and placed on an equality with that of other citizens; and was only prevented from so doing by reason that it would not bring the prices of* 1830, *thereby he was forced to stop the sale, having made some sacrifice.*' If the Citizens of New-York are laboring under an erroneous impression in believing that they have been greatly oppressed and injured by the course pursued by these Commissioners, that belief is, *in the judgment of the Committee, very extensive.*"

The Committee, in another part of their Report, say:

"If the case of the Seventh avenue had been a solitary instance, the Committee might have supposed that it had taken place through some mistake; but they found the same principle of ENORMOUS expenses to extend throughout the whole system of Street Openings in that City, and that to such an amount, that their surprise should not be that the inhabitants now complain of it, but that they had not done so at a much earlier period."

Mr. JAY remarked that the power exercised by the Corporation, in Street Assessments, was greater than that of the Parliament of England.

Mr. JAY was one of that family whose great name was associated with the history of our Government. He was a man of great purity of character.

OBITUARY.

LEMUEL SKIDMORE.

On Friday evening Feb. 16th, the individual whose name heads this obituary notice, departed this life, at the age of 89 years.—He passed calmly down the current of life, and in peace of mind finished his earthly course.

He looked forward with calm composure to the end, retaining his mental faculties till he fell asleep in death.

He lived to see almost a century of time pass away, was highly respected and beloved and died full of hope.

He was the father of Mr. Burtis Skidmore, one of the most active members of the Anti-Assessment Committee.

ALBANY, Tuesday Feb. 13, 1844.

The funeral of the late MR. JUSTICE COWEN, took place this morning. Shortly before 10 o'clock, the Senate and Assembly met in their respective Chambers, and thence proceeded to the American Hotel, where the corpse lay. Having received the body, they returned to the Capitol, where the Clergy, the members of the Bar, the Corporation of Albany, and a large number of citizens had assembled. The coffin having been brought into the Hall of the Capitol, and the State Officers, Judges of the Supreme Court and members of the Legislature, arranged on either side, the service for

the dead was read by the Rev. Mr. Kip, in an appropriate and impressive manner. This ceremony concluded, the body was placed in the hearse and a procession formed, in the following order:

1. The Clergy. 2. The Hearse.
3. The Pall Bearers—Messrs. Bartlit and Varney, of the Senate—Messrs. Sweeney and Edwards, of the Assembly.
4. The Judges of the Supreme Court.
5. The relatives and friends of the deceased.
6. The Joint Committee of the Senate and Assembly.
7. The Governor and State Officers.
8. The Senate, preceeded by its officers.
9. The Assembly, preceeded by its officers.
10. The Corporation of Albany.
11. The Members of the Bar.
12. Citizens and strangers.

The procession, imposing alike in its numbers and appearance, passed from the Capitol down State street, and up Broadway to the confines of the City. At this point the remains of the deceased were taken to Saratoga Springs for interment. Having paid the last tribute of respect to the memory of JUDGE COWEN, the procession returned to the Capitol, and then dispersed.

MONUMENTS IN CITIES.

Monuments in Cities, in our latitude, are but temporary structures. Cities are of but limited duration.

Monuments erected upon some towering mountain top, that holds close converse with the clouds, meets the eyes of distant gazers; the place, the height, the loneliness of its position, give it impressions and a character which a monument in a crowded city cannot command.

A monument in some secluded grove, arrests the eyes of the passer by, and at once makes an impression upon his mind, almost as durable as life. But in a crowded city, thousands pass within the very shadow of a monument without being aware of its existence, or taking the least notice of this mute memento.

Much has been said of erecting a Monument in the City of New-York, to the memory of GEORGE WASHINGTON. There is a monument of this great man in Pearl street, near Pine street. A house which the Father of the Republic occupied, stands in that thronged street, unnoticed, a monument of the forgetfulness of things connected with the life of the great PATRIOT.

If the citizens wish to have a monument of GEORGE WASHINGTON in New-York, let them purchase that house, and appropriate it to some good and useful purpose.

A monument like this, would have a charm that all the polish that could be given to a marble pillar, could not impart.

It is not a monument of architecture that is wanted, but a monument of the virtues of a statesman and a patriot.

APPROVAL OF THE DECISIONS OF THE COURT.

The memorials which are shortly to be presented to the Legislature in relation to odious and outrageous assessments, and the abuse and usurpation of power by the officers of the Corporation and their protegees, are signed by Jonathan Thompson, John M. Bradhurst, Philip Hone, Abraham Van Nest, William B. Crosby, Peter Cooper, Peter Schermerhorn, Peter Embury, George Griswold, Jonathan Goodhue, James Lenox, Philip Milldollar, James G. King, Gulian C. Verplanck, Robert C. Cornell, James Brown, John Haggerty, Abraham G. Thompson, Edward Prime, James Boorman, James Monroe, John Authon, Andrew Foster, Sam'l S. Howland, James Lovett, Jacob Aims, Anson G. Phelps, William C. Rhinlander, Benjamin L. Swan, Edmund H. Pendleton, John R. Murray, Jonathan Sturges, David Hadden, Robert Jaffray, Charles H. Russell & Co., Woolsey & Woolsey, Arthur Bronson, Hendrick & Brothers, Peter Harmony, Charles Clinton, John B. Lawrence, Samuel Ward, James Donaldson, Elisha Riggs, Peter Lorillard, Jr. Samuel Thomson, John G. Coster, James McBride, George Ireland, John D. Wolfe, Silas Brown, Henry Breevoort and numerous other citizens of the highest standing and respectability in the city of New York; gentlemen who pay immense sums in taxes, and whose opinions and influence where they are known, will outweigh those of assessment depredators.

NEW PARTIES.

The abuses which have been practised by public officers, in the City of New-York, for years past, under both political parties, have been so great, that our citizens have become indignant.

The party which we term the ABOROGINES, would no doubt carry the City by an overwhelming vote, if they select the best men as candidates for office, in equal proportion from both political parties. Half Whigs and half Democrats.

In our last number, we named two most excellent men, as candidates for the Mayoralty. Other gentlemen of high standing have been spoken of, among which is HUGH MAXWELL, SAUL ALLEY, WM. B. CROSBY, and JOHN ANTHON. Either of these gentlemen would discharge the duties of the office to the entire satisfaction of the people. All of these gentlemen possess great firmness of purpose and decision of character, are intelligent, honest and capable. Among the persons spoken of for the Common Council, we heard the names of Daniel Lord, Shivers Parker, John Penfold, James K. Hamilton, Thomas T. Woodruff, Samuel Roome, James I. Jones, Theodore Sedgewick, Abraham Van Nest, Jacob Aims, Thomas Jeremiah, Edgar Harriot, Peter I. Nevius, John Levenidge, Edward Prime, John J. Boyd, Henry Breevoort, F. R. Tillou, W. D. Murphy, Peter Cooper, George B. Smith, Anson G. Phelps, W. B. Brady, and James Fellows.

The fact is, that which ever party puts up the best men, will succeed. The People are tired of Corporation abuses, and they are determined to have the public business managed better than it has been for years past.

LABOR AND REST.

Nature, in the great system of economy, has provided periods of rest, which are marked down in the successive changes of night and day, of winter and summer, of seed time and harvest.

The Sabbath of rest, is among the first in the order of time, and co-eval with man's existence as a living soul.

The entering into rest, was the subsequent provision of the source of all good. That rest which remains for the virtuous of the family of man.

What we term death, is the suspension, and not the extinction of life, for the soul of man is immortal, and destined to endure as long as eternity exists—forever.

The Solar day is that of a given portion of the time the Earth is revolving upon its axis, the primitive day was constituted of the evening and the morning. We reckon time from midnight to midnight, the French from meridian to meridian.

Animated Nature rests from the labors and from the cares of the Solar day, with but few exceptions, among which is that of the Lion, the Wolf, &c. Night, is this period of rest. This rest takes the last of the evening and the first of the morning.

The Sabbath of rest is a less frequent repose, but not the less necessary. It is a rest of the body, a period of reflection, of meditation and of contemplation for the mind. It is a rest which the Ruler of the Universe has marked with great particularity, and in reference to which he has made a special command, which was announced amid the thunders of the skies, and the fire of the high Heavens.

The Sabbath is a holy time, secular labors have no place on that day, and if indulged in are never blessed.

The Vegetable kingdom has its periods of rest, and these are regular, limited and restricted.

In our latitude, the cold is the sweet singer which puts vegetation to sleep, to rest. The Solar Orb, the great luminary of our portion of the firmament, in his own fixed time, awakens vegetation, and it comes forth dressed in all the beauties of Spring, in all the rich and varied adornings of Nature.

The rest which remains for the human family at the close of the evening of mortal existence, at the termination of animal life, is the sleep that precedes the glorious morning of the resurrection of the ashes of mortality.

Man makes preparation for his daily rest with more sincerity than he prepares for the rest on the Sabbath, or for the entering into rest. The glories, the blessings, the fruits of the latter, are dependent under the will of Heaven, upon the improvement of the two former.

MAMMOTH CAVE.

The entrance to this vast subterranean territory is in the county of Edmonson, State of Kentucky, on the southerly side of Green River, and distant therefrom about four hundred yards.

The entrance is North latitude 37° 10′, West longitude from Washington City, 9° 15′. The entrance to this nether territory is 94 miles from Nashville in Tenn., 125 miles from Lexington, and 99 miles from Louisville, Ky. The nearest places of note are distant as follows: Dripping Springs 9 miles; Pruits Knob, 8 miles; Horse Well miles; Bear Wallow miles; Bells Tavern 7 miles; Mumfordsville 15 miles. The mouth of the cave is about north east from the Dripping Springs, and about north west from Pruit's Knob.

The Mammoth Cave extends under a range of Knobs which border what is called the Green River or Kentucky Barrens.—Formerly, these Barrens were destitute of timber, but were covered with grass and flowers which grew spontaneous and with great luxuriance. Since that section of the State has become thickly settled, the fires which every year overrun the surface consuming the dry grass, &c., have been prevented, and now the surface is covered with a young growth of timber consisting of oak, hickory, and chesnut. It was the custom in former times for settlers who had located themselves upon the barrens, as early in the fall season as that the grass began to get dry, to burn over a small district around their plantations in order to keep off the fire when the barrens should get enveloped in one general conflagration. It sometimes happened that the Barrens become ignited at an earlier period than usual, and in such cases settlers were obliged to set what are called the back fires—burning over small districts, so that when the great body of flames come sweeping over the Barrens with a roar of wind, increased by the augmentation of heat and flame, that a boundary should there be set to it, as the flames would be thus deprived of food to feed upon. A fire on the barrens I once witnessed. It was a beautiful moonlight evening. I was travelling on horseback on one section of these higland prairies, the fire in its spread outstripped that of the horse on which I was riding, but as its track was some distance from me, and the wind in my favor, I felt no apprehension from its effects. Fires of this description are frequently caused by persons who are flitting and who encamp for the night, building fires for the purpose of cooking, and which are spread by the wind. The term flitting is used in this country to denote persons moving from one section of the country to another. It sometimes happens that fires are set for the purpose of driving deer into what are called the "deer runs" where the hunters station themselves to shoot them down as they pass. The Barrens were a great resort for deer, rabbits, &c. It seldom happens that fires are set by persons for the mere sport of seeing a bonfire, which in such a country would be malicious mischief. Crimes are rare in countries where the products of nature are more than adequate to the wants of man. The Barrens are a limestone formation and the soil when brought under cultivation is found to be very productive.

The best of tobacco is grown upon the barrens and some cotton It is somewhat singular that this section of country should at once produce such a profuse growth of oak, hickory and chesnut, and I know no other way to account for it than to refer back to the Mosaic account of the commencement of vegetation in which the sacred historian states that the primitive seeds were of themselves in the earth. The Knobs are a range of hills which border the waters of Green River on the one side and the barrens on the other, and are a sort of a winrow made on the subsidence of the waters of the great deluge. I have been thus particular in describing the surface around the entrance to the cave, before taking the reader below the surface.

The entrance to the Cave is at the foot of a knob, by a gradual descent of about seventy feet. At the bottom of this descent, which is so easy that oxen pass down it without trouble, is the opening to the greatest known Cavern. The opening is in the solid rock, and is about 10 feet wide, and about eight feet high. In winter, a strong current of air rushes into the Cave, and during the hot summer weather, the current of air changes and rushes out of the Cave, equally strong. This change of current of air, is owing to the temperature of the atmosphere upon the Earth's surface. When the weather is warm, the surface atmosphere air is more rarified than the air of the Cave, and then the current blows out of the Cave; but when the atmosphere outside becomes cold, the air in the Cave is more rarified, and then a change takes place and the wind blows into the Cave. At the mouth of the Cave there is water dripping from above, and it is to this cause that I attribute the present entrance to the Cave being made. This spot is not the original inlet to the Cave, for it is evident, on a careful examination, that the roof of the Cave broke in at this place, and that one end of the roof fell, while the other maintained its position, like one end of a wooden floor settling down while the other kept its place; and it is this slope which forms the visitors' path into the subterraneous chambers. Near the mouth of the Cave is a pit of water, of some fifty or sixty feet deep, made by the continued wear from falling water, for centuries. After passing the front thirty or forty feet, the Cave gradually widens to the width of from thirty to fifty feet, and increases in height to about sixteen or twenty feet. The sides and roof are of solid rock, and the floor, which is of the same solid material, is overlaid by a strata of sand and earth, to the depth of from three to six feet. This dirt has been the accumulation of time. Much of the surface of the walls have a thick white incrustation, like a thick coat of whitewash, and some of these surfaces are black, and some a mixture of black and white, yet each color was distinct and separate, no amalgation visible. The Cave is dark, perfectly dark, and here silence reigns in all the majesty of Nature's grandeur, shrouded with the curtains of the blackest darkness. The atmosphere within these nether chambers is perfectly dry, and the temperature that of 59 degrees of Farenheit's scale. There is a peculiar sensation experienced by visitors after entering the Cave and breathing its atmosphere for a few minutes; whether it has its origin mentally or physically, or both, I am unable to determine. I have experienced this feeling on every visit within the Cave, although these visits were very numerous, and many of them protracted. There are various evidences of the dryness of the atmosphere in the Cave, which illustrate the uniformity of this peculiar quality of the air at long periods of time. Of these I will mention three. The Cave was extensively worked for Saltpetre from 1810 to 1814, during which time oxen were used in the Cave for transporting the earth to the Hoppers for lixiviation. These oxen were fed on corn and corn blades. The corn cobs now remain in the Cave about a mile from the mouth, in a state of perfect preservation. Wooden Conduits, (logs bored,) were used for conveying water from the mouth of the Cave to the Hoppers, to lixiviate the Earth, and the same mode of conveyance was resorted to, to convey the nitrate solution from the Hoppers to the mouth of the Cave, from whence it was raised by pumps, into the iron pans in which the chrystilization was affected. These logs, after thirty years exposure to the atmosphere of the Cave, are perfectly sound and dry. In excavating the earth in the Cave for the purpose of lixiviation, pieces of cane torches were found embedded in the dirt in great abundance, and in a perfect state of preservation. Combustion goes on well in the Cave, lamps burn free, and the light given by this means is, as to proportionate yield, greater than in surface atmospheric air.

On my first visit to the Mammoth Cave, in 1813, I saw a relic of ancient times, which requires a minute description. This description is from a memorandum made in the Cave at that time.

"In the digging of Saltpetre earth, in the Short Cave, some little distance from the Mammoth Cave, a flat rock was met with by the workmen, a little below the surface of the earth in the Cave, and about a quarter of a mile from the Cave's mouth; this stone was raised, was about four feet wide and as many long: beneath it was a square excavation about three feet deep, and as many in length and width. In this small nether subterranean chamber, sat in solemn silence, one of the human species, a female, with her wardrobe and ornaments placed at her side. The body was in a state of perfect preservation, and sitting erect. The arms were folded up, and the hands were laid across the bosom; around the two wrists was wonud a small cord, designed probably, to keep

them in the posture in which they were first placed. Around the body, and next thereto, was wrapped two deer skins. These skins appeared to have been dressed in some mode different from what is now practised by any people, of whom I have any knowledge. The hair of the skins was cut off very near the surface. The skins were ornamented with the imprints of vines and leaves, which were sketched with a substance perfectly white. Outside of these two skins was a large square sheet, which was either wove or knit. This fabric was the inner bark of a tree, which I judged from appearance, to be that of the Linn tree. In its texture and appearance, it resembled the South Sea Island Cloth or Matting, this sheet enveloped the whole body and the head. The hair on the head was cut off within an eighth of an inch of the skin, except near the neck, where it was an inch long. The color of the hair was dark red; the teeth were white and perfect. I discovered no blemish upon the body, except a wound between two ribs near the back bone; one of the eyes had also been injured. The finger and toe nails were perfect, and quite long. The features were regular. I measured the length of one of the bones of the arm with a string, from the elbow to the wrist joint, and they equalled my own in length, viz: ten and a half inches. From the examination of the whole frame, I judged the figure to be that of a very tall female, say eight feet ten inches in height. The body, at the time it was first discovered, weighed but fourteen pounds, and was perfectly dry; an exposure to the atmosphere on being moved to the Mammoth Cave, it gained in weight by absorbing dampness, four pounds. Many persons have expressed surprise that a human body of great size should weigh so little, as many human skeletons of nothing but bone, exceed this weight. Recently some experiments have been made in Paris, which have demonstrated the fact of the human body being reduced to ten pounds, by being exposed to a heated atmosphere for a long period of time. The color of the skin was dark, not black; the flesh was hard and dry upon the bones. At the side of the body lay a pair of moccasins, a knapsack, and an indispensable or reticule. I will describe these in the order in which I have named them. The moccasins were made of wove or knit bark, like the wrapper I have described. Around the top there was a border to add strength and perhaps as an ornament. These were of middling size, denoting feet of small size. The shape of the moccasins differ but little from the deer skin moccasins worn by Northern Indians. The knapsack was of wove or knit bark, with a deep strong border around the top, and was about the size of knapsacks used by soldiers. The workmanship of it was neat, and such as would do credit as a fabric, to a manufacturer of the present day. The reticule was also made of knit or wove bark. The shape was much like a horseman's valise, opening its whole length on the top. On the sides of the opening and a few inches from it, were two rows of loops, one row on each side. Two cords were fastened to one end of the reticule at the top, which passed through the loop on one side and then on the other side, the whole length, by which it was laced up and secured. The edges of the top of the reticule were strengthened with deep fancy borders. The articles contained in the knapsack and reticule were quite numerous, and are as follows: one head cap, made of wove or knit bark, without any border, and of the shape of the plainest night cap; seven head dresses, made of the quills of large birds, and put together somewhat in the same way that feather fans are made, except that the pipes of the quills are not drawn to a point, but are spread out in straight lines with the top. This was done by perforating the pipe of the quill in two places and running two cords through these holes, and then winding around the quills and the cord, fine thread, to fasten each quill in the place designed for it. These cords extended some length beyond the quills on each side, so that on placing the feathers erect on the head, the cords could be tied together at the back of the head. This would enable the wearer to present a beautiful display of feathers standing erect and extending a distance above the head, and entirely surrounding it. These were most splendid head dresses, and would be a magnificent ornament to the head of a female at the present day. Several hundred strings of beads; these consisted of a very hard brown seed, smaller than hemp seed, in each of which a small hole had been made, and through this hole a small three corded thread, similar in appearance and texture to siene twine: these were tied up in bunches, like a merchant ties up coral beads, when he exposes them for sale. The red hoofs of fawns, on a string, supposed for to be worn around the neck, as a necklace; these hoofs were about twenty in number, and may have been emblematic of Innocence; the claw of an Eagle, with a hole made in it, through which a cord was passed, so that it could be worn pendent from the neck; the jaw of a Bear, designed to be worn in the same manner as the Eagle's claw, and supplied with a cord to suspend it around the neck; two rattlesnake skins, one of these had fourteen rattles upon it, these were neatly folded up; some vegetable colors done up in leaves; a small bunch of deer sinews, resembling cat gut in appearance; several bunches of thread and twine, two and three threaded, some of which was nearly white; seven needles, some of these were of horn and some were of bone: they were smooth and appeared to have been much used. These needles had each a knob or whirl on the top, and at the other end were brought to a point like a large sail needle. They had no eyelits to receive a thread. The top of one of these needles was handsomely scolloped; a hand-piece, made of deer-skin, with a hole through it for the thumb, and designed probably to protect the hand in the use of the needle, the same as thimbles are now used; two whistles about eight inches long, made of cane, with a joint about one third the length: over the joint is an opening extending to each side of the tube of the whistle, these openings were about three fourths of an inch long and a quarter of an inch wide, and had each a flat reed placed in the opening. These whistles were tied together with a cord wound around both.

I have been thus minute in describing the mute witness from the days of other times, and the articles which were deposited within her earthen house. Of the race of people to whom she belonged when living, we know nothing, and as to conjecture, the reader who gathers from these pages this account, can judge of the matter as well as those who saw the remnant of mortality in the subterranean chambers in which she was entombed. The cause of the preservation of her body, dress and ornaments, are no mystery. The dry atmosphere of the cave, with the nitrate of lime, with which the earth that covers the bottom of these nether palaces is so highly impregnated, preserves animal flesh, and it will neither putrify or decompose when confined to its unchanging action. Heat and moisture are both absent in the cave, and it is these two agents, acting together, which produce both animal and vegetable decomposition and putrefaction.

In the ornaments, &c., of this mute witness of ages gone, we have record of olden time, which, in the absence of a written record, we may draw some conclusions from. In the various articles which constituted her ornaments there were no metalic substances. In the make of her dress there is no evidence of the use of any other machinery than the bone and horn needles. The beads are of a substance of the use of which for such purposes, we have no account among people of whom we have any written record. She hand no warlike arms. By what process the hair upon her head was cut short, or by what process the deer skins were shorn we have no means of conjecture. These articles afford us the same means of judging of the nation of which she belonged, and of their advances in the arts, that future generations will have in the exhumation of a tenant of one of our modern tombs with the funeral shroud, &c., in a state of like preservation, with this difference, that with the present inhabitants of this section of the globe, but few articles of ornament are deposited with the body. The features of this ancient member of the human family much resembled those of a tall, handsome American woman. The forehead was high, and the head well formed.

I have already travelled over several pages of paper, and have proceeded not one mile in this Cavern of gigantic dimensions. I will proceed in the cave. The Saltpetre hoppers are placed at a distance from the mouth of the cave, which we reckoned to be one mile. The Cave at this place is large, and branches off in different directions.—The Saltpetre hoppers are constructed in the same manner as ash leaches are made, and the earth is lixiviated with water precisely in the same way that ashes are leached to make

pot and pearl ash. The fluid which is obtained by lixiviaition of the earth is mixed with fixed alkilies, and evaporated to the chrystalizing point, and thus Salpetre is obtained. The dirt yields from 3 to 5 lbs. of nitrate of lime to the bushel, requiring a large proportion of fixed alkali to produce the required chrystalzation, and when left in the cave becomes reimpregnated in three years. When saltpetre bore a high price, immense quantities were manufactured at the mammoth cave, but the return of peace brought the saltpetre from the East Indies in competition with the American, and drove that of the produce of our country entirely from the market. An idea may be formed of the great extent of the manufacture of saltpetre at this cave, from the fact that the contract for the supply of fixed alkali alone for the cave, for the year 1814, was twenty thousand dollars. In the excavations of the earth for the supply of the vats, immense quantities of remains of cane torches and old moccasins were found imbedded in the dirt. There was also found imbedded in earth near the mouth of the cave, a human jaw bone, of gigantic size. The inside of this bone would pass over the outside of that of an ordinary sized man. The workmen employed in the cave, were blacks, and were sometimes to the number of 70. They worked by artificial light from iron lamps, in which lard was burned. The stranger visiter, on passing up the cave and coming in sight of this sable group with their burning lamps, displaying their white shining ivory teeth and glistening eyes, would feel a sensation that the reader can as easily imagine as I can describe. During the whole time this cave was wrought in for saltpetre, there was no case of sickness among the numerous workmen. They all enjoyed excellent and uninterrupted health, and preferred this employment to that of labor outside.

No wild animals have ever been known to enter the cave. Bats are numerous in some of its extensive apartments in winter, and so numerous, that it is a wonder where they all come from, or how they all find their way to this great head quarters. These bats hang in clusters like bees in swarming and sometimes manifest displeasure by a twitering noise when a human being invades their apartments with a lighted taper. There are some crickets in the cave, such as are seen about kitchen fire-places in the fall season of the year. These are of a light flesh color. Some few rats and mice are occasionally seen in the cave. These comprise all of the animated creation which now inhabit this nether territory. In the River of the cave, which I shall hereafter notice, are fish of three species, one of which are destitute of the organs of sight. On passing the Saltpetre hoppers, the visitor ascends what is called the mountain, an ascent of about 20 or 30 feet, and at the top finds himself at the west end of the "Haunted Room." There is in the name of this apartment something to excite curiosity in the stranger visiter, and this is increased when looking forward in this magnificent apartment, his light reaches one object after another about the height of a human being, the heads of which have become coated with the smoke of the lamps of the workmen, and this, increased by the peculiar appearance which the feeble light produces upon the surface of the most distant, which are half enveloped in darkness. These objects when first seen look like groupes of men standing before you, but on a closer inspection are found to be figures formed by the operation of water percolating slowly through the rock which forms the roof, making what are called stalagmites. The commencement and progress of these formations are illustrated in the formation of icickles from the eaves of houses. The water in falling from the eaves, when it reaches the ground congeals, and if the supply of the fluid continues to fall the lower concretion will meet the upper and that which is pendant will form a pillar. The haunted room is about half a mile in length and contains great numbers of stalacites and stalagmites, and other concretions. One of these is called the bell. It is a hollow stalacite of large size, which is pendant from the upper ceiling or roof, and is shaped much like a hornet's nest. When this stone is struck, the sound from it may be heard in distant parts of the room. Hence its name. Another large concretion, is a stone much in the shape of an arm chair. This is a ponderous stone of great compactness. It is a solid piece of fluor spar. It was called "Wilkins' arm-chair," in honor of Charles Wilkins, Esq., one of the former proprietors of the cave.—Mr. Wilkins is a brother of the Hon. William Wilkins, American Minister to the Russian Court. In some parts of the haunted room there is much echo from sound, a voice or sound, is reverberated, and this first gave the apartment the startling name. This room is from 50 to 100 feet wide, and from 10 to 16 feet high. Its walls are covered with white incrustations. The visitor after passing the numerous concretions arrives at a place called the "sand-hill," down which he descends a gradual slope about forty feet, and at the foot of this hill, on his left, is an opening of about six feet wide and twenty feet high, through the solid rock, in a winding way leads him to the "Pond Room," so called. This opening is a wonder, a great curiosity. The indented surface of the wall on one side are in a corresponding shape with the projection of the wall exactly opposite, and have to the accurate and careful observer the appearance of having been once united together. On one side is to be seen a column with its swells and its mouldings, and on the other side, exactly opposite to it, is to be seen indentations of the same shape and form in the rock, and one would suppose that this had been the mould in which the pillar was cast, but on looking upward to the roof it is seen that its form is that of an arch. Here then is the action of some methodical arrangement in the very rocks, although enveloped in thick darkness. This passage is about thirty yards long, and before reaching the pond room, a deep pit is passed on the right. A stranger without a guide, would not be a safe traveller through this narrow way. On arriving in the pond room, the visitor takes to the left, and travels the northern portion of the room. This part of the room is paralell with the haunted room, but its lower surface is about 50 feet lower than than that of the haunted room. On the middle of the floor of the room is to be seen a pile of black looking stones which look like large cobble stones covered over with a dingy concretion, having somewhat the appearance of Blacksmith's cinders. To this place, some visitors gave the name of "Vulcan's Workshop." A little distance further on, in the same direction, is a small pond of clear water, as transparent as air. This pond is about three feet in diameter and nearly circular. The bottom is smooth rock and the water when examined by torch light appears to be about two inches deep. A gentleman from Massachusetts in company with some visitors attempted to jump across this pond and not being able to accomplish the undertaking by a few inches was exceedingly alarmed in finding himself knee deep in water. The depth of the water was thus deceptive from the great transparency of the fluid. This water may be termed *pure*. It has been in a state of perfect quietude, probably for centuries, so that all earthy particles, held in suspension, have become precipitated to the bottom by time, and now coats the surface of the rock which forms this subterranean basin. The pond room is in this section of it, about 12 to 14 feet high, and 30 or 40 feet wide. The floor, sides, roof, &c., are solid rock, and without any earthy covering on the lower surface.—The visitor retracing his steps back to the narrow passage through which he entered this apartment, arrives at the commencement of that part of the pond room, which lies to the right of the passage. Here in a short distance he hears the sound of falling water, and soon beholds a body of water falling through a circular opening in the ceiling into a pit of great depth in the floor. This body of water is about the size of a barrel and fills the aperture through which it falls. It is a splendid water fall, but has but few charms to the eye of a visitor —in this vast subterranean apartment. Returning the way I came, I retraced my steps until I again saw the light of day. Just before reaching the mouth of the cave and when I passed entirely without and began to ascend the hill into the surface air, I experienced a singular feeling. About the center of my body and entirely around it seemed to be affected so much as to be distinctly felt. I cannot describe the sensation—it was not in the least painful or unpleasant, but it was singular and peculiar in the extreme, and I have heard the same remark made by others, but I have never heard it accounted for. During this visit I travelled about seven miles in the cave going and returning, according to the distances noted by the guide. The cave, as I before observed, is perfectly dark. The guide carried two torches, myself and companions each, carried one.

These torches we held so near the floor

as to have a light to our path, which should be a lamp to our feet. In this visit I had an opportunity of learning something of the laws which govern light, and also sound. On entering apartments, the roof of which were high, we were obliged to wait some minutes before the light from our lamps would illuminate the apartment sufficiently for us to see the roof. Sound is not increased by being confined, but depends much on the state and temperature of the atmosphere. I remarked that the atmosphere in this Cave is pure, and respiration is easy. The atmosphere of the Cave remains unchanged throughout the year, and at 59 degrees of Farenheit. In summer weather, this is called cool, in winter weather, it would be denominated warm and comfortable. Thus it is that our judgment misleads us in forming opinions of heat and cold, unless we have recourse to some standard scale of measurement, less liable to err than our own feelings.

I have traversed various sections of the Cave frequent and often, at all hours of the day and of the night, and during all kinds of weather, fair and foul. In the distant parts of the Cave, night and day and rain and sunshine, are all alike. There all is dry weather and all is night's darkness. I will speak generally of it, when I have first given particular details. I have not been at the Cave since the manufacture of Saltpetre was suspended there, near the close of the war. At that time I furnished the carbonated alkalies with which the Saltpetre fluids were chrystalized. My knowledge of the Cave is extensive, and from personal observation made at various times, although more than a quarter of a century ago, yet notwithstanding the lapse of time. my recollection of this woundrous place is quite distinct. In the early part of 1838, the land called the Mammoth Cave tract, containing 1,610 acres, running ahout one mile on Green river, was sold by Hyman Gratz, Esq., of Philadelphia, one of the former proprietors, to F. Gorin, Esq., of Glasgow, Kentucky. This tract embraces the mouth of the Mammoth Cave, and with it the title to the Cave or io its entrance passes. Mr. Gorin erected a large Hotel at the Cave, capable of accomodating thirty or forty persons. In a letter which I received from that gentleman, dated Glasgow, July 18th, 1839, he remarks: that within a short time, new discoveries of numerous apartments have been made in the Cave, which are in the aggregate greater in extent than all the Cave previously known. A river of great extent had been discovered, and also a dome of great heighth. Mr. Gorin has since disposed of the Cave tract, &c., to Dr. John Croghan, of Locust Grove, near Louisville, Kentucky. I have received from a scientific gentleman of high standing, several lengthy letters in reference to the Cave as now known, and the particulars of various discoveries recently made in it, which I will give in detail and in chronological order. My correspondent, in his letter to me of June 24th, 1841, remarks: "The discoveries made in the Mammoth Cave the last two years are, in the estimation of many, better worth seeing than all the Cave, as previously known. They consist of numerous branches and avenues; domes of great size and beauty. Until recently no person had explored the Cave in which the "Bottomless Pit" is situate, beyond the Pit; now, the most extensive and interesting part of the Cave (as now known,) is beyond the Pit. For this discovery we are indebted to a gentleman of Georgetown, Kentucky, named Stevenson. He ascertained that the Pit was nothing but a chasm of great depth extending across the Cave, and therefore got a ladder of sufficient length to reach across. On this ladder, this daring man, the guide, and some two or three others, crossed this deep and frightful chasm, and on reaching the opposite bank, found themselves in a cave of considerable size, which, after exploring it to the distance of about two miles, brought them, to their utter astonishment and delight, to the celebrated river of the Cave, unknown until the last two years. In order to gratify the numerous visitors with a view of this deeply interesting section of the Cave, the proprietor has had a large and strong bridge, with suitable rail-ways, erected over the "Bottomless Pit." Rocks have been removed so as to render walking pleasant in the different avenues; stair steps have been placed where required; boats are in readiness for those who feel inclined to take aquatic excursions, and Bengal lights can be had by such as wish to witness the sublime spectacle which is exhibited by an illumination of the various domes. The river is three miles from the mouth of the Cave; where you first strike it, it is not very wide, but of a considerable depth. It is in this river that fish without eyes have been found. It was the opinion of Professor Davidson, of Transylvania University, (who wrote a pamphlet concerning the Cave,) that these fish had eyes and were blinded by light, or in other words, that the apparent want of eyes, arose from the sudden stimulus of light. This is not the case. A professor of the Louisville Institute, anatomized the head of one of these fish, and says there is no indication of there being such an organ. The improvements within the Cave commence about half a mile from the mouth, in that branch known as the great "Bat Room," but now as "Audubon's Avenue," named by the proprietor after his old friend, the celebrated Ornithologist. There are two regular guides at the Cave. The best guide is Stephen, he has made many discoveries, and although he has acted as a guide for a number of years, he takes great pleasure in accompanying visitors and penetrating its most remote ramifications. No later than November last, he, when acting as cicerone for a German gentleman, made one of the most interesting discoveries of the Cave. This visiter was quite an enthusiast in respect to the Cave, and as anxious to make discoveries as Stephen was to gratify him. They penetrated the Cave to within half a mile of the river, when Stephen pointed out to him an opening, not exceeding four feet square; they entered this, and after going a short distance, found themselves in a Cave of considerable size, which seemed to take a direction in the course of the Cavern's mouth. After walking about one mile in this branch, their progress was suddenly arrested by an abrupt, indeed perpendicular descent of the rock on which they stood. All beyond, above, and below, was perfect darkness. At a distance they heard the fall of water, but no idea had they of the space before, of the depth below, or of the heighth above them. They returned and reported the character of their discovery. No attempt was made to descend this precipice for a month, when some gentlemen from the adjoining County, determined on making the effort. A strong rope was obtained, and upon reaching the spot, the guide consented to be let down into this dark and unexplored region.

This was done, and he did not descend more than thirty feet before he exclaimed "I am on the side of a hill!" Untying the rope he descended the hill from seventy to one hundred feet, and was enraptured by the appearance of a magnificent dome of great width and heighth, and a cataract tumbling from its top. Having gratified himself in beholding this splendid spectacle he ascended the hill to the point from whence he embarked, and the other guide manifesting a desire to join him was let down by the visitors. They continued ascending the hill, (not without much difficulty) to its summit, and there beheld the most awfully grand and sublime sight of this famous cavern. The top of the hill is quite level, embracing an area of about one acre in extent. The bottom is of rock, having innumerable indentations about the size of a large tea cup and lined with chrystals of carbonate of lime. A few feet from the wall of this spacious hall are staglamite columns (the number I have forgotten) of the most gigantic size and altitude. The distance to the ceiling above is **280** feet as measured by Mr. Lee, civil engineer. This fact in regard to the elevation of the ceiling and the locality of the great hall was subsequently ascertained by finding in this spot never before trodden by man, an *iron lamp!!* The astonishment of the guide, as well as that of all the party in beholding this lamp can be easily imagined, and to this day they would have been ignorant of its history but for the accidental circumstance of an old man being at the cave who thirty years ago was engaged as a miner in the manufacture of saltpetre for Wilkins and Gratz. Upon seeing the lamp he said the place where it was found was directly under the little bat room pit, a fact which surprised all, that during the years 1810 to 1814, Wilkins of Lexington, and Gratz of Philadelphia, were extensively engaged in the cave, manufacturing saltpetre and a Mr. Gatewood informed Mr. W. that he thought the richest saltpetre earth was under the little bat room pit. The depth of this pit was then unknown. Mr. Wilkins therefore got a rope 45 feet long, to the end

of which he tied with a string this identical lamp. In letting the rope down, the string caught fire, and down fell the lamp. Mr. Wilkins made an offer of two dollars to any one of the workmen who would descend the pit and bring the lamp up. His offer was accepted by a man, called in consideration of his diminutive size, "Little Dave." Little Dave had the rope tied securely round his waist and was let down, holding a torch in his hand, its entire length; he was then pulled back by the workmen, and so alarmed was the poor fellow, that it was with difficulty he could articulate.

"Dave remarked that no sum could tempt him to try again for the lamp, and related the most marvellous account of what he saw. He was suspended at a heighth above the level below, of 240 feet. Such is a history of the lamp, as related by old man Holten. To ascertain if his views in respect to the place where the lamp was found, was correct, the guides went to the spot, where they found it, and persons at the pit above could be heard by those below, and sticks thrown down were brought out. From the mouth of the Cave to this pit, the distance does not exceed a mile, yet to reach the grand apartment immediately under it, the visitor will have to perform a circuit of at least three miles. Foreigners who have visited this section of the Cave, have declared that a view of it alone, would compensate them for a trip across the Atlantic. The discoveries recently made in the Cave, greatly exceed in extent all that was known when you was at the Cave. A gentleman of unquestionable veracity, and one who has ample opportunities for acquiring correct information, having resided there and in its vicinity, thirty years, gives it as his opinion, that there is not less than two hundred square miles of Cave." (I presume my correspondent has reference to Mr. Gatewood.) "The Cave is abundant in minerals, such as the sulphate of lime or gypsum; Epsom and Glauber salts; nitrous earth; chalk; sand; flint; pebbles; red and grey ochre; calcareous spar; chalcedony; chrystalized carbonate of lime; Oolite; chrystals of quarts, &c. &c. The echo in various branches of the Cave, is very extraordinary. On the river it is the greatest. On one part of it, I was told, that talking in the ordinary way, produced a reverbation which was rather unpleasant to the hearer."

I extract from a second letter of my correspondent, dated October 23d, 1841, as follows: "The 'Bottomless Pit' has been sounded, and is but **170** feet deep. The river can be reached by two routes, one is by crossing the bridge, which extends over the bottomless pit, and proceeding thence through the winding way and other avenues, and the other is by going through 'Penseco avenue' and 'Bunyans' way,' which leads to the bottom of the bottomless pit, and thence on to the river. There is water in the bottomless pit. The route to the river from 'Penseco avenue,' through 'Bunyan's way' and the bottomless pit, is much lower than that by the winding way, and consequently more wet and disagreeable. The imprint of children's footsteps have been seen in several sections of the Cave, and in the earth dug up in the Gothic avenue were the remains of Cane torches, bundles of faggots, moccasins, &c. The lower jaw bone of the immense skeleton found in the Cave, is in the possession of a gentleman of Tennessee, and I am in hopes of procuring it from him. The skeleton of this supposed giant, was re-intered by Mr. Miller, more than thirty years ago, between the mouth of the Cave and the first hoppers. Efforts will be made to find the spot and disinter it. The Cave has been explored according to the estimate of the guides, thirteen miles in a direct line, which is the limit to their explorations in a cave or avenue beyond the Rocky Mountains. How much farther they could have gone in this Cave, I know not. From the mouth of the Cave to the river is three miles, from thence to the landing on the third river, one mile, and from thence by the pass of *Ell ghor* to 'Cleaveland's avenue,' four miles, and from the ladder you ascend to get to 'Cleaveland's avenue' from 'Croghan's Hall,' two miles. The Cave to which I allude, as a limit to the guide's discoveries in this quarter, is to the right of 'Cleaveland's avenue,' (if I am rightly informed,) and about half a mile from 'Croghan's Hall." Only a part of this distance has been measured, the remaining portion is computed, from the time occupied in reaching particular points, and judging according to this rule, I think the distances not much exaggerated. In going to 'Cleaveland's avenue,' the visitor passes a number of Caves, one of which is named 'Silliman,' in honor of the distinguished Professor of Yale College.

"The Cave continues beyond its mouth in an opposite direction, and at some very remote period the Cave was broken in at this place. The ancient mouth of the Mammoth Cave, is a quarter of a mile from its present one. The mouth of 'Dixon's Cave' was originally that of the Mammoth. 'Dixon's Cave' is, so far as it goes, of immense size. Laborers digging for Saltpetre earth, at its extremity, have been heard within ten feet of the Mammoth Cave. The proprietor intends to connect them at some future period. The river within the Cave has not been explored; it is influenced by Green river only, when the latter is very high, the river in the Cave rising occasionally when Green river does not. The river within the Cave, rises to the height of thirty or forty feet perpendicular. Mr. Craig, of Philadelphia, and Mr. Patten, of Louisville, (the discoverers of 'Cleaveland's avenue,) ascertained that Stephen labored under a mistake in supposing that the river terminated in a lake. The supposed lake is only an expansion of the river. There are but few varieties of fish in the Cave, the cat-fish is the most abundant, and is (as I remarked in a previous communication,) perfectly white and destitute of eyes. One of the laws of sensation is verified as respects this fish, viz: that the loss of one sense increases the vigor and acuteness of the others. These fish are regardless of the greatest degree of light, but the least agitation of the water alarms them, hence the difficulty of catching them. A small fish, denominated sun fish, a species of perch, is found in the river, but principally, if I mistake not, only during the summer months. The rivers of the Cave have no fixed names. One of them is called the river Styx, and the third and largest, the Echo river, from the extraordinary echo heard on its waters; it is literally deafening. Messrs. Craig and Patten, who took soundings in the river, ascertained the average depth to be eight feet. Sulphate of lime is found in the main Cave, two miles from its mouth; it is also to be seen in some of the other branches. Glauber salts is found in that branch of the Cave, called 'Salts Room.' Epsom salts is found in large quantities, in the Cave, and in different parts of it; large piles of it are seen in 'Cleaveland's avenue,' and here also it is seen beautifully chrystalized. During the month of August last, Messrs. Craig and Patten, of whom I have before made mention, spent two weeks at the Cave, and were, during a great part of that time, making explorations beyond the river. The most interesting discovery which they made, was 'Cleaveland's avenue,' named in honor of Professor Cleaveland, of Bowdoin College. It is on an average, seventy feet wide, twelve to fifteen feet high, and two miles in length. The ground on which the visitor walks, and the sides and ceilings of this avenue, is encrusted with every variety of formation, and generally perfectly white. It is truly a beautiful, a gorgeous spectacle! Visitors who have but half a dozen lamps, can form but an imperfect idea of this splendid avenue. They see it only in detached parts, and can only admire these singularly handsome formations pendant from the ceiling. It is when illuminated at different points with Bengal lights, by means of which you can have an extensive survey of the entire scene, that you can properly appreciate the splendor of this avenue. When thus illuminated, a spectacle is exhibited to the view of the beholder, which for brilliancy has possibly no parallel, and which it is impossible for language to describe. It is much to be regretted that this avenue is at so remote a distance within the Cave. To reach it the visitor has to travel on a very long and rugged way, and persons unaccustomed to exercise, become so exhausted by the time they reach there, that the sensation of fatigue destroys every thing like enjoyment; but, apart from this consideration, he who could behold this magnificent avenue, incrusted as it is with its rare and beautiful formations, without experiencing the highest order of admiration and delight, must indeed be devoid of capacity to enjoy the beauties and sublimities of Nature's works. Since the explorations of Messrs. Craig and Patten, two of the Professors of Bardstown College have visited the Cave, and made some discoveries in the *transfluvian* (if I may be allowed the expression,) section of the Cave.

I have not seen them: I am told, however, they are exceedingly interesting. One is a small but beautifully arched avenue, leading to what they have named 'St. Mary's Chapel," a perfectly white room, about twenty feet in diameter; the other is called the 'Holy Sepulchre,' which is remote from 'St. Mary's Chapel,' upwards of two miles. The 'Holy Sepulchre' is difficult of access; it abounds with the most beautiful stalactites, in one part of it there is, to all appearance, a fresh dug grave of the usual size of an adult grave. As characteristic of the spot, the Priests named this place the 'Holy Sepulchre.'"

In a third letter from my correspondent, dated April 21st, 1842, he remarks: "Much the most interesting and extensive section of the Cave, is beyond the river, and the specimens obtained from this recently discovered quarter, are as rare as they are beautiful. The proprietor of the Cave sent a few of them to Doctor Locke, Professor of Geology and Chemistry, in the College of Ohio. Doctor Locke states, they are unlike anything yet discovered, equally beautiful for the cabinet of the amateur and interesting to the geological philosopher. Doctor Locke has given the name of *Oulophitites*, signifying the curled leaf stone, to some of the specimens sent him from 'Cleaveland's avenue.'"

In another letter from my correspondent, dated July 26, 1842, he states: "Mr. Allen and Mr. Campbell, artists of great merit, have been for sometime engaged in taking views of the Cave. The painting of the 'Stalagmite Hall,' the 'Church,' the great 'Domes,' the 'Bandit's Hall,' the river scenery, &c., will be peculiarly interesting. The work, which will be a large one, containing descriptions of the Cave generally, and particularly of the scenes represented, will be written by some competent writer, and it, as well as the engravings, will be published in England or Scotland."

I have received two letters from my correspondent, dated in 1843, in which he speaks of the lectures of Doctor Locke, delivered at Cincinnatti, on the Mammoth Cave, having been fully attended, and that these lectures afford much minute and valuable information to the Cave and its minerals, &c., &c. When the Cave was first worked for Saltpetre, there was a chamber then known by the name of the 'Deserted Chamber,' the floor of which was covered with loose dry sand, in which were the imprints of children's feet. An imprint of a human footstep in an apartment situate like this, would remain forever in the sand, unless disturbed by being obliterated by visitors. Some of these tracks measured but four inches in length.

In traversing the Cave, the visitor is able to determine, by the sound of his footsteps, when he passes an apartment still below him. Persons who have been accustomed to travelling on railroads, will have noticed the change in the sound at the time when the cars pass on an earthen, a stone or wooden road, and more especially if there is any hollow beneath. It was the custom formerly, in the Cave, for a visitor when traversing the Cave with guides, when turning into another apartment from that in which he had been travelling, to make the mark of an Arrow pointing the way he had come, in case he should be confused as to his way. The instructions to the guides always were, to make a final halt in case the lamps should, from any cause give out, and there wait until the people at the mouth of the Cave should go for them. A person in the dark would be as apt to take the wrong end of the road as the right one, and therefore the only safe way is to keep still. Locofoco's were not in common use when the Cave was worked for Saltpetre, 30 years ago. At the time the Cave was wrought, the workmen computed the main Cave to be thirteen miles in length. Distances were computed by the watch, and it is probable that these were overrated. A dozen miles under the earth is a long way to travel, and when it is considered that every inch of the way has to be scrutinized with care, it is a task to travel thirteen miles, and not a small one either. Formerly there was a waggon way in the Cave one mile long, and oxen travelled over this way two or three years, until it became a good road. I have read a great number of accounts, given by various visitors of the Cave, since I was there, and I have preserved many of these, and among them is one published in the Lexington, Kentucky Intelligencer, in 1834, which is very accurate, and from which I extract the following:

"The writer of this article has recently visited this Cave, and proposes to give such a description of it, as the limited time allowed him to explore will permit.

"Our company consisted of the writer, two ladies, the guide Mr. Gatewood, and two servants, one of whom acted in the capacity of guide from the Inn. Our first descent after leaving the house, was down an abrupt precipice, into a ravine, or rather a basin, the bottom of which extends to the opposite side of the Cave, and some distance in front. It is mostly covered with a growth of oaks and small under shrubbery. A narrow winding foot-path conducted us to the mouth of the Cave, near which are the ruins of several furnaces, constructed many years since, and employed in the manufacture of Saltpetre, and about fifty iron kettles, used for the same purpose. Before entering the Cave, we had to descend another deep precipice, about thirty feet. Standing upon this we felt a cold atmospheric current rushing from the cavern, which, with the damp, dark entrance below, (the water dropping from the rocks,) rendered the prospect so inhospitable and comfortless as almost to chill the curiosity, and forbid a further descent. After descending this precipice our guide lighted the lamps, the rush of air being too strong at the summit to descend with them burning, and with a slight inclination of the head, and shuddering sensations, we passed under the immense masses of overhanging crags, into a narrow winding avenue, leading to the high arched rooms of the main cavern. This avenue extends a quarter of a mile, and was first rendered passable by visitors in an erect position, by the Saltpetre manufacturers, whose improvements, if they may be so called, extend a mile into the Cave. A waggon road was constructed by them this distance, and the wooden pipe for the conveyance of water from the mouth of the Cave to the Hoppers, and much other machinery made use of by the manufacturers, still remain as they were left twenty years ago. As we passed along this road, we also observed the ruts formed by the waggon wheels, and the tracks made by the oxen employed in the Cave, which in many places are perfect and apparently as new as if made yesterday. At the end of the avenue, we passed through a small door, formed by the construction of an artificial well across the Cave, and after gradually ascending and descending some ten or twenty feet over what is called the 'rocky mountain,' the cavern widens into a lofty and capacious room, the arched ceiling of which, is seventy feet from the floor, and the width a hundred yards.

The roof or arch of the Cave here, resembles the appearance of a hazy sky dimly lighted by the moon, an alteration of light and shade occasionally deepening into blackness. This room extends perhaps one hundred and fifty yards in length, when the walls contract again and the Cave and its rooms continue comparatively narrow until we entered what is called the 'Cathedral,' which is another stupendous arch, such as Nature alone, in one of her mightiest convulsions, could form. The roof of the cavern here, is upwards of a hundred feet from the floor, and the width, including a recess on one side, must be an eighth of a mile. The rocks composing the walls have a brown appearance, but much of the room here, as in many other parts of the Cavern, are of a chalky whiteness. The name 'Cathedral,' was given to this part of the Cave, from the circumstance of a religious meeting having been held in it a short time since. A rudely constructed pulpit is still standing, and the seats for the accommodation of the audience remain as they were originally placed. Our guide stated that a large multitude attended the meeting, and that the room being lighted by a hundred lamps, presented a splendid and sublime appearance. Near this, which is about a mile from the entrance, we were startled by what resembled the report of a cannon. After recovering from our surprize, we ascertained that the almost stunning noise, which was reverberated in long and loud echoes from various parts of the Cave, was produced by a small stone thrown by our guide against a log trough, formerly used for feeding oxen. We had travelled but a short distance from this, before the ladies signified their wish to return, and dismissing them with one of our guides and many particular instructions, we decided, as we had time to visit but a small part of the Cavern, to take one of its most interesting branches, about half a mile beyond us, first

explored last year, and after examing some portions of it, to return to the mouth.

"We left the main Cave on our right hand, and creeping through a narrow winding avenue a short distance, in which we descended about seventy-five feet, we entered a room of the usual width and heighth of the main Cave, extending a quarter of a mile. At the end of this we again turned to our right, and experienced considerable difficulty in making our way in safety through narrow apertures, down a descent of one hundred feet more. Here we found ourselves in another large Cavern, the roof and walls of which are white and chalky. In travelling half a mile, we came to a part of this Cave, called 'The Deserted Chamber.' It received this name, from the prints of human feet in the sand on one side of it, which are as perfect as if made yesterday. These impressions extend some distance, and appear to have been made by a female leading a small child. The sand here is moist, which is unusual in the Cave, and is undergoing the process of petrefaction.

"We pursued our route a quarter of a mile further, sometimes being compelled to stoop, when we came to a pit seventy feet in depth, by measurement. The diameter of its mouth is about ten or fifteen feet. We held our lamps in a position to obtain a view of its walls some distance downward, which are perpendicular, and appear as regular as if they were the work of art. Near this pit in the floor of the Cave, is a fine cool spring, from which all drank freely. We continued our walk a short distance over a smooth sandy floor, to what has been named the "Bottomless Pit,' a name applied with much propriety. It extends quite across the Cave in front, leaving a narrow passage into another branch of it on the left, never yet explored, and is about thirty feet in diameter at its mouth. Its walls, as far as could be seen, are much the same as those of the pit described above.

"Our forward progress was here interrupted, for although we could see the continuation of the Cavern beyond the chasm just described, it would have been madness to have attempted to reach it. We therefore retraced our steps nearly a quarter of a mile, and entered without difficulty another branch of the Cave, the floor of which, the distance we followed it, (about one mile) was principally composed of loose masses of flint rock. The curiosity that first attracted our particular admiration in this Cavern, was the 'Dome of Washington,' a magnificent dome having the shape of a Bishop's mitre, about fifteen feet at the base, and seventy-five feet in height. We entered this dome by descending ten feet through a small door on the left of the Cave. Its form at the base is nearly round, and its walls have all the regularity of construction and perfection of design, characteristic of the nicest masonry. Leaving this by the same door we entered it, and pursuing our forward course a few hundred yards farther, we arrived at the entrance to the 'Dome Spring' on our right hand. This dome is larger at the base, and loftier than the one just described, and excited a full measure of wonder and admiration, both for its perfection of form and construction, and a spaciousness of dimensions. Its shape is that of a regular cone, about twenty feet in diameter at the base, and one hundred or one hundred and twenty feet from the floor to the apex. A fine cool spring of the most limpid liquid we ever beheld, gushes from the wall, and covers about one half of the floor. From this fountain in one of the lowest recesses of Nature, we again refreshed ourselves; and leaving the dome by the same door that we entered it, (the only one) we travelled nearly a half a mile to the 'White Chambers.' These apartments derive their name from the beautiful whiteness of their walls and roof, they being frosted over with a bright chrystaline substance, about half an inch in thickness, large flakes of which we peeled from the rocks without difficulty. The effect of even the two small lamps we carried with us, upon the walls and roof, was admirable. A large number of lights would have made the spectacle splendid.

"The limited time allotted us by the appointment for making our observation in the Cavern, having more than expired, we were obliged to set out on our return to the mouth of the main Cave, where we expected to meet the ladies, whose parting from us was above mentioned. This the writer did with regret, for the little, the comparatively very small portion of this stupendous and almost limitless vault of Nature, which he had seen, excited a curiosity greatly increased from what had been felt before entering it, treading its 'devious ways' and exploring its alternately gloomy and gorgeous recesses. Our first object now was, to re-enter the main Cave; this we did, not by retracing our steps, but by turning into another branch of the Cavern on the left hand, a short distance from the 'White Chambers;' and after pursuing it a few hundred yards, ascending in rapid succession steep precipices and crags, until we found ourselves once more in the spacious range of rooms we had left previous to our entering the first branch. It should be remarked, that we left the main Cavern on the right-hand side, and we returned to it through an aperture, on the left-hand side; proving, that in our rambles below, we had passed directly under the main Cave: our re-entrance to it was about a quarter of a mile beyond or more, distant from the mouth, than where we had left it. Having arrived at the mouth of the branch at which we at first departed from the main Cave, the writer suffered the guide and servant to go in search of his hat, which for convenience, he had parted with in one of the narrow passages at some distance. The sensations of utter loneliness produced by being left in the high arched and gloomy room where he stood, were more oppressive, not to say overwhelming, than he ever before felt or expects to feel in any other situation than that in which he was placed. The solitude and silence were perfect, awful, profound, appalling; words cannot describe, the nerves and senses alone can realize them. The guide and servant having returned, and the road before us being unobstructed, without accident we soon reached the mouth of the Cavern, where we found the remainder of our company in waiting for us.

"The above is a hasty and in many respects imperfect description of the writer's own observations while in the Mammoth Cave. The distance he travelled in the Cave, was thought to be about five miles. The portion of the Cavern he saw, is probably as interesting as other parts of it, but he scarcely made a beginning toward a complete examination. Indeed, the extent of the Cave, with its unnumbered branches and ramifications, is almost interminable, and months, perhaps years might be employed in exploring those parts of it that have never yet been seen. The main Cave, in which the writer travelled about a mile and a half, extends twelve miles, where it forks, forming two main Caves. One of these forks only has been explored to its termination. The distance from the mouth to this point, is said by some, to be twenty miles. The other fork has been explored an equal distance, but no one yet has had sufficient perseverance to trace it to its end. The branches from the main Cave the whole distance, are frequent, and the branches from the branches are still more frequent, presenting a map, resembling the profile of a large tree, with trunk, large branches, smaller branches and twigs. The floor and walls of the Cave, are generally dry and dusty. The atmosphere is temperate, pure and invigorating. It is said that animal substances placed in the Cave, never become putrescent. The bodies of several aborogines, retaining in great perfection their general shape and features, in a state of petrifaction, have been discovered in the Cave, and are now preserved in some museum of the country. Some of the rooms of the Cavern were also used as cemeteries by the original population of the country; the bones and the other remains, together with the grave clothes in which the bodies were enveloped and interred, in a state of good preservation, having been discovered by the Saltpetre manufacturers, when making their excavations. The cloth, however, which was formed by the weaving or braiding together of narrow slips of bark, was soon decomposed after exposure to the light. No inconvenience is experienced by remaining in the Cavern any length of time, but on the contrary its atmosphere is regarded by those residing in the vicinity, as being highly conducive to health. In conclusion, the writer cannot but remark, that he regards the Mammoth Cave as not only the most interesting, but one of the, if not emphatically the most wonderful of all natural curiosities yet discovered"

The Cave has been at one time inhabited, but to what extent it is impossible to say. In one of the very distant apartments, in 1811, were to be seen such evidences as established conclusively the fact. The time is not far distant, when a full, detailed, and particular account of this Cave will be published, and then the public will have an op-

portunity of forming an opinion of its vastness, of its localities, and of its magnificence. It is impossible to convey to the reader, with the pen, any thing like a proper description of the appearance of the distant apartments of the Cave. The Cave must be seen to be admired. A full description would, in the mind of a distant reader, seem more like an account of an enchanted Castle, than a reality. The inhabitant of the Torrid Zone, whose knowledge of natural things is confined to his own latitude, would find it difficult to believe that "Boreas," in a single winter's night, in this latitude, should cover one of our deep lakes with a chrystal bridge, formed of that acquaeous fluid, of which he drinks to quench his thirst. Yet such is the reality. A January night, of 1844, has witnessed the formation of ice on a broad surface of water of sufficient strength, to be travelled on for miles! an ice bridge!! a chrystal cover!!!

Travelers who wish to visit the cave, will find it a pleasant place to pass a few weeks. I know of no place to compare with it. A most excellent hotel is kept at the cave for the accommodation of visitors. After the previous pages had passed through the press, I perceived that I had left the distances of the Bear Wallow and also of the Horse Well from the cave, blank. The Bear-Wallow, is 15 miles, and the Horse-well is 12 miles from the mouth of the cave. Pruits Knob, of which I have made mention, is 250 feet high.

The sense of smell I am inclined to believe is not retained in the cave. I speak of this as my own experience.

I have never seen any wild animal of any kind at the cave, nor are there any snakes in this subterranean territory.

The solar light is not seen in the cave.—How necessary this is to the sustenance of animal life, is not determined. Where the solar heat is most intense on the various sections of the surface of our globe human life is the most brief. In high northern latitudes where there is but little comparative solar heat, human life is protracted, and good health enjoyed.

The Green River, or Kentucky Barrens are a limestone formation. Much of the water in this section of the State, runs under the surface of the ground. The horse well of which I have spoken, is a pit about 30 or 40 feet deep, judging from my recollection, having but once examined it, and that more than 25 years ago. It is now on the side, and was formerly in the great road leading from Lexington to Nashville. The path is now made a little distance from it.—Formerly a traveler having a led horse broke in at this place, and he was only saved by clinging to the horse he was leading. At the bottom of the pit is a little run of water. Brush are thrown around this, as a kind of hedge to keep travellers from falling into it. The Bear-Wallow is a pond where the bears were seen to wallow when the country was first settled, and their practice in this suggested to the settlers the plan of making artificial ponds to collect water for their cattle. To accomplish this a hedge is built around a sink hole or natural indentation in the earth. In this several hogs are placed. These animals tramp over the ground and as the rain falls make a sort of puddling of the surface. Thus it is qualified to hold water like a dish and large ponds are to be seen in great numbers on the Barrens made in this way.

The Mammoth Cave is a wonder of wonders. When or how it was formed, none but him who formed the hills, can understand. It is the work of Nature, and probably had its begining when the mighty Deluge, of ancient time, had its end. The stratas of the earth, doubtless, were such as were soluble in the aqueous fluid that buried the face of our globe beneath the mighty waters.

The lightning's fire—the roar of the thunder of the raging tempest—came not here. While the reverberations of peal on peal of deafening thunder shakes the windows of terestical habitations built upon the outer surface, and make the inmates tremble with dread emotion—here, here all is silent, calm, and tranquil. The fury of the whirlwind, the germ of the tornadoes blast, comes not within the subterranean chambers. No angry clouds lighted up with the coruscations of the lightning's fire, and shaken by the detonations of the terrific thunder, invade this nether palace. He who has heard the raging tempest, and seen cloud piled on cloud raving with madening fury, who has heard the moaning wind howling at every blast, in all its solemn emphasis of expression, can here, in calm composure measure in his mind the mighty contrast.

The scorching rays of the summer sun, the stiffening cold of the freezing wind—come not here—here, all is equal, even temperature, and unchanging.

The sickning blasts of pestilential winds come not within these nether chambers—here all is healthful.

No mephetic air loads the atmosphere of these chrystal chambers—for here the atmosphere is tempered by the warmth of the bosom of mother earth, which is unchanging, and like as the moistened clay, extracts the poison of the viper's bite, so here all air is purified. It is life to breathe such an atmosphere—it is medicine to the body to partake of such ærial refreshment, and medicine to the mind to contemplate the beauties and the harmonies of nature in these chrystal chambers where silence and solitude are sweetened by the hand which framed the world.

The earthquake, the thunder of the nether world has here a solemn, a sublime, and awful echo. These walls tremble, and totter when the silence of its chambers are broken by the moaning of the earthquake's roar.—Poor mortal man, when standing within these massive walls would quick remember GOD in such a moment—the aspirations of his soul would be eloquence of devotion breathing the language of prayer, in look, thought and deed.

Day and night are both alike to the sojourner in the halls of the most distant apartments of this nether territory—for here is a darkness that may be felt—may be seen—although darknees is transparent—and yet it is thick darkness which cover these shining walls frosted and irradiated by the hand of nature, as with a garment.

In this gigantic cavern, is the silence of solitude—a solitude that is grand, imposing and solemn—"a silence that is perfect, profound, and overwhelming." I have at the hour of midnight, stood upon the pinnacle of a majestic mountain, towering in the clouds, with upturned eyes, contemplating in calm and solemn silence the starry firmament, the celestial worlds which spangle the mighty vault of Heaven, and then casting my eyes downward and beyond the mountains base, upon the great terestial carpet chequered with its endless variety, illuminated by light thrown from that great lunar reflector placed near a quarter of a million of miles above my head—and I have also at the hour of midnight stood within the distant halls of this vast subterranean palace, holding in my hand a lighted taper, which at every pulsation of my heart, cast its rays upon myriads of shining points in this great subterranean vault which glittered and sparkled in the embrace of its unsual visiter; every motion introduced other points, reflecting their shining sides in rich profusion, and in both cases a feeling pervaded my bosom that language cannot describe. The splendor, the grandeur, the magnificence of the the works of nature when thus presented to the human mind in the silence of solitude—in the calmness of quiet—in the solemnity of awful reality, kindle in the bosom, emotions that glow with a sensation that humbles human pride, and raises the aspirations of the soul to the homage of adoration. Why should the majestic towering walls of this nether palace be decorated with brilliant mineral frotsings, its countless millions of shining gems, sparkling with almost living light, and these subterranean surfaces be thus irradiated, far, far beyond the decorations of the most magnificent palace of any earthly potentate? Who can answer?—The eyeless fish sport in the crystal waters of the pools of this nether palace—for their use are these decorated walls—these crystal gems. Yes, vain man, these are the only occupants—and this reality should be humbling to thy vanity. These ornaments are as useful to these eyless fish, as most of the ornaments with which mankind decorates their persons, are to bearer.

In 1810 and 1811, the earthquakes which were so severe at New Madrid, upon the Mississippi, were felt at the Cave. The Miners were at work at the Cave during one of these shocks, and they were greatly alarmed, and it was sometime before they could be persuaded to return. In a letter from my correspondent, dated May 21st, 1843, in speaking of the earthquake felt at the West and South, in 1843, he says: "The Earthquake produced no impression at the Cave."

E. MERRIAM.

AMERICAN SALT.

To the President and Board of Managers of the American Institute.

Gentlemen:

The manufacture of Salt, in the United States, has become to be a business of great pecuniary importance to those engaged in the preparation of this necessary of life, and the supply of this article to the consumer, at a reasonable price and of good quality, is a matter of great importance as regards the public at large.

It will be seen by a reference to the report made to the Legislature of the State of New York, by Rial Wright, Esq., the State Superintendent of the Onondago Salines, that the duty imposed upon the manufacture of Salt, at Onondago, by the Legislature of this State, from 1817 to the 1st of January, 1844, has amounted to the large sum of two million nine hundred and thirty thousand four hundred and fifty-eight dollars and six cents, which money has been collected from the manufacturers and paid into the State Treasury.

The policy of collecting a local tax of such great magnitude, from the citizens of a particular district, is a question of grave character. The justice of the monopoly of the manufacture of Salt, or that which is equivalent to monopolizing its manufacture by the State, is one of still more important bearing.

The Government of China have a Salt monopoly, and from the avails of it predicate the supply of the means for the payment of the Opium indemnity to the English government, which has, in defiance of every principle which ought to govern a christian nation, forced this noxious drug upon an almost defenceless people of China.

I have visited the Salines at Onondago, and examined the works for the evaporation of the salt waters raised from the wells there sunk in the earth. These consist of two kinds. The first and best, is those constructed for the evaporation and chrystilization by solar heat. The second, are the works in which large potash kettles are used for boiling down the salt water by the heat of wood fires.

The vats used for solar evaporation, are placed on wood frame work about three feet above the ground, and are furnished with sliding covers to protect the basin from rain and snow. These are well calculated for the purpose intended, but I am of opinion that if the covers were placed higher, so as to allow drying winds to pass underneath the roofs, that the evaporating process would be hastened. If a greater body of salt water was placed in the evaporater, I think the salt produced would have more solidity.

This mode of making Salt is decidedly the best, and I think the most profitable. The heat is the product of Nature, and costs nothing. All the expense to the manufacturer is the attendance upon the salt-field, and the interest of the cost of the evaporators, and the cost of the ground upon which these works are placed.

The manufacture of Salt by boiling down the brine in potash kettles, is a rude mode of performing the operation, and unless the supply of brine is inexhaustible, is one of great waste of that fluid. The furnaces are rudely constructed and generally consist of two rows of potash kettles, set lip to lip, under which wood of large size is burned as fuel, without the appendage of a grate.

The kettles are of great thickness, and when thoroughly heated, become red-hot; this great heat causes the Salt as it chrystalizes and falls to the bottom, to vitrify and cake upon the kettles, impairing the pans and wasting the salt, as well as three fourths of the heat. If the kettle is three inches thick at the bottom, and the caking four inches, then there is a body of seven inches in thickness to heat through, which will require the consumption of as much fuel as would with proper management, evaporate six times the quantity of brine. I have had much experience in the evaporation and chrystalization of fluids holding solids in solution, and this experience, I trust, qualifies me to form an opinion in these matters. In the selection of fuel to be burned in furnaces, care should be taken that it is dry and "split fine." If the furnace is of great length, which is the case with salt kettles, and the wood dry and "split fine," and burnt upon a grate, the flame will reach the bottom of the furthermost kettle, and if care is taken to place the bottom of the kettle so near the surface of the hearth of the furnace as to confine the heat to the kettles, the back kettles will boil nearly as rapidly as the front kettles. All furnaces should have hearths of great thickness of brick, and the shape of these should be made to correspond with the shape of the bottom of the kettles, by which means the heat is confined to the surface of the bottom and sides of the kettles equally, and where it is most needed. Bricks retain heat a long time, and if a course of a foot and a half thick is placed under a kettle, these when once heated will retain the heat for a long time, while on the contrary, if no such hearth is made and the earth left uncovered, all the dampness in the ground must be evaporated by the heat which is designed to boil the kettles, and this portion is thus wasted. I have tried both plans of heating kettles; by fire made upon grates, and by fire made upon the ground, and so perfectly well satisfied am I of the advantage in the use of grates, that whenever a grate becomes destroyed, I have at once stopped boiling until the grate could be repaired.

In the setting of iron kettles in brick furnaces, I have found, from many years experience, that kettles should be suspended in the furnace walls by ears or by the rim, so that the residue of the kettle should not be cramped in the expansion which results from heat, as is the case when the brick masonry is made to touch the sides of the kettle. Pans set in the way I suggest, suspended, will be found to crack less frequently than those set in close work. In the placing of grates under kettles, care should be taken to have the bars well supported by strong cast-iron bearers. The grate-bars should be of cast-iron, and made deep and strong. For example, if a grate bar is four feet long, it should be four inches deep, two inches wide at top and one inch wide at bottom. At each end and also in the middle, for three inches in length, the grate-bar should be four inches deep, and two and a half inches wide at top and bottom. This shape, it will be seen, would make the bars keep their place, and leave an opening between each bar on the top, of an inch wide, for the ashes to fall through, and for the air to pass up to support combustion. This plan would enable the furnace tender to burn all the coal of the wood, instead of having these accumulate at the mouth of the furnace to make a dead heat. The furnace should be furnished with an iron door, with hinges and latch, the same as a stove, and this should be kept shut while the fire is burning. Kettles should not be more than sixteen inches from the floor of the grate, nor more than eight inches from the floor of the hearth, beyond the grate.

In the evaporation of salt water, there are three items of expense: 1st, cost of kettles and furnace; 2d, the expense of fuel; and 3d, the cost of labor to attend the fires and pans. I will examine these items in the order in which I have stated them.

1st, *The cost of Kettles and Furnace.*—The kettles are heavy and clumsy, and contain as much iron as will make four good kettles of the same size, and require twice as much fuel to boil them as is required to boil kettles of one fourth the thickness. The workmen frequently crack these heavy kettles, and then they are sent to a blacksmith to be mended with bar-iron clamps. I have had a great number of large iron kettles repaired, and my practice has been, to take a piece of heavy boiler-iron, and shape it to the surface of the inside of the kettle to be mended, and then to bore holes in the iron plate and kettle and put them together by screws on the inside of the kettle. This is a cheap and a very efficient way of mending kettles. I have frequently known kettles to be impaired by the use of heavy iron spuds by the workmen. The spuds which I have found the most useful, were of a chisel shape, about one foot long, with a socket; into this socket I inserted a wooden handle. The socket should be large enough to receive the whole handle without having to taper it to a point, which should be fastened by an iron bolt or screw, through the socket and the handle. For ladles, I have used the imported frying pans, first having them rounded in the bottom by a blacksmith, and then having the handle shaped so as to fit the side of the kettle. In the construction of furnaces, care should be taken to allow the rim of the kettle to project above the brick work, by this means the dirt on the top of the brick furnace, will be prevented from getting inside of the pan. Where the heat is not too great, I have had a covering of boards or plank fastened on the top of the furnace. Where the kettles are circular, pieces of

cast-iron should be made to fit in between the rims of the kettles; these would cover in the furnace, keep the kettles in their places, and be a great aid to the mason in setting pans. The expense of these pieces would be trifling; they should be one and a half inches thick to give them strength, and should fit so exact as to set between the kettles, and if that portion running to a point could not be supported below, a staple might be cast in the piece to catch up the rim of the kettles. These plates to go on top the furnace.

2d, *The cost of Fuel.*—Where wood is burned on the ground in the mouth of a large furnace, it is wasted. The heat which is generated at the mouth of the furnace, is greater than is needed, and the surplus is lost, and besides much of the salt is vitrified and ruined. If this wood was well split and dried, it would burn free and make a clear flame, and the heat of this with a good draft, would be sufficient for a long range of kettles.

3d, *The Labor.*—Strict attention to the fires, and also to the kettles, is necessary. Among the furnaces which I examined while at the Salines, I was very strongly impressed with the opinion, that they were managed with less labor than was needful for an economical use of fuel and for the safety of the kettles.

The water at the Onondago Salines, contains some few impurities, which are held in solution, and which are deposited on being left quiescent for a little time. It is not fully saturated with salt; it may be said to be about three fourths saturated.

The last time I visited the Salines, I brought home with me a bottle of the water, which, by the hydrometer used there, tested 78 degrees, 100 being the point of saturation. By my scale standard, it stands at 525; rain-water being 470. This water I subjected to a temperature of six degrees above zero; no earthy precipitate resulted from this change of temperature. I next placed it in a porcelain evaporator, over the surface of which was a sheet-iron cylinder, through which a current of heated air was passed until the brine was all evaporated, and the salt chrystalized. The yield was 110. The salt made in this way is most beautiful, and is free from vitrification or caking. The experiment satisfied me that this was the most economical mode of applying heat to a saline fluid for the purpose of producing chrystalization, and that it is far preferable to any other mode, except solar heat, for making Salt.

In the calcining of the salts of ashes, for the purpose of depriving these salts of the coloring matter, I have made use of two modes, one by a reverbatory furnace, where the flames were confined to the surface of the salts; the other by heating iron cauldrons to a red heat, and stirring the salts with iron rakes until they become calcined. In the result of these two processes, there was no difference as to the quality of the calcined alkilies, but in the expense of fuel and labor there was a great difference. In the reverbatory furnace I constructed, I was particular to keep the centre of the arch within fourteen inches of the surface of the hearth, the arch was fourteen feet between the abutments. It was made of fire brick, made in a hand mould, and the brick were made of an exact bevel with the rise of the arch and laid without mortar. It would be difficult, if not impossible, to make an arch of common brick, stand, with so small a rise. This shape of the arch and the hearth confined the flames to the salts designed to be calcined, and the process was therefore easy, quick and effectual, and without loss of heat. Had this arch been twenty-eight inches rise in the centre, instead of fourteen, the fuel required would have been four-fold, and the length of time required for the calcination would have been double. The mode in which application of heat is made, is therefore the great desideratam in the making of salt, as the cost of the fixtures depend entirely upon the manner the heat is to be applied. A wooden vessel is equally as good as an iron one, if the evaporation is to be by a rarified atmosphere. In this mode of evaporating Saline fluids, there is no uncertainty, there is no risk, it is a business which is capable of mathematical demonstration. It requires but little capital to commence business, and but little capital to carry it on, and it is therefore one of public utility, and for that reason should be made known for general benefit.

The waters of the Salt Springs, in the United States, which I have examined, differ greatly in quality, and therefore require different modes of operation, both as to evaporation and chrystalization.

I have some of the waters of the deep well at Montezuma, and also of the well recently sunk on the borders of the Cayuga marshes. These waters are both of the same specific gravity, and are full saturation, but differ widely in quality. By my scale of density, they both range 560.

There can be little doubt, I think, that the source from whence the waters of the Onondago wells derive their saline properties, is the fossil salt. My reasons for this conclusion, I stated to you in my communication, in October, 1842, but the extent of this supply is a matter of loose conjecture. Many of the salt wells, in various sections of the world, have gradually freshened by the exhaustion of the salt rock which fed the water. The State, I think, should not allow the brine of these Springs to be wasted, as much of it has been for years past. The safe course will be to use it with economy, and induce the manufacturers to make their salt of the best quality, and to accomplish this, the best way is, to remit the duty.

The saline waters of the deep well at Montezuma, are very transparent. I have a bottle of this water in my cabinet, which was, when first received, about two years ago, of great clearness, but since that time, although closely corked up, has deposited a light fibrous precipitate, of a chromate hue. The addition of a little sulphuric acid to this water solidifies it, and makes it quite opaque and hard.

William P. Milnor, Esq., in the absence of Mr. Findlay, from Saltville, Va., has addressed me a letter under date of February 1st, 1844, in which he states, that a bottle of the water of their wells which he has put up to forward to me, tested by the hydrometer 23 degrees, and was, when raised from the well, of a temperature of 51 degrees of Farenheit's scale. The hydrometer is graduated at 25 degrees for water fully saturated with salt, and 0 for fresh water. It is, therefore, within two degrees of full saturation. The specific gravity of the Saltville saline waters are, I think, as great as cold water will take up of salt under any circumstances.

Mr. Milnor states, in the letter which I have noticed, that one of the stratas of salt passed in sinking the shaft in the Saltville mines, was nearly white; others have a beautiful rose tint. He has forwarded to me a box of specimens, containing as follows, viz: "specimens of salt rock, numbered from one to five of the first strata, from seven to thirteen of the other stratas, from fourteen to twenty of blue and red clay, No. 21 of plaster, No. 22, blue and red clay, No. 23 plaster raised from the same valley, five miles north-east of the mines, No. 24, red clay borings from the Artesian well, from which the water sent me was raised; No. 25, salt formed on iron steam pipe; No. 26, salt formed in back kettles; No. 27, salt formed on sides of cistern; No. 28, salt from leakage, and some other specimens to fill up the box, not numbered. Also, a piece of blocking or rimming formed on the kettles.

These specimens will be useful in comparing with the stratifications and salt of other salines, although, in my remarks addressed to you on the 29th of December, 1843, I mentioned some salt mines where the sulphate of lime was absent, and others where liquid petroleum was found intermixed with the salt. In the Artesian well at Saltville, there is a most abundant supply of water at the depth of 214 feet, and this well is but forty feet from the shaft sunk in the mine to the dept of 404 feet. It would be difficult to mine this salt so near such a body of water, and besides, I do not see what is to be gained by the process of mining, while fuel remains plenty to evaporate the water now obtained from the well at the mines, which is abundant and of as great specific gravity as they could obtain by dissolving the salt rock in cold water. The well water is the least troublesome. I am induced to make this remark, for the reason, that persons who are engaged in sinking salt-wells, are apt to make extra exertion to find the fossil salt, which if they succeeded in, they would not be gainers thereby, unless that the salt waters should be weak.

The State Superintendant of the Onondago Salines, Rial Wright, Esq., has recently made a report to the Legislature, in which he states that the quantity of salt made at the Onondago Salines, in 1843, at 3,127-500 bushels, of which 318,105 bushels are coarse solar salt, and 76,531 bushels ground or dairy salt. This is fully equal to

half the quantity imported into the United States, in 1843.

Mr. Wright states, in his report, that there has been paid into the State Treasury, for duties on Salt made at these Salines, from 1817 to 1844, the large sum of **$2,930,458.06.** This money has been applied to pay the expense of making the great Erie Canal. Common fine salt was forwarded to the City of New York, in 1843, from these salines, and sold for one dollar per barrel, including the cask; a barrel contains five bushels, The Legislature, at the last session, passed an Act remitting the State duty on all Salt which should be transported to certain points, hence they were enabled to send salt to the City of New York, and sell it for $1 per barrel!

Mr. Wright gives a statement of the Salt imported into the United States, in 1842, and of the places from which it was received.

By this statement, it appears that the quantity received from England, was 3,300,749 bushels, costing 18 cents per bushel, amounting to $607,761, while the value of that year's import, altogether, was only $841,572. The salt received from England was fine salt, and of that kind which was sold at Syracuse, in 1842, for four and five cents per bushel.

The amount of duties on salt imported into the United States, in 1842, was $494,299.44, this divided among every man, woman and child, will make an apportionment of a little more than two cents each, which is less than the usual price of a glass of grog, for every inhabitant.

There is much said by persons engaged in Commerce, as to the quality of American Salt, and I have been surprised at the ignorance which prevails in relation to the anticeptic properties of Salt. Salt is one of those bounties of Nature, the same as water, it is distributed over the whole Earth in such districts as may be needed, but in most of the deposits it is interminxed with earthy materials, which make it necessary to dissolve the fossil salt, and evaporate the solution before it can be used.

In sections of the globe which are heated by a vertical Sun, the evaporation of salt water is rapid, and the product of salt great and the quality good. In the West Indies, which are in low latitudes, the salt made in this way is of an excellent quality, and of rapid chrystalization. The quantity of salt made in the United States is greater than that imported from abroad.

In the Southern section of the United States, but small quantities of salt are used for curing meat. Pork which is cured for smoking, is frequently packed in a gum trough or a wooden box, and a little salt sprinkled over it, and after laying a few days is removed to the smoke house, where it remains until required for use. The right possessed by the State to impose a duty on the Salt made at the Onondago Salines, is a very doubtful one. The Salt Springs are a grant from the Onondago Nation to the State, for the use of the Indian and white man forever. Is not the duty a contravention of the grant? Is it good policy to lay a heavy duty on articles of necessity?

It is the province of government to encourage industry, to patronise it, and the most feasible means should be used to this end.

If the United States admit foreign salt duty free, and the State of New York retain a duty on the salt made at the Salines, the Onondago Salt works must stop, and the capital invested in the works be sunk. If Congress admits foreign salt free of duty, the State government should remove the tax upon the manufacture of domestic salt, and encourage the salt makers to better the quality of the salt, by giving them a bounty for a very superior article. It is preposterous for a State government to undertake to make money by the salt duty. It is a poor way of levying a tax.

It is not the business of a State government to make money out of the people, but on the contrary, it is its duty to benefit the people by throwing open every access to the bounties of Nature.

In our own continent, Nature has placed the Saline deposits in the interior of the country, where they are most needed. What a display of the wisdom and goodness of the Creator.

Lime has been used in the brine at the Syracuse Salines, for clarifying it. I cannot see that any good can result from this mixture. The salt water which I obtained at Syracuse, when last there, I corked up tight as soon as it was taken from the well, and no earthy matter has appeared in it. I am, therefore inclined to the opinion, that there is no earthy matter held in suspension by the water; but there may be some property acquired from the atmosphere by the water, which is held in solution, and even give it a floculent appearance. If the object in using lime is to precipitate particles suspended in the water, the same result may be accomplished by using wood ashes that have been completely or thoroughly lixiviated, or white sand will produce the same result without imparting to the water any bad quality. The change of temperature causes floculent substances held by fluids in suspension to precipitate, and particles which have greater specific gravity than the water, will, in obedience to the laws of gravity, find the bottom. A steel needle will float upon the surface of rain water as long as the needle remains dry and the water is quiescent, but the instant that the water is disturbed, or the needle becomes moistened, it goes at once to the bottom.

I have applied cold water to heated solutions to produce a quick and rapid precipitation of earthy substances held in suspension, by pouring a pail of cold water over the surface carefully, so that it should cover the surface of the heated fluid. The precipitation commences at once.

Solutions of great specific gravity are not disturbed by pouring water carefully upon the surface. I have made the experiment frequently by using a glass vessel and pouring a colored fluid upon the surface of a transparent one, which enabled me to see the mixing up and the extent of the union.

Caustic alkalies, on exposure to the atmosphere, absorb carbonic acid, and more rapid in warm, than in cold weather. At the temperature of zero, I think, no absorption will take place.

The waters of Salina may have affinities for properties of an atmosphere rarified by solar heat, and undoubtedly do have, otherwise I should be unable to account for the difference in the brine I confined in a tight bottle, for a year or more, from that exposed in the vats at Salina.

Some few years since, the quality of Curracoa salt was quite inferior, and the manufacturers found that poor salt met with so difficult a sale, that they were under the necessity of making it good, or keeping it on hand.

The State government have the entire control of the Onondago Salines, and it is the duty of that government to see that every pound of salt is of good quality. The barrel for packing bad salt, and the transportation, are both the same as that for good salt, and the difference to the consumer between a good and a bad article, is very great. The State officers look at the increase of quantity annually made, instead of the increase of the quality. Here is the great error. It is not a business of dollars and cents with this great State, but the making of a good salt for the use of the people.

In the packing of provisions, bad water is often used to make the pickle. This is a matter which is rarely taken into account, although it is a very important consideration, and this evil is often charged upon the salt.

Salt water is an excellent preservative of wood. The pipes in which the water is conveyed at the Salines, are almost indestructable.

Salt thrown on ice walks, is as effective to melt the ice, as so much burning coals.

A pump which is frozen in winter, can be freed of the ice in a short time, by throwing into it a few quarts of fine salt.

In the evaporation of salt water by a heated atmosphere, the chrystalization need not be disturbed until the process is completed, and in this process, chrystals already formed, thrown into the fluid, hasten the process.

There are salt Lakes in some parts of the Russian dominions in Asia, that become incrusted by the salt in hot weather, and as fast as this becomes of greater weight, it breaks in pieces and falls to the bottom, and one strata after another is then formed, and thus continue accumulating on the bottom during the whole of the warm season. When the rains set in, the earth, clay, &c., is washed into the lake, this also is precipitated to the bottom, and forms a strata over salt which had previously sunk and protects it from dissolving, and thus every year is deposited a strata of salt and a strata of earth, until, in the course of ages, the lake will be

filled up, and beneath the surface will be a salt mine thus formed.

That the stratas which lay beneath the surface, in the region of Onondago, have undergone a great change, cannot be doubted; when or how this change has been affected, we are unable to conjecture, for the reason, that beyond two hundred and fifty years ago, the history of this region is a perfect blank, not a vestige of history to mark the past, that is intelligible to our race.

The Salines of Onondago, are one of the great bounties of Nature, destined for the free use of the inhabitants. Why then, should the State Government restrict the gift, and put a turnpike gate upon the focations of the earth. The Indians, the wild, uncultivated Sons of the forest, have set an example that is better than this, an example that should be followed, however humble the teacher; a state to fill their coffers by taxing salt, it is absurd. Salt should be as free as Nature has made it.

The salt rock of Cardonna, in Catalonia, Spain, near the mountain of Mountsarrat, is a homogeneal mass without any appearance of strata or seam, and is raised near five hundred feet above the earth, and is about three miles in circumference. The depth is unknown, the colors are white red and light blue, is free from sulphat of lime.

At Poza, near Burgos, in Castile, a mine of Sal-gem exists in the mouth of a vast crater and embedded in it is pummice stone, puzzolana, and other volcanic productions.

In La Mancha, at Almengranville, there is a mass of rock similar to that of Cardonna, about six hundred feet in circumference, mixed with sulphate of lime, and covered with the same stone mixed with red quartz, above this sileceous pudding stone, and still above, carbonate of lime.

There are mines of salt at Valtierria in the kingdom of Navarre, near the Ebro, in a chain of hills at an elevation above the sea. This is enclosed in sulphat of lime.

In the district of Mount Blanc, near St. Maurice, is the Salt rock of Arbonne, in so elevated a position as to be near the region of perpetual snow. The salt is extracted from a gypseous rock which being saturated with water, leaves a porous matter which is very light.

The Cheshire mines, in England, are near the surface. The first strata is about 120 feet from the surface. The stratas which cover this saline deposite is red clay, coarse grained sand stone, blue clay, sulphate of lime, and indurated clay.

The salt is, in some places, red, and in others transparent. I have in my cabinet a specimen of this sal-gem as clear and transparent as the purest flint glass. These are the most productive mines in the world. Thestratas of salt are wavy, vary in thickness, and are alternated with stratas of clay.

The mines of Tyrol, are in a very high mountain, about two leagues from the city of Halle, on the river Inn. The sal-gem forms an irregular mass including fragments of the schist, the *wacke* of Werner. This forms the base of the mountain.

The salt mines of Wieliczka, near Cracow, and those of Bochnia are very ancient, having been worked for more than six centuries.—The ground which cover them is composed of stratas of sand, marl, pebbles, and marl in which are large blocks of salt mixed with clay. These mines are about 800 feet deep The salt is in some stratas, brown, and in others, redish, and in some transparent.—There are springs of fresh water in these mines. In some parts of these mines hydrogen gas collects and takes fire.

The mines on the south east part of the Carpathian chain, are numerous, and in general near the surface. Some of these in Transylvania are at times exposed to the rain, and persons are appointed to cover the soil with turf when washed bare by the rain.—These mines contain large quantities of liquid petroleum.

Near Ockna in Moldavia, there is a hill of rock salt, in many parts of which the salt is exposed to view.

In Paraid, in Transylvania, there is a valley, the bottom and sides of which, are pure salt. Walls of this mineral exist here two hundred feet high.

In the salt mines of Marmarosch, water has been found included in the substance of the salt rock.

Near Astracan, the mine of Iletzki, is near the surface, and rests upon a bed of hard clay. The soil above is sandy, and is full of holes containing salt water.

In Siberia, there is a mine of salt rock on the bank of the Kaptendoi.

The country near the Caspian Sea is so impregnated with salt that near Gourief, the fog and dew which settles upon the clothes of the inhabitants and upon plants, are saline.

The Mungal Tartars lixiviate the earth and by this means obtain supplies of salt.

In China, they have mines of salt; so with Thibet, Great Tartary and Hindostan and many sections of Persia.

The Isle of Ormus at the mouth of the Persian Gulf, appears a solid rock of salt.

In Peru salt rock is found in hard masses in the most elevated sections of the country.

The stratas which overlay the salt mines of Visechna, on the south west of the carpathean mountains, are 1st, a strata of vegetable mould; 2, stiff yellow clay; 3, grey and yellow clay mixed with spots and veins of sand and ochre; 4, greyish blue clay; 5 fine white sand; 6, black fat bituminous clay immediately covering the bed of salt.

The arctic land expedition, under Capt. Franklin, discovered numerous springs of salt water in N. lat. 60°, W. long. 113°.

The needle chrystals which I received from Mr. Mead, which he obtained from the salt welll on the borders of the Cayuga marshes, I placed in a crucible, which I heated to redness. Some of these chrystals sepated at one end into very thin plates, with smooth and even surfaces, and so thin that one hundred of them would not make an inch. The chrystals lost all their transparency by a red heat, became opaque, and with little pressure could be reduced to an impalpable powder. The water I submitted to evaporation by a rarified atmosphere. One pint of the specific gravity, 2,240, yielded 620 of dry salt, holding in combination other earths. This is as far as my examinations have extended with this water. The Montezuma water, on being evaporated to 1200 of my scale of density, and then exposed to a temperature of six degrees above zero, rapidly liquified. It holds much magnesium conbined with lime in solution.

The great importance of making salt of a superior quality, in the United States, requires from the State some more effectual means of operation than hitherto brought into use. The employment of a competent person to visit the Salines, Salt-mines and Salteries, throughout the world, would enable them to profit by the experience of others. Experience is the best schoolmaster. Theory is only imaginations, but it sometimes hits right.

Should I, before your next annual Fair, obtain any information on this subject, which may be useful to the public, I will lay it before you.

E. MERIAM,
No. 47 Orange street.

BROOKLYN, Feb. 10, 1844.

THE MAMMOTH CAVE.

In my notice on page 317, of the entrance to this Cave, there is a typographical error. It should read about four feet wide, instead of about ten feet wide. In speaking of the depth of the Pit at the mouth of the Cave, there should be a transposing of the paragraph; the Pit is fifty or sixty feet, and contains water, and not a Pit of water, fifty or sixty feet deep.

The Mammoth Cave contains nitrous earth sufficient to supply the whole population of the globe with Saltpetre. Government allows Saltpetre to be imported duty free, and thus stop the Mammoth Cave Saltpetre works, while at the same time, it lays heavy duties on various articles for the protection of other manufacturers. It is true that much of the Saltpetre is put to a bad use, viz: used for to make powder, to destroy human life, still the government does not act upon that principle, but admit it free for the reason that it is made into gun powder.

The furnaces, kettles, hoppers, bear-pipes, water-pipes, calcining and evaporating furnaces, at the Mammoth Cave works, have been idle about twenty eight years, and wholly on account of the admission of foreign Saltpetre duty free. If Government is to derive revenue from duties imposed on imports, let that duty be uniform and equal. Let it be so permanent, that money invested in manufactures, shall not be sunk to the owner by a vascillating Tariff. Men will not embark in manufactures on such uncertainty, and therefore, a shifting Tariff is a public evil.

E. MERIAM.

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PUBLIC MEETING
IN THE CONFISCATED DISTRICT.

We copy from the New-York Courier and Enquirer, of the 29th ult., the proceedings of a Public Meeting, held in the 12th Ward of the City of New-York.

JACOB HARSEN, ESQ., who was called to the Chair, is a descendant of one of the oldest families on this island, and himself and the other members of the ancestors family own a farm on the island, five miles from the City Hall, which still retains the same ancient boundaries which were affixed to it by the first patent granted in 1686. In addition to this entire farm of near one hundred acres, this ancient family own very large parcels of real estate within the improved parts of the city, and on other parts of the island, which, taken together, make the next real estate in importance, in superficial surface, to that of John Jacob Astor.

In publishing the proceedings of this Meeting, we feel a delicacy from the fact, that we are named in the proceedings.—There is an individual whose name is not mentioned in these proceedings, who has rendered immense services to the Public, as to Taxes and Assessments; an individual whose firmness of purpose, whose industry, perseverance and public spirit, entitles him to the thanks of the citizens, far and near. That individual is BURTIS SKIDMORE, of the 5th Ward. Mr. Skidmore has, on all occasions, and at all times, boldly denounced the odious assessment abuses which have been so long and so successfully practiced in New-York; and when the public depredators appeared in the presence of public Committees, he has had the independence to say to them * * * * thou art the man.

Mr. Skidmore's plainness of speech, his decision of character, and his singleness of purpose, entitle him to the highest commendation.

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(From the New-York Courier and Enquirer of Feb. 29th, 1844.

Twelfth Ward.

At a large and highly respectable meeting of the Tax Payers and inhabitants of the Twelfth Ward, held at the Hotel of Andrew Howe, at Harlem, on Saturday, the 24th of February, 1844, JACOB HARSEN was appointed Chairman, and MARCELLUS EELLS, Secretary.

The object of the meeting being stated, to wit: the reduction of the Taxes of the Twelfth Ward, and the necessity of an application being made to the State Legislature, to relieve the inhabitants thereof from charges which are not considered rightly County charges, but ought properly to be paid by the City Proper, in contradistinction to the County, it was determined that a petition be forwarded to the Legislature stating the grounds of complaint, and requesting them to interpose their power when the Common Council should ask for their annual Tax Law, to do justice to the upper or agricultural Ward.

It was resolved by the meeting, that a Committee be appointed to prepare the Petition, select some suitable person to appear before the Legislature and advocate the right of the Ward to the relief sought for; and that the Committee raise money to defray the expenses attending the same.

It was Resolved, That Messrs. Harsen, Eells, Alvord and Hall, be a Committee for that purpose.

The subject of burdensome assessments, attending the opening of avenues, streets, and squares, by the Common Council, was brought before the meeting, and information given of the recent DECISION of the Supreme Court, declaring that they have no constitutional power to act in the matter of opening streets, and therefore declining to confirm the assessments of Commissioners, for opening five certain streets, was received with great gratification.

A letter received by the Chairman, in relation to a ruinous assessment upon Mrs. Pearson, on property in Centre street, whereby she was deprived of her support, and with her three children reduced from comfort and independence, to depend upon the charity of friends, was also read.

The following letter, from Hiram Parker to the Chairman, was also read and ordered to be published in the proceedings of this meeting.

"DEAR SIR,—I observe by notices that there is to be a meeting of Tax Payers, to be held at the Hotel of Andrew How, on Saturday next, in relation to taxes and assessments, and to concert measures to relieve the Twelfth Ward from the burdens which for several years past have borne heavily upon it. I shall, in all probability, be in Boston at that time, and shall not therefore be present. I have been an agent for the purchase and sale of real estate, in this city, for fifteen years past, and I can assure you that the great objection which has been made by men of capital, to investing their money or loaning it on lands in the Twelfth Ward, has been in consequence of the heavy taxes and ruinous assessments.

"And I am glad to find that the Supreme Court has finally declared said law unconstitutional, whereby one of the most despotic and arbitrary laws that has ever been made, is rendered a dead letter in our Statute book; and that no road, avenue or street, can hereafter be opened, except under the laws prevailing previous to 1807. And I sincerely congratulate you and the meeting that hereafter the rights of property will be respected.

The whole credit of producing this new state of things is, I understand, owing to E. Meriam, the Editor of the "New-York Municipal Gazette," and Richard MOTT, Counsellor at Law, who, it is said, have labored for the last three years in the cause, with untiring industry and unabated zeal. I therefore enclose you twenty-five dollars, to be handed over to them as an acknowledgement of the favor I feel for their valuable services in redeeming the Twelfth Ward from the iron-grasp of oppression.

"With sentiments of great regard and esteem, I am, gentlemen, your obliged friend, HIRAM PARKER."

P. S. On the strength of the aforesaid decision I will re-open the Harlem Land Office, corner of 125th street and 4th avenue, on the first day of May next, and I am happy to inform you that since the good news has been proclaimed, many good improvements in the way of building are in anticipation at Harlem, and will no doubt be commenced early in the spring. All persons wishing to dispose of, or purchase property in Harlem or its vicinity, will confer a special favor by leaving their diagrams of property or applications to purchase with Mr. Thomas Hope, corner of 125th street ahd 6th avenue.

H. P.

Whereupon the following preamble and resolutions were presented by Mr. Marcellus Eels and unanimously adopted:

Whereas, the Supreme Court of Judicature of the State of New-York on the 8th day of February inst., refused to give countenance to the odious proceedings sought to be confirmed for opening five several streets and avenues on the Island of New-York, on the ground that they have no constitutional power to act in the matter.

And whereas such refusal and decision of the Court will have the effect greatly to increase the value of real estate upon this Island, and particularly in this ward, which is used chiefly for agricultural purposes, and will also have the effect to render greater security to landed property, and relieve the owner from the fear of depredations of public officers connected with the corporation of the city of New-York, who have been foraging upon land-holders for years past, and will put a final stop to a system of land piracy which has brought reproach upon the City Government, disgrace and shame upon its officers, and ruin, distress, and embarrassment upon land holders.

And whereas, two Justices of the Supreme

Court, viz: the Honorable Esek Cowen and the Honorable Greene C. Bronson, have boldly and independently stood up for the great and fundamental law of the commonwealth, *The Constitution of the State*, for its doctrines, for its safeguards to property, for that division of the powers of Government which makes each department a check upon the others.

Therefore, Resolved, that the said Court are entitled to the thanks of this meeting, to the thanks of every good citizen, and to the approbation of the good and virtuous throughout our land, for boldly refusing to perform duties imposed upon them, contrary to the Constitution of the State, which were of an arbitrary, anti-republican, and despotic character. And that in the death of Judge Cowen the public have sustained the loss of an upright Judge, an able expounder of the laws, and of a shield between the people and unconstitutional legislation.

Resolved, That this meeting highly approve of the proceedings of the Anti-Assessment Committee of the City of New-York, in their bold and persevering resistance of the illegal proceedings of the Corporation of the City of New-York and their officers, in the assessment abuses and outrages, and also in their labors for the reduction of the Taxes of the City.

Resolved, That this meeting recommend to all good citizens to unite together to resist the arbitrary exercise of usurped power, by the Corporation of the City of New-York, and its officers, by all legal means, thereby handing down to posterity the rights and liberties purchased by the blood of our ancestors.

Resolved, That the thanks of this meeting, and of the land-holders of this Ward, be presented to Mr. Meriam, Editor of the "Municipal Gazette," and Counsellor Mott, for the zeal and industry which they have evinced in exposing the iniquities and abuses of the Assessment Law, and of successfully presenting before the Courts of our State, the illegalities of the proceedings under the law, and the unconstitutionality thereof.

JACOB HARSEN,
Chairman.

Marcellus Eells,
Secretary.

"New-York,
February 29th, 1844.

"Dear Sir:

"I was informed by Richard Mott, Esq., that he had some money which he received from a Public Meeting, held in the 12th Ward, over which you presided as Chairman, which he was directed to give one half of to me, in the matter of assessment proceedings. I am obliged to you for that expression of approval, but I must in duty to myself, and in duty to the cause, which is not one of dollars and cents, decline any pecuniary compensation whatever from any citizen, as a reward for any services I may have already rendered, or may hereafter render individual sufferers in assessment matters.

With great respect,
your obedient servant,
E. MERIAM.

To Jacob Harsen, Esq.,
Chairman of the 12th Ward Public Meeting, convened in reference to Taxes and Assessments."

THE DECISION

Of the Supreme Court as to the right of the Justices of that Court to act as Street Commissioners!

When we received the copy of the OPINION of the Supreme Court, in the five Street Cases, we placed it at once in the hands of the Printer,, at the same time giving him a few hastily drawn up comments upon it, which were printed with it.

We now take the opportunity to examine this Opinion more leisurely, and also to make some remarks.

The Opinion is from the pen of Mr. Justice Bronson, and is worthy of its author. There is a frankness and boldness of language in it which is highly creditable to the Court, and which commends it to the good opinion of every candid mind.

It is a noble trait in the character of a Judge, to evince a willingness to relinquish power. Public men, as well as private citizens, are tenacious of power, and they most commonly hold on to it to the last moment; not so in the present case—the moment the Court were convinced that the power they had exercised was not sanctioned, but prohibited by the Constitution, they at once relinquished it.

In the Chapel Street questions, which involved important principles, the Court decided against us. Judge Bronson wrote the Opinion of the Court in that case, and in reviewing it on page 200 of this number, we admit that the Court were right and that we were wrong, although at the time the decision was made we were differently impressed.

Some Public Officers boast that they intend to proceed in assessment sales, notwithstanding the Decision of the Supreme Court. Such persons will incur penalties that will be enforced, which will teach them to feel that the taking an oath to support the Constitution is not a mere sham, and the vexatious proceedings of staining the titles of lands and of attempting to extort money from the owners by these sham sales, will be followed up so close that these gentry will learn that obedience to the laws is the duty of every public officer, and if he wilfully violates it, the law will make him culpable.

Any proceedings of the Corporation Officers under these assessments, after the DECISION, will make them personally and individually liable.

We think that measure ought to be taken to put under sequestration the moneys of the assessment depredators, and if that money has been invested, to follow the investment. The principle here suggested is an ancient doctrine, and we believe is now practised.

Some of the moneys which the assessment depredators have taken have been, we are informed, invested in lands. These lands should be at once put under sequestration.

The appointment by the Supreme Court of Commissioners to make estimates of the benefits and advantages of opening streets, avenues and public squares, of extending, altering and widening streets, and also of the damage and injury thereby caused, and to assess such damages, injury, &c., upon property in certain arbitrary districts, deemed by such Commissioners to be benefitted; and the confirmation of the Reports of such Commissioners by the Supreme Court, has been decided by that Court to be unconstitutional.

The pages of this volume abundantly show, that while the Court have in these matters acted without authority and in violation of the Constitution, that the Common Council have acted in downright violation of the law, even if the law had not been a violation of the Constitution; that they have disregarded all its provisions, and bid defiance to the people and to the Courts; oppressed the one, and indirectly threatened the other that if they decided against them, that they should either lose their offices or have their salaries cut so low as to starve them out. Again, these proceedings of the Commissioners, their Surveyors and their Lawyers, have been of a most odious, most shameful character, unequalled in these respects in any similar proceedings any where in the civilized world. We are informed that one of the officers of the Corporation seeks to sustain these assessments. A Public officer who would thus act under all the circumstances, will be severely censured by the community, and will find no one whose opinion is entitled to the least respect, to sustain him. We have not room to discuss this DECISION in this number, but will do so at length in a future number. The subject is vastly important not only as respects the Present, but the Future.

REPORT

Of the Finance Committee of the Common Council.

It appears by this Report, of Feb. 26th, 1844, that the sum of $912,034.85 is wanted for Contingent Expenses, $266,000 for City Watch, and $120,887.36 for Lamps, making $1,298,922.21 for the year 1845. For the year 1844 the Supervisors on the 3d of October, 1843, assessed as follows: for Contingent Expenses $544,844.91, for City Watch $212,000, for Lamps $110,000; making in all $866,844.91.

The sum demanded for next year, is an increase over this of $433,077.30, which is an increase of a fraction less than 50 p. c.

What destruction! what ruin! what waste! what profligacy! what incompetency and mis-management!!

Distressing Scene.

The destruction of human life by the explosion of one of the newly invented weapons of death, on board of the Ship of War Princeton, has clothed the seat of government in the habiliments of mourning.

In our paper of the 21st ult., we noticed, under the obituary record, the sudden death of Judge Cowen, at the seat of our State Government, and then remarked that:

"*The death of public men at the seat of the National and State Governments, have been very frequent of late years. These dealings of Providence are solemn and admonitory. On the 65th page of this volume we recorded the death of six individuals, who had held the office of President of this Republic, and each and all marked by circumstances calculated to impress the human mind with the fact that GOD overrules the doings of men.*"

That number of this paper we forwarded to the President of the United States, to Judges of the Supreme Court of the United States to heads of departments, and to the members of Congress from this State, and to distinguished members of Congress from other States, and these reached the seat of government but a little while before this mournful event took place.

In the exit of four individuals who had been President of this Republic, the death of each occured on the 4th day of the month, and three of them on the 4th day of July. The death of a fifth occurred six days before the 4th of July.

Two of these individuals died on the 4th of July, 1826, one on the 4th of July 1831, one died in 1836, and another in 1841.—A period of time marked by a revolving of five years, intervened, viz: 1826, 1831, 1836, and 1841.

Each of these individuals took the oath of office and entered upon its duties on the 4th day of the month.

President Tyler assumed an office made vacant by death. In June 1843, President Tyler and his Cabinet made a tour to New England to celebrate the completion of a monument upon a field of blood. This tour was terminated by the sudden death of one of his Cabinet, Mr. Legare.

On the 28th of February, 1844, President Tyler and a portion of his Cabinet proceeded on a tour of pleasure on board the Princeton Ship of War, and while the President was drinking a toast to the engine of destruction, that machine exploded and killed two of the members of his Cabinet and several other individuals.

These doings of death are admonitory. There is a peculiarly marked providence in reference to these events which seem to indicate, that war is not that glorious occupation that is blest of Heaven.

Our nation is prone to train up too great a portion of its population, to the profession of arms. Men thus educated are ambitious of employment—ambitious of fame—and some of these very causes, will involve our country in wars.

The steam frigates which have been constructed for the more certain work of death, have been unfortunate. The Fulton was blown up. The Missouri was destroyed by fire. The Princeton has done worse, and one of the others in using her anchors, destroyed numbers of her men.

Public men have been peculiarly and singularly admonished. If any thing can awaken in the minds a remembrance of their mortality, it would seem that the melancholy events which they have so frequently and so recently been made spectators of, would humble their pride, subdue their angry passion, and lead them to cultivate a desire for harmony, peace, and the public welfare.

Unless our public men pursue a course far different from that which has for years past characterised their public councils, our country will be visited with judgments that will shake our government to its foundation.

MISCELLANEOUS.

Written May 25th, 1843.

Birds.

These feathered songsters are less numerous in our forests than formerly, and for the reason that they are now more hunted and destroyed.

Among those of our race who are less favored with advantages and blessings, these innocent creatures are suffered to live in peace, and to chant their sweet notes among the green branches unmolested. The song of the sweet singer of the wood, on a bright morning in Spring, is medicine to the mind, and leads men to contemplate the harmonies of Nature with pleasant delight and cheerfulness of heart.

Parents who permit their children to make sport in the destruction of these sweet creatures harden the hearts of their dear offspring, and do their better feelings an injury which time never effaces.

Birds are useful as well as entertaining. These feathered songsters were not made in vain, nor were they created for wanton destruction; and these little creatures are confiding in exact proportion as they are well treated.

In some parts of our country the law prohibits the destruction of birds, and it is to be regretted that it is not so here; but it is still more to be regretted that there should be necessity for such a law.

—

The Ant.

The Ant, like the Bee, is a pattern of industry. The Ant possesses what is termed instinct, which approaches so near to intelligence, that it requires more than human learning to draw the line of distinction.

In strength they are unequalled; and as to their powers of sight, are found to see equally as well in the darkest night as in the brightest day.

They appear to have a strict regard for the rights of private property, and discovery with them, appears to constitute the legal as well as the equitable title.

I have spent hours in watching the movements and labors of a little community of Ants, and have felt instructed by their example, and humbled by their teachings.

These insects (a portion of them,) take wing in Summer. I have noticed them at an early hour in the morning waiting for the Sun to appear above the horizon, and as soon as its rays had warmed the atmosphere, these insects quit their terrestrial tenements and made the atmosphere their home. What a change! the work of chance, shall we say? No; chance never wrought the transparent and gilded wing of this despised insect, nor is it in the power of man to accomplish such a work. It is the work of Him who made the mountains and the Sun.

—

Written June 6th, 1843.

The Worm.

The despised and hated worm is appearing on the trees, and satisfying the cravings of hunger by feeding on the leaves of that vegetation which Nature has provided for its support. Ere a little while this unwelcome visitor will unwind its slender thread, and descend to the earth preparatory to its entering on another stage of existence, and shall we follow it through that stage, and witness its change to that of the brilliant butterfly of the morning, see it take wing and sport among the gay flowers? What a volume of instruction in these brief pages of Nature, teaching man a lesson of humility calculated to moderate his pride, and put his vanity beneath the earth he moves upon. How beautiful, how rich, how splendid is the plumage of this sportive insect. Its mornings are few and cheerful, its journey of life is one of peculiar brevity, yet nevertheless, it retires preparatory to its last change with a system of preparation that would, in the life of a human being, make one of the brightest ornaments that could adorn his brow.

Written June 13th, 1843.

The hated and despised worm inhabits the ocean, the atmosphere, the earth we tread upon, and is the last companion of mortal flesh in its terrestrial bed. The worm which now frequent our trees, which seem to have a superabundance of foliage, I have never met with in a single instance, in very extensive wilderness journeys. They seem to be found only near the abodes of men.

For what purpose worms were created, is beyond the reach of human learning to investigate, or the wisdom of man to determine. Thus it is, that the smallest things are beyond our comprehension.

In one of the large rivers of India, the British Government expended large sums of money and vast labor, to clear the mouth of a great body of flood wood which had been accumulating for ages, and which completely obstructed its navigation, but found the work could not be accomplished by human labor, and gave up the undertaking. The follow-

ing year this body of wood was attacked by an army of worms, and in the short space of a few weeks these despised laborers accomplished this great work, so that the first rise of water the channel was freed of its obstruction. What a result this, to humble human pride!

An unsheathed ship in some latitudes in the Pacific Ocean, would, in a single night, be completely riddled by the worms, and these mechanics are so methodical in their labors that every perforation is made with mathematical precision.

The Silk-worms which feed upon the mulberry, are a most industrious community, manufacturing all the silk used throughout the world.

The Glow-worm is another of the beauties of Nature. Where is the attentive observer, who, in surveying this brilliant and splendid worm, will, in his considerate moments, say this was made in vain?

During the last summer I found a worm in my yard about three inches in length, and as large in circumference as my little finger. I placed it in a glass flask and examined it; it was of a brown color, had sixteen feet and but one eye, which was in the centre and nearly on the top of its head, and this eye was large and very bright.

I have placed most of the descriptions of worms which are found on our trees, under glass vessels, and noticed them every day until they were supplied with the wings of a butterfly, when I at once ceased to withhold from them that liberty which is the rich bequest of Nature, and they soared above my head, to look down upon me, a humble worm of the dust.

There is a species of worm abundantly to be found amidst the habitations of men, at all seasons of the year, and in all climates. Its poison may be said to almost infect our atmosphere, and penetrates the palace of the prince with the same facility that it does the cottage of the peasant; like the enchanting serpent, it has a mysterious charm. This worm feeds not only upon mortal flesh, but also upon immortal mind. Millions of our race have fallen victims to its insidious poison—it has filled our prisons and our poor houses with its deluded victims, and our world with human suffering, wretchedness, misery and crime. Total adstinence is a sure preventive of the poisonous effects of this worm. It is known as the "*Worm of the Still.*"

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Written July 15, 1843.

The Butterfly.

A few days since I noticed a worm slowly making up the house wall, and near by it a spider was closely watching its movements. I took a small brush stick and gently moved the spider to a distance, and this industrious insect scampered away, full speed. The next day I noticed the worm had fixed its head under a projection in the wall, and in the course of twenty-four hours when I examined it again, it had changed its appearance and become what the boys call a butterfly's egg. I removed it carefully, and with a wafer hung it to a piece of paper in a closet, in the same position in which it had suspended itself. I opened the closet regularly every morning for nearly two weeks to examine it. This morning, on opening the closet, I found it a beautiful large butterfly. I left the closet door open and also opened the room windows into the garden, and this little stranger worm, in its new state of existence, took its flight, and is now sporting among the flowers with great apparent enjoyment and satisfaction. Two weeks ago I saved the despised worm from the net which the spider was spreading with great ingenuity for its destruction, and in two short weeks it passed that change allotted to it by Nature, and is now soaring above my head. How instructing this brief lesson; how consoling, how animating this display of "the change." A reality—a demonstration—an illustration, that a change is not death; and although we cannot understand how, why or wherefore, yet, nevertheless, it is a reality, a certainty.

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The Volcanic Mountain,

In Rabun County, Geo.

I have advices from my correspondent, A. W. Norris, Esq., of Clayton, in said county, of the 15th instant, giving the particulars of the phenomenon attending the convulsions of that volcanic mountain, which is in his immediate neighborhood. The smoke which issues from the crevices in the rocks, is very dense and black. The fire has been seen to rise from ten to twelve feet above the summit of the mountain. These discharges are not regular, but occasional; sometimes once a month—then intermitted—and again at intervals of two or three months. These discharges are seen in the day time, and also in the night. My correspondent adds that there is something uncommonly strange about the interior of this mountain. Rabun County, or most of it, is high table land; the agricultural part of it is elevated above tide about 1800 feet. The Blue Ridge is the range of mountains which passes through this county, and which is here volcanic. Rabun County is in lat. 34 deg. 55m., lon. W. C. 6 deg. 24 m. W. The immense pile of mountains which load the surface of the Earth's crust for a great distance through this part of the continent, is enough to produce convulsion, encrusting as it does the great gasometers of inflammable air.

This is the Volcanic Mountain of which the newspapers some few months ago gave an account. The information given by my correspondent may be relied upon for its accuracy.

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The Great Gasometer in use.

I have received from my correspondent, at Kanhawa Salines, Virginia, a paper containing the following highly interesting statement:

"The Kanhawha Salt Region.—We have said before that the subterranean wonders of the upper Kanhawha Valley, were not half explored, and every day proves that there are not only mysteries, but treasures of wealth, of which the preceding generation had no conception. When a year or so ago, Mr. Tompkins turned the *gas* that forced up the water under the kettles to aid in converting the brine into salt, thereby saving one half of the fuel, it was thought to be a vast stride in the march of improvement and discovery, but now Messrs. Worth & English, at their new furnace, have actually attained the Irishman's desideratum in the proposed purchase of two stoves—*they save all the fuel.* The gas has sufficient power to force a column of water, three inches in diameter, from the depth of a thousand feet to the height of about fifty feet above the surface of the earth. It is turned under the furnace, ignited, and boils the water till it is brought to the state for chrystalization, and then conveyed to the cisterns for evaporation. Thus 350 bushels of Salt, of the first quality, are made per day, without one particle of other fuel than gas. At these works but one cistern is yet erected, and they are able to use only one half of the water that is forced up. Another is in progress of erection. When completed, all the water will be used, and seventy or eighty barrels of Salt manufactured daily without coal, wood, or the rays of the Sun."

In 1842, I gave in the Journal of Commerce, an account of the sinking of this well to the depth of above one-fifth of a mile, of the *gas*, and of the intention of the owner to use it for fuel. He has now accomplished that operation successfully.

This gas when set on fire at night, illuminates the whole surrounding valley. How wondrous, how inconceivably grand! beneath this local surface, a mighty, a vast gasometer, containing inflamable air sufficient, if not covered by water when ignited, to shake the whole American continent. I take pleasure in communicating this wonderful and this useful matter to the public.

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The Mayoralty.

From present appearances, the three political parties, viz: the Whigs, the Loco Focos, and the Aborogines, will nominate light candidates for the Mayoralty. If they do, the Anti-Assessment Committee, which is composed of Democrats and old-fashioned Whigs, who do not go the whole hog for Party, will nominate an independent candidate for the Mayoralty.

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Public Credit.

The right of a majority of voters to encumber the private property of a citizen with a public mortgage, we will discuss hereafter. Seven years from 1836 has elapsed, and another convulsion is generating!

NEW YORK MUNICIPAL GAZETTE.

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REMONSTRANCE
Against the Public Mortgage.

TO THE HONORABLE THE LEGISLATURE OF THE STATE OF NEW-YORK:

The undersigned, Citizens of the City of New-York, most respectfully represent to the Legislature, that a Memorial is in circulation in the City of New-York, asking the Legislature to pass a Law to authorise the Corporation of the City of New-York to subscribe to the Capital Stock of the New-York and Erie Rail Road Company, the large sum of THREE MILLIONS OF DOLLARS, and that the project shall be determined by vote, by ballot, at the Charter Election.

The undersigned call the attention of your Honorable Body to the provision of the Constitution, which is the fundamental law of the Commonwealth, which you are to consider your rule, and the grant of the limited powers with which you are vested.

The protection of private property is one of the great doctrines of the fundamental law, and lays at the very foundation of civil liberty. The taking of private property for public use is allowed upon only one condition, which is that of making just compensation to the owner; but the proceeding contemplated by the proposed Loan of Public Credit, is to take private property for private use; to take the private property of one citizen and give it to another, or to take private property of the citizens inhabiting a local district, and give it to the Stockholders of a Railroad Company, of another local district.

The Corporation of the city of New-York is already indebted to individuals a greater amount than their corporate property is worth; and the doctrine that the private property of citizens residing in a local district is to be encumbered by a public mortgage without their consent, is one of so dangerous a character, and so erroneous in principle, that the undersigned trust the Legislature will not give it the color of existence by any Public endorsement.

It is contended by some, that the Croton Water Debt is a lien or public mortgage upon the property of the citizens of the Island of New-York, but the undersigned suggest that this principle has never been recognised by the high Judicatores of the land, for in such a case, no mortgage could be foreclosed in the City of New-York, without making every one of the Croton Bond Holders parties defendants to such suit, they having a certain interest therein.

The recent unfortunate occurrence, in a City of an adjoining State, is so fresh in the recellection of the members of your Honorable Body, that it is deemed unnecessary to recapitulate the particulars of that unfortunate affair.

The undersigned suggest that Municipal Corporations are not that class of organizations which are intended to carry on tradebanking, or dealing in stocks, but are intended solely as a mere administrative functionary, for the executing of the State Laws in a local district.

In the principles involved in the organization of the local Corporate Government of the City of New-York, there is no difference from that of a Village Corporation, except in the greater aggregate of its population.

The undersigned suggest, that if an application was made to your Honorable Body, for the passage of a Law to compel an individual to subscribe to the Stock of the Erie Rail Road Company, that the doctrine would be looked upon as so absurd and of such an arbitrary and despotic character, that you would not for one moment entertain the application.

In the present case, it is an attempt to ask that same thing to be done indirectly which you would not permit to be done directly; that although you would not compel the particular individual to subscribe, yet said Memorialists ask you to compel other individuals to subscribe at his expense, and that such subscription shall be a lien upon his land.

The undersigned take leave to call the attention of the members of your Honorable Body, to the grant of limited power contained in the Constitution, and to the important fact that no clause is embodied in that instrument which authorises the Senate and Assembly to delegate the Legislative power of your Honorable Body, to any other class of citizens.

This power is a special power, limited, restricted and so plainly expressed, that there is no room or place for doubtful construction.

The undersigned suggest, that if the doctrine is to be sustained that the Senate and Assembly can delegate the legislative power with which they are specially vested by the Constitution, which is the general power of Attorney from the People, who in this land of freedom are the Sovereigns, then there is no necessity of the annual meeting of the Legislature, as this expense and trouble may be saved by delegating to any number of individuals the Legislative power of one portion of the State, and to certain other persons, the legislative power of the residue of the Commonwealth.

The members of your Honorable Body must be aware that the strict construction of the Constitution, which is the Charter of Civil Liberty, is the only true and safe construction, and if that safe rule continues to be departed from in future, as it has in times past, the experiment of self government by a free people, will prove a failure, and mankind will become disheartened and prevented from a future effort to better the condition of human government.

The undersigned suggest, that in case your Honorable Body should deem it within your legitimate power to grant the prayer of the said Memorialists, who ask for the loan of Public Credit, that an amendment be made to the bill, providing that the tax to be levied annually to pay the interest of the Loan, be assessed wholly upon the land of such Memorialists, and that the principal of the Debt be a lien and incumbrance upon their real estate, and that the Bill and the names of the said Memorialists, be recorded ed in the office of Register of Deeds, in the City and County of New-York, that whenever their real estate is alienated, that the purchaser may have adequate notice of the public mortgage upon the premises.

The undersigned remonstrate against any power being granted to the Corporation to borrow money or incur pecuniary liability, and ask that a Law may be passed to vest the Public property not in Public use, now belonging to the Corporation of the City of New-York, in a Special Board of Control, to sell and convey, and to apply the proceeds to the immediate extinguishment and cancelling of so much of the Public Debt, as its avails are adequate to discharge.

The undersigned remonstrate against the Memorial here complained of, and trust that the disastrous consequences which have already resulted from loaning the Credit of this State to incorporated companies, may be a warning and admonition in the present instance, and that the embarrassments which have fallen to the lot of sister States in this Republic, from the lending of the pledge of the Public faith to further the objects of speculation, and the censure which the members of this Confederacy have incurred abroad, and the suffering which private individuals who have loaned the earnings of a life of industry, the only dependence of old age, have experienced, may have its solemn admonition in the Councils of the Legislative Halls of this great Commonwealth, and lead the members of the Legislative Chambers to such a result, as shall tend to perpetuate the blessings of Civil Liberty, and avert the catastrophe which a disregard of written Constitutions bring upon the People.

The undersigned urge upon your consideration the suggestion, that the application of the gentlemen petitioners for the Loan of the THREE MILLIONS of Public Credit, involves a principle which cannot be settled by a vote of the citizens of a local dis-

trict. That the consumating such a vote is not within the rule laid down in the fundamental law, for the amendment of the Constitution of the State.

The undersigned desire to call the attention of the Legislature to manifestos issued by the Patriots of the Revolution, in which they hold that doctrine to be obnoxious which tax the People against their consent. The varying the form in the present case, as contemplated by the Memorial complained of, is merely a varying the form without varying the substance; the results are the same in both cases, applying the circumstances thereto.

The undersigned could enlarge upon this subject, but they deem it unnecessary. &c.

City of New-York, March 8th, 1844.
And your Memorialists,

Jonathan Thompson, Jonathan Goodhue, Walter Bowne, Wm. B. Crosby, John D. Wolfe, Hickson W. Field, A. G. Thompson, Henry Grinnell, Hicks & Co., S. B. Collins, Burtis Skidmore, Isaac Jones, Anthony Lamb, Henry Andrew, E. K. Collins, Richard Mott, Robert Jaffray, David Graham, Jr., Henry Young, Peter Schermerhorn, John Anthon, Daniel Parish, Robert Hyslop, Jacob Drake, George Ireland, Lyman Denison, J. J. Janeway, Henry Brevoort, Horace Holden, J. B. Varnum, Woolsey & Woolsey, John H. Tallman, R. Whiley, C. V. S. Roosevelt, Abraham Schermerhorn, M. Bruen, and numerous others of high standing.

MISCELLANEOUS.

Æreolites---Meteoric Stones.

The fall of Meteoric Stones from the atmosphere, have been so frequent and so well authenticated, that the phenomena almost ceases to excite surprise.

I do not recollect to have noticed in the Sacred Record, any particular mention of the fall of ærolites from the atmosphere. Mention is made in the book of Joshua of the great destruction of human life by "great stones which fell from Heaven," but these are subsequently, in the same verse, called hail stones, and immediately after an extraordinary phenomenon is stated, that of the suspension of the diurnal revolution of the solar orb, and also of the satellite of our Earth, and such cause would, in all probability, produce such a result, and was, for aught we know, the very means designed by the Almighty to produce the result there made manifest. The Book of Jashur, which is referred to in Joshua, as containing an account of this event, is not found in the sacred volume, and therefore we are without the additional light which that record would afford us. In the present aspect of our terrestrial globe, it is, I think, clearly evident, that the primitive poles have been changed for the present arctic and antarctic, and this event may have produced that change, as the time which the Sun and Moon stood still was nearly a whole day. From the present appearance of our planet, we should be led to look for the position of the primitive poles at the Isthmus of Panama and the Straits of Java.

M. Arago, the celebrated French Astronomer, in 1842 communicated to the Academy of Science of Paris, an account of an ærolite which fell in the district of Mount Blanc. The stone fell in the day time, about one o'clock. P. M., attended by loud detonations, resembling the sound of several pieces of ordinance discharged in quick succession. The stone was by the explosion, broken into fragments, and numbers of these were collected and examined. The largest weighed about fourteen pounds.

In June last the same distinguished gentleman communicated to the same academy an account of the fall of an ærolite in one of the departments of the German States. That stone fell about seven o'clock in the evening, and was heard by great numbers of persons for a distance of near fifteen miles, making a musical sound as it passed through the air, which he termed the music of the spheres. Shortly before this ærolite reached the earth, it exploded with a loud detonation. One of the largest of the pieces was seen to fall in a piece of meadow ground, and was immediately sought for and found, having penetrated the earth until it came in contact with a strata of hard sand. When taken out it was still warm.

When Sir John Herschell was at the Cape of Good Hope, an ærolite was seen to pass through the atmosphere about mid-day, by great numbers of persons, near Capetown and its vicinity, for a distance of sixty miles and to explode, scattering its fragments in every direction. Some of these fell on the rocks, and were again broken; others fell in soft ground, and sunk to the depth of some inches. Many of these fragments were at once collected, and when first found were soft, but became hard on getting cold.

Some few years since, an ærolite fell upon a dwelling house in Germany, and passed entirely through it into the cellar. Fortunately no person was injured. This occurred in the day time.

In one of the three first instances I have mentioned, the fragments were found over a surface of about two miles in width and fifteen miles in length; in another, about one mile and a half in width and six in length. The velocity of the ærolite and its explosive force, were thus both developed; and some idea may also be formed of the inclination of its path to that of the Earth.

Some few years since, a large shower of stones fell in the State of Tennessee. These were collected in great numbers.

Aikens collected together accounts of the fall of meteoric stones, as follows:

"On the 29th of April, 1803, a shower of stones weighing from eighteen pounds to one quarter of an ounce, and supposed to be two or three thousand in number, fell in the neighborhood of l'Aigle, in Normandy, on a space of about six miles long and two broad.

"On the 4th of July a stone struck a house at East Norton, with an explosion, by which the house was much damaged.

"On the 8th Sept., a stone fell near Apt, in the country of Avignon.

"On the 18th December, a stone fell on a barn, in a small village in Germany, and broke the rafters of the roof.

"On the 5th of April, 1804, a stone fell at Possie, about three miles from Glasgow.

"On the 15th March, 1806, one fell at Valace in the *aroundisement* of Alais, in France."

Brande has the following:

"The first tolerably accurate narration of the fall of meteoric stones, relates to that of Ensisheim, near Basle, upon the Rhine. The account which is deposited in the Church, runs thus:—A. D. 1492, Wednesday, 7th of November, there was a loud clap of thunder, and a child saw a stone fall from Heaven; it struck in a field of wheat and did no harm, but made a hole there. The noise it made was heard at Lucerne, Tilling and other places; on Monday, King Maximilian ordered the stone to be brought to the Castle, and after having conversed about it with the noblemen, said the people of Ensisheim should hang it up in their Church, and His Excellency strictly forbade any body to take anything from it. His Excellency, however, took two pieces himself, and sent another to Duke Sigismond, of Austria. This stone weighed 225 pounds."

King Maximilian decided wisely in directing this ærolite to be hung up in the church in the immediate vicinity of its descent upon the earth. The worshipper of the Creator of the Universe, would have a witness before him, a witness of the unsearchable works of the Almighty, for although the Globe has been inhabited about six thousand years, mankind are as ignorant of the origin of these ærial wanderers, as at any time since the creation of Adam. Man rarely calls to mind that the atmosphere above his head is the path-way of wandering rocks.

I proceed with my quotations:

"In 1627, 27th November, the celebrated Garsondi, saw a burning stone fall on Mount Vasin, in Provence; he found its weight to be 59 pounds.

"In 1672, a stone fell near Verona, 300 pounds in weight.

"And Sucas, when at Sarissa in 1706, describes the falling of a stone, with a loud hissing noise, and smelling of sulphur.

"In 1753, de Pelaude witnessed this extraordinary phenomena, near Port de Vesle.

"In 1768, no less than three stones fell in different parts of France.

"In 1790 there was a shower of stones near Agen, witnessed by several respectable persons.

"And on the 18th of December, 1795, a stone fell near Major Topham's house, in Yorkshire; it was seen by a ploughman

and two other persons, who immediately dug it out of a hole it had buried itself in ; it weighed 56 pounds."

Professor WEBSTER, in his Manual of Chemistry, refers to the Edinburgh Philosophical Journal, (Vol. 1, *p.* 22,) for an account of meteoric stones which have fallen from the Heavens, from the earliest period down to 1819; I have not that work in my Chemical Library to refer to.

Professor HENRY, in his work on Chemistry, refers to the Annals de Chemie, for January 1846, for an account of a meteoric stone which fell near Ganges, which by the analyses of Vanquelin, yielded neither sulphur nor nickle, the iron being also oxydidir, contrary to all former cases of the kind.

AIKEN, in his Chemical Dictionary, remarks thus :

" It is remarkable that all the stones, at whatever period or in whatever part of the world they may have fallen, on being analysed, are found to contain the same substances combined."

The atmosphere exhibits its various phenomenon, but we have very limited means of investigation.

The motion of meteoric bodies are generally so rapid that their path is not traceable, or the inclination of their orbits ascertained.

If heavy bodies accumulate in the atmosphere, under the influence of the laws of chemical affinity or attraction, they would it is presumed, at once become obedient to the laws of gravity, unless they should have acquired a velocity in the first formation which hould over-power the force of great specific gravity. This is illustrated in the motion of an iron ball discharged from a piece of ordinance, the velocity overpowers the gravity.

Atmospheric Stones have by some, been supposed to be thrown from volcanoes in the Moon, but M. Arago has recently expressed the opinion that the Moon has no atmosphere, and if such be the fact, it is difficult to conceive of a burning volcano, without air to sustain combustion.

Gelatinous bodies have frequently fallen from the atmosphere, but I have never met with an analysis of these ærial precipitates. Some few years since, during a violent snow storm in Russia, a vast number of insects of a nondescript species, fell upon the earth and were collected. When taken to the fire it was found that the heat killed them.

Ice and snow form in the atmosphere, and various gases may by various atmospheric agents, become instantly condensed, and form solid bodies.

Meteoric Iron is found in various sections of the Globe, and the Copper Rock which passed through New York not long since, for Washington, is perhaps an ærolite. It is not as heavy as some bodies of Iron which have been found in Africa, in a pure metallic state. The atmosphere is sometimes, in a local district, filled with iron in an oxidized state, blown from the earth's surface by the winds.

ASSESSMENT AND TAX

Memorial.

TO THE HON. THE LEGISLATURE OF THE STATE OF NEW-YORK:

The undersigned, Citizens of the City of New-York, most respectfully represent to your Honorable body that the Bill reported by the Committee on the judiciary in the Senate, on the 10th of April last, and known as Senate bill No. 66, is disapproved of by intelligent citizens in that provision which requires a schedule, and oath, to be filled up and returned to the assessors between the 1st and 10th day of May in each year, under a penalty of a treble tax for non compliance is considered, by your memorialists, vexatious and inquisitorial and your memorialists most respectfully remonstrate against the said provision becoming a law.

Your Memorialists refer your Honorable Body to the Memorial and remonstrance of the meeting held at the Merchants Exchange on the 6th of March last, which was presented in the Senate on the 11th of the same month, by the Hon. D. S. Dickinson, Lieut. Governor of the State of New-York, and President of the Senate, which Memorial is signed by Preserved Fish, Chairman, Abraham G. Thompson, George Griswold, Jonathan Goodhue, Peter I. Nevius, Abraham Van Nest, Peter Cooper, William B. Crosby, Peter Lorillard Jr., Charles H. Russell, Peter Embury, Peter Schermerhorn, and John Haggerty, Assistant Chairmen, and W. B. Meech, Secretary, and ask that the said Memorial and Remonstrance may receive the early attention of the Honorable the Legislature at the present session.

Your Memorialists ask that the Memorials presented in the Senate, by the Hon. E. Rhoades, and the Hon. Abraham Dixon, in the Assembly, by the Hon. Robert Smith and others, at the last session of the Legislature, a copy of which is annexed hereto, may also at the same time receive the attention of the Legislature.

Your Memorialists ask that the thirty-two Remonstrances presented in the Senate at the last session by Mr. Dixon against the passage of the act authorising the corporation to purchase at assessment and tax sales, against the passage of the law requiring a schedule and oath and providing a penalty of a treble tax for non compliance, asking that the Water Commissioners may be made Supervisors, and the President of the Water Commissioners may be made County Treasurer, and remonstrating against the increase of the City Tax, and against the re-assessment of the arrear tax may receive the early attention of your Honorable Body.

Your Memorialists ask that the law passed at the last session authorising the Corporation to purchase at assessment and tax sales *may be repealed*, and that the passage of the said act may be examined into by a Committtee of your Honorable Body.

The undersigned ask that the amount authorised to be raised for the City Watch, may be limited to Two Hundred Thousand Dollars; for lighting the city to One Hundred Thousand Dollars; to cleaning the streets of said city, to Fifty Thousand Dollars ; and for the support of the Alms House to Two Hundred Thousand Dollars, and that the money so raised, shall be appropriated to the specific purpose for which it is so raised, and for no other purpose whatever.

The undersigned ask that the fees of the Coroner of the City and County of New York shall be paid into the City Treasury and that he be paid an annual salary of Fifteen Hundred Dollars per annum and no more.

The undersigned ask that so much of the interest of the Croton Debt, as the receipts for water annually, fall short of paying, may be assessed upon the owners and also upon the occupants of all houses and lots within the district where the water pipes are laid for supplying water for the extinguishment of fires and for the use of the inhabitants, and also that the expense of the City Watch and of lighting the streets, aad of cleaning the streets may each be assessed in the same manner in the respective districts where the money is expended.

The undersigned ask, that the State Mill Tax may be commuted to One Hundred Thousand Dollars, being, as your Memorialists are informed, about the proportion of this City and County, as compared with the amount of taxable property, as is now paid by the other Counties of this State, and that such Tax be assessed upon the estate, real and personal, of the inhabitants and freeholders, of the said City and County of New York.

Your Memorialists ask, that the Tax for the support of the Poor of the said City, and all the other Taxes, except the cleaning of the Streets, of the Watch, Lamps and Croton interest, may be assessed upon the estate, real and personal, of the inhabitants and freeholders, of the City and County of New York.

Your Memorialists ask, that the Water Commissioners may be made members of the Board of Supervisors, and that said Water Commissioners may be vested with the entire control of the Croton Water, and that the appointment of other Boards by the Common Council, either from their own body, or of other persons, may be prohibited by law.

Your Memorialists ask, that the Assessors of the several and respective Wards, may be elected for longer terms, viz: one Assessor for the term of two years, and one Assessor for the term of three years, that they thereby may have the benefit of experience to qualfy them the better, for the performance of their duties: that the present Assessors may be allowed to hold office, until the second Tuesday of April, 1845, and that the Assessors be required by law, to furnish each person assessed for Taxes, at the time the assessment is made, with the amount of the assessed value of his real or personal estate, or both, as put down by such Assessors, by delivering to such persons, a printed form, filled up with his name and the

amount of the assessed value of his real, and also his personal estate; and stating, also, in said notice, that the Assessors will meet at the City Hall, on the following Saturday, and every Saturday during the months of May, June and July, from the hour of ten in the morning, to the hour of two o'clock, P. M., for the purpose of hearing objections. In case such notice cannot be served personally, it shall be left at the place of business of the person assessed, with some person in charge thereof, or at the dwelling house of such person, with a member of his family, of suitable age and discretion.

Your Memorialists ask, that the Assessors shall be required to assemble at the City Hall, every Saturday, during the months of May, June and July, in each year, for the purpose of affording citizens, owning property in the several Wards, an opportunity of examining their several and respective assessments.

Your Memorialists ask, that the receiver of Taxes may be required by law, to compute the interest to be deducted upon the aggregate amount of the Tax, where there is more than one item, instead of each separate item, and thereby save both expense and trouble to the Tax payers.

Your Memorialists ask, that this Memorial may be referred to a Select Committee, to be composed of one member from each Senate district, and that they may be heard before said Commtttee, by the Delegates who are the bearers of this Memorial to the Legislature.

Your Memorialists remonstrate against the payment of the annual Tax, at an earlier day than that now fixed by law, and against any attempt of the Common Council, to collect two Taxes in one year, and ask that the allowance of discount for advance payment, may be made for all moneys paid prior to the 15th day of February, and that in all cases where real estate is sold for non-payment of Taxes, that so much only as may be sufficient to pay the Tax, may be sold, and no more, and that the expenses of advertisement of sale, and notice of redemption, and all other charges, may be limited to the rates charged by the State Comptroller, in selling Lands for Taxes.

Your Memorialists ask, that all the Corporation Bonds, now outstanding, be required by law, to be registered in the office of the Clerk of the Common Council, within thirty days, and that such Register be open to the inspection of any citizen who may desire to see the same.

And in duty bound, &c., your Memorialists, &c., &c.

Jonathan Thompson, James Brown, Robert C. Cornell, Philip Milldollar, Benjamin L. Swan, Wm. B. Crosby, Peter Schermerhorn, Jonathan Goodhue, Edmund H. Pendleton, Abraham G. Thompson, Joseph Sampson, James Roosevelt, Burtis Skidmore, James W. Beekman, Adam Treadwell, John R. Murray, James Monroe, Wm. H. Aspinwall, John H. Tallman, Stewart Brown, Wm. Gale, A. B. Cox, John Haggerty, Jonathan Sturges, Joseph Foulke & Sons, Robert L. Stuart, Wm. Tucker, William C. Rhinlander, John M. Bradhurst, J. Smyth Rogers, Gulian C. Verplanck, Peter Harmony, Jacob Aims, Arthur Bronson, Charles March, George Ireland, Wm. H. Falls, R. L. Maitland, J. R. Leavitt, Hendricks & Brothers, J. L. Bowne, John B. Lawrence, Robert Jaffray, Isaac Jones, Philip Hone, James Lovett, Abraham Van Nest, Charles A. Clinton, C. Bolton, James Boorman, James Lenox, John Anthon, Samuel Marsh, Peter Embury, Henry Grinnell, George Griswold, Garret H. Striker, Nathaniel Richards, James Gillespie, M. Myers, John R. Peters, Frederick Bronson, Peter Cooper, Abraham Schermerhorn, Charles H. Russel, Smith W. Anderson, William B. Meech, James I. Jones, J. J. Janeway, John M. Dodd, J. M. Morison, James G. King, Henry Brevoort, A. B. Hays, E. K. Collins, Peter B. Amory, Samuel Thomson, M. Bruen, Thomas Glover, Garret Van Doren, Silas Brown, John D. Wolfe, H. Hendricks, Gerardus Clark, Anthony Lamb, John Morss, Stacy B. Collins, Thomas Hunt, Caleb Bartlett, Henry Andrew, Horace Holden, B. Deming, Isaac Adriance, David Graham, Jr., Robert Hyslop, John M. Bruce, S. B. Collins, James Harriot, John C. Green, James McCall, Richard L. Schieffilin, Moses Tucker, Alfred Edwards, Richard Mortimer, Andrew Foster, T. W. Thorne, D. C. & W. Pell & Co., Nathaniel Paulding, Eben Cauldwell, Samuel Ward, Peter Lorillard, Jr., Peter I. Nevius, Samuel S. Howland, David Hadden, Robert Smith, John G. Coster, Anson G. Phelps, James McBride, Thomas Lawrence, James Donaldson, Woolsey & Woolsey, Elisha Riggs, Edward Prime, James A. Burtis, Duncan P. Campbell, Abel T. Anderson, John Milhau, Josiah Macy & Son, Robert Buloid & Co., L. & V. Kirby, Fearing & Hall, N. M. Beckwith, George C. Thorburn, and numerous other citizens of the highest standing and respectability.

City Comptroller's Report.

This document has at length made its appearance. The Report covers four and one third months of time of the Whig, and seven and two thirds months of the Democratic Administration of the City Government, making together one fiscal year.

We have carefully examined this Report. It present a sad recital of expenditures, some of which we notice here, thus:

"*Paid expenses attending application to the Legislature, for passage of new Tax Collection Law, and revision of Assessment Law, &c.,*	$1,007.63

See page 36.

We are at a loss to account for this enormous expenditure. The Citizens' Committee, five of which attended at Albany to oppose this new Tax-Collection Law, expended less than $200 altogether. One of the Citizens' Committee remained more than a month at Albany, and the others were each of them there several days. We should like to see the items of this expenditure, for it must contain some bonuses, and these should be known. It is impossible that this sum could have been expended for travelling charges and hotel bills.

On page 50, is as follows:

Paid for printing Manual of Corporation,	$826.75

This is a most exorbitant price for a very small book.

On page 43:

Paid for Printing sales list and advertising, in 1842,	$3,491.00

On page 25:

Paid for advertising sale of unpaid Assessments,	1,461.00
Paid for advertising list of property to be redeemed,	1,851.98
	$6,803.98

This work could have been all done for less than $1000.

On page 36:

Paid for refreshments for members and Committees of Common Council,	$4,988.75

This is more than $150 for each member of the Common Council, and is equal to an expense of near one hundred dollars per week for the "Banquetting Room."

On the same page:

Carriage hire, C. C.,	$2,911.74

On the same page again:

Refreshments for Board of Supervisors and County Court,	$447.34

On the same page, also:

Paid for Contingent Expenses of Street Commissioner's office,	$200!!

On page 40, 41 and 51:

Paid District Attorney for prosecuting forfeited recognizances,	$5,675.41
Salary of District Attorney and Clerk,	$3,500.00
Acting District Attorney,	320.00
Printing and Stationary of District Attorney,	272.54
	$9,767.95

This is a pretty round sum to one officer.

On page 59:

Paid for Profile, &c., of Chapel street Sewer!!!	$728.71

This item is charged to *Street Expenses.* We should like to see the bill of particulars for this most monstrous charge, and the names of the beneficiaries. It is more than one fourth of the 7th avenue survey. Do. 6th avenue survey.

The whole expense of Printing, Stationary and Advertising, is stated at $48,015.80.

NEW YORK MUNICIPAL GAZETTE.

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PUBLIC FERRIES.

Public Ferries are designed for public convenience. The more easy, the more cheap the intercourse between different districts, and the greater the facilities, the greater the advantages. Good roads facilitate intercourse, and the same with bridges and ferries.

Roads which are public highways, are made at the expense of the public, so are all the public bridges. There are some bridges and turnpike roads which belong to incorporated companies. These are constructed at the expense of such companies, and they are permitted to take toll to compensate for the use of these facilities and the capital invested in the construction. The policy of granting such monopolies, and the right to take private property for their use, we are much disposed to question.

Cheap ferries depend upon the same principles as to public policy, as cheap postage. The poor man finds a dear ferry a heavy tax, and it sometimes operates on him as a hindrance or non-intercourse.

Our remarks here are intended to apply to the public ferries which the Corporation of New-York claim as a property, as a vested right.

We will take what is called the Fulton Ferry, which connects the Island of New-York with Long Island, to illustrate our position.

The Fulton ferry extends from Fulton street in New-York, across the East river, which is an arm of the sea, to Fulton street, Brooklyn, and both intersect the East river and thus all three are cross roads.

Both the streets and the river are public highways. The Corporation of New-York claim this ferry under a patent or charter from Gov. Dongan, dated in 1686, (*see Ante. page* 35,) also, under a patent from Gov. Cornbury, dated in 1708, (*see Ante. page* 39,) and also under a patent or charter from Gov. Montgomery, dated in 1730, (*see Ante. page* 50).

The patent of Dongan was made when the Duke of York was proprietor of the Colony, but before the patent reached England for his confirmation, the Duke of York had become King James II., and the title of proprietor had become merged in the crown. He refused to confirm the charter of Dongan. William and Mary shortly after came in possession of the crown. These sovereigns were applied to by the Corporation to confirm the patent, but they refused, (*see Ante. page* 38). On the 11th of May, 1697, the King confirmed a severe Act against the Corporation of New-York, (*see Ante. page* 38). The patent of Gov. Cornbery was in the reign of Queen Ann, and that sovereign refused to confirm the grant. The patent of Cornberry provided that persons living near the water, might ferry themselves and property over in their own boats. The patent of Montgomery was in the reign of George II. That sovereign refused to confirm this patent or charter. The patent of Montgomery recites that the patents of Dongan and Cornbery were doubted, (*see Ante. page* 50), because of being made in the Governors own names, instead of being made in the names of the reigning Kings and Queens, and that very patent containing this recital, shared the same fate of its predecessors. In 1732 the Colonial Legislature passed an Act to confirm the Charter. The Colonial Legislature subsequently threatened to repeal the charter, but it was let alone.

In 1830 the Revised Statutes repealed the Colonial Act of 1732, and also the Act against the Corporation of New-York, signed by the King in 1697. We do not find any record of the Act of 1732 ever having been confirmed by the King as a public Act. The Constitutions of 1777 and 1823, confirm all charters granted by the King or predecessors. These charters were not of that class. They were grants of the Governors for the time being, for their own term of administering the government.

All political power was demolished by the Revolution. The Colonial Laws not repealed by the State Legislature, were kept in force and recognised by the Constitution until 1830, when the general repealing clause in the Revised Statutes, swept all Acts which had not been repealed by their titles, from the Statute Book.

The East river *is an arm of the sea*, and the control of it belongs to the United States. It is navigable water.

In 1787 (*see Ante. page* 31,) the Legislature of the State of New-York granted to John Fitch, of Bucks County, Pa., the exclusive right of navigating the waters of this State by vessels or boats, propelled by fire or steam, for the term of fifty years. This Act was declared to be unconstitutional by the Supreme Court of the United States, in the suit of Livingston and Fulton.

This grant included the Fulton ferry. The Olive Branch is one of the ferry boats that ply between New-York Island and Long Island. The North America is a ferry or passage boat, and plies between New-York and Albany. Other boats of the same kind, ply between New-York and New Haven, New-York and New Brunswick, and the Great Western between New-York and Bristol, England. All these are public ferries, and the Corporation of New-York have as much right to one as the other, and no exclusive right or estate in either.

The Corporation of New-York is a mere public functionary, to execute the laws of the State in a local district. The City Government is not a sovereignty, but on the contrary a mere organization like that of a country village or County Supervisors.

If the Corporation of the City of New York should lease to a company, Broadway, and allow them to collect toll from every passenger or vehicle passing through it, the lease would be worthless and the toll would be an extortion, but the Broadway stages take up passengers and carry them through this route and they take stage fare for the service rendered. This fare is not regulated by law, but by competition. The carman carries merchandise over this street and charges for the labor, but in this he is regulated by the Corporation. This is wrong, any man has a right to a fair price for cartage, and what his employer agrees to give him. It may be answered that regulations are necessary, and this we admit, but the Legislature of the State, which has alone the power of making laws, and not the Corporation, which is made by the law, and is a creature of the law. The State Legislature have not the power of delegating this power, specially given them by the Constitution, (*see Ante. page* 197).

The East river and Fulton streets in New-York and Brooklyn, are all as much public highways as Broadway, and the Corporation have no control over either.

A deed of Fulton street in New-York, in fee to a citizen, from the Corporation, would not be worth a straw, that body has no right in it whatever; when the street ceases to be used for a public highway, the use goes to the adjoining owners of land bounding in the centre of the street.

It may be said that the Corporation own the wharves; they own the timber, &c., which has been placed in the East river, the same as the County Supervisors own a public bridge over a navigable water, not otherwise.

NOMINATIONS FOR THE CITY.

It is gratifying to see among the names of the candidates, so many who are held high in public estimation. We see among the names of the candidates, many whose names appear on the Anti-Assessment Memorials in this volume.

The Democrats have done themselves great credit in their nomination for Mayor. Our good friend John M. Bradhurst, Chairman of the Citizens' Committee, presided as Chairman of the Convention which made this nomination. Mr. John I. Codington is the gentleman nominated. A most excellent citizen and upright man, and one who, if elected, will no doubt discharge the duties

of the office to the advantage of the City, and with credit to himself.

Mr. James Harper has been nominated for Mayor by the American party. Those who know him well speak very highly of him.

Mr. Morris Franklin has been nominated by the Whig party for the Mayoralty. Mr. Franklin has, in the School Question, done himself great credit, and won by his labors in that good cause, a fame far brighter and better than political favor. In the Assessment Question he has been against us, in the Common Council, and also in the Legislature. We regret sincerely and truly that so good a man and so worthy a citizen, should have in this, so far travelled out of the right way. We have always supposed that politics misled him; we still think so. In every thing but in the Assessment Question opposition, we wish him well. Mr. Franklin is a member of the Society of Friends, and should he be elected, we hope he will take counsel from the former associates of his father, sometime since deceased, instead of politicians, for such counsel would gain him an abiding popularity of increasing brightness.

Mr. Wm. Gale has been nominated by the American party, for Alderman of the 2d Ward. Mr. Gale was one of the Delegates appointed by the Meeting held at the Merchant's Exchange, in 1843, to proceed to Albany in relation to Taxes and Assessments. Mr. Gale is a good man and worthy citizen, and if elected will make a most excellent Magistrate.

Mr. Richard L. Schieffilin, of the fifteenth Ward, is nominated by the American party for Alderman of that Ward. Mr. Schieffilin is a most excellent citizen and a sound lawyer, and if elected will be a very great acquisition to the Common Council.

Mr. E. G. Drake has been nominated by the same party for Alderman of the fifth Ward. Mr. Drake comes up to the requirements of Mr. Jefferson, capable and honest, and if elected will faithfully do his duty. He is a most worthy citizen.

Mr. John Brouwer is named as a candidate for Alderman of the first Ward. Mr. Brouwer will make an excellent Magistrate. It is a most excellent selection.

All the gentlemen we have named for Aldermen, are thorough-going Anti-Assessment men, their names will be found on the numerous Memorials to the Legislature in reference to Assessments and Taxes, which are set forth in this volume.

We hope none other than Anti-Assessment citizens will be elected to the Common Council. Men who will not only talk but act, and the four gentlemen we have last named come up to this standard.

Mr. Cozens is nominated by the American party, for Alderman of the third Ward. This is a most excellent nomination. The office will be honored in the man.

Charles Henry Hall has been nominated by the same party in the twelfth Ward. We have seen much of Mr. Hall at Albany, and we think highly of him. His experience as a business man, will make him a useful member of the Common Council. Mr. Hall has rendered most important services to his Ward at the last session of the Legislature, and to his personal services alone is due the credit of saving the citizens of that Ward from most oppressive and arbitrary taxation. Mr. Hall is now at Albany attending to the interest of his Ward. He is a worthy man and a good citizen.

Mr. Alonzo A. Alvord is a candidate for Assistant Alderman of the 12th Ward. Mr. Alvord is a most excellent man, he was among the earliest actors in the Anti-Assessment Committee. He is a business man, capable and honest, and will be a great acquisition to the Board of Assistants.

Some of the gentlemen we have named are Democrats, and some are Whigs, but it is of no importance which party claims them, they are good men and capable, and will act independent of party.

Whole hog Whigs, and blue Loco's, are neither of them right, but the old fashioned Whigs and Democrats there is no fear of, either of these will do right. The party which we call the Aborigines, are made up of all sorts, and we hope that they have but few politicians. The party lines are now being broken, and we are glad to see any measure started which will bring the old fashioned Whigs and the old fashioned Democrats, back to their seats again.

INCREASED TAX.

The Corporation have decided upon an application to the Legislature, for authority to raise this year $266,000 for City Watch, also $120,887.36 for Lamps, and also $912,-34.85 for Contingent Expenses. These three items swell the amount to the enormous sum of $1,298,922.21, which is the largest sum ever asked of the Legislature.

The laws now in force, authorize the assessing of the Croton Interest, the Floating Debt, the Mill Tax, &c.

The Supervisors, on the 3d of October last, assessed but $212,000 for City Watch, also $110,000 for Lamps, and also $544,-844.91 for Contingent Expenses, making in all $866,844.91.

This sum is more than Two Hundred Thousand Dollars too much, and now the Common Council ask the Legislature for the large sum of $432,077.30, over and above what the Supervisors deemed sufficient last year.

The Common Council last year only asked for $212,000 for the Watch, $110,000 for the Lamps, and $668,000 for Contingent Expenses; making in all $990,000. This year the Common Council ask for an increase of that sum of $308,922.21. See Session Laws of 1843, page 170.

The Citizens last year opposed that amount at Albany, but Mr. Varian resisted the application. The Board of Supervisors, however, put him right in this, and reduced the tax $123,125.09.

In 1830, the whole City Tax authorised, was but $450,000, and the population was more than 200,000; now the population is but 340,000, and they ask for near $1,300,-000, independent of the Mill Tax and the Croton Interest and Common Schools.

The Corporation Officers do not show any thing at all to account for the increase of the Tax Bill this year, over last year, and in the absence of such information, will the Legislature authorise the increase?

It is evident from the showing of the Corporation, that the money raised is much of it squandered. The Printing Expenses are a true index. We could point to salaries in which the public are paying more money than appears upon the face of the papers.

CONSTITUTIONAL QUESTION.

The veteran sufferer on the 9th avenue, whom the Corporation of New-York have attempted to plunder of his patrimonial estate for a sham assessment now amounting to near Ten Thousand Dollars, for the pretended opening of a paper street, has obtained the professional aid of that great Constitutional Lawyer, the Hon. DANIEL WEBSTER, to argue his cause, with RICHARD MOTT, Esq., at the May Term of the Supreme Court, in New-York.

This is the case in which six intelligent Jurors, on the trial of the cause in the Circuit Court, refused to yield, and nobly sustained the Constitution and the law.

SALARIES OF JUDGES.

The Legislature should at once disconnect the Courts from the Corporation. The Corporation pay the salaries of the Judges of the Superior Court, Court of Common Pleas, and Court of Sessions. These salaries should be paid by the State. The Corporation and their officers are often parties in these Courts, and therefore should not have the power to fix the pay of the Judges or withhold their pay.

SALE OF LANDS FOR ASSESSMENTS.

The Memorial of the Corporation to the Legislature, and the Comptroller's Report of 1843, show that the boast in reference to the act authorising the Corporation to purchase lands for assessments, lessening the tax, is dished.

TAX BILL

Proposed by the Common Council of New-York, the present year, to be passed into a law by the Legislature:

"AN ACT

To enable the Supervisors of the City of New-York, to raise Money by Tax.

The People of the State of New-York, represented in the Senate and Assembly, do enact as follows:

SEC. 1. The Mayor, Recorder, and Aldermen of the City of New-York, as the Supervisors of the City and County of New-York, of whom the Mayor or Recorder shall be one, are hereby empowered, as soon as conveniently may be after the passage of this Act, to order and caused to be raised by tax on the estates, real and personal, of the free-

holders and inhabitants of, and situated within the City and County of New-York, and to be collected according to law, a sum not exceeding nine hundred and twelve thousand and thirty-four dollars and eighty-five cents, to be applied towards defraying the various contingent expenses properly chargeable to the said City and County, and such expenses as the Mayor, Aldermen and Commonalty of the City of New-York, may in any manner sustain, or be put to by law; and also a further sum not exceeding two hundred and sixty-six thousand dollars by tax on the estates, real and personal, of the freeholders and inhabitants of, and situated within that part of the City of New-York which is or may be designated by an ordinance or resolution of the Common Council of said City, "as the Watch District," to be applied towards defraying the expenses of watching and guarding such parts of the said City, and also a further sum not exceeding one hundred and twenty —— thousand, eight hundred and eighty-seven dollars and thirty-six cents, by tax on the estates, real and personal, of the freeholders and inhabitants of, and situated within that part of the City of New-York, which is or may be designated by an ordinance or resolution of the Common Council of said City, as the "Lamp District," to be applied towards defraying the expenses of the lighting such parts of the said City last mentioned."

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TAX ACT OF 1843.

"AN ACT *to enable the Supervisors of the City and County of New-York, to raise Money by Tax.*

Passed April 17, 1843.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SEC. 1. The Mayor, Recorder, and Aldermen of the City of New-York, as the Supervisors of the City and County of New-York, of whom the Mayor or Recorder shall be one, are hereby empowered, as soon as conveniently may be after the passage o this Act, to order and cause to be raised by tax on the real estate situated within the said city, and on such persons as are or may be, by law, liable to taxation on personal property therein, and to be collected according to law, a sum not exceeding six hundred and sixty-eight thousand dollars, to be applied towards defraying the various contingent expenses properly chargeable to the said city and county, and such expenses as the Mayor, Aldermen, and Commonalty of the City of New-York, may in any manner sustain, or be put to by law; and also such further sum, by a tax as aforesaid, as is or may be required by law to be raised by tax in the said city for the support of common schools, and as may be necessary for supplying the deficiency of taxes upon any one and every one of the wards of the said city, imposed or laid during the year one thousand eight hundred and forty-two, owing to the insolvency of the collectors of the said wards, or any or either of them, or their sureties, or their inability to collect the said tax, and also for defraying the whole of the expenses for assessing and collecting the taxes to be raised as aforesaid (such deficiencies to be assessed upon such estates throughout the said city, and upon persons who are or may be by law, taxable for personal property therein;) and also a further sum, not exceeding two hundred and twelve thousand dollars, by taz on the real estate situated within that part of the City of New-York, which is or may be designated by an ordinance or resolution of the Common Council of said City, as the "Watch District," and on such persons as are or may be by law, liable to taxation on personal property in the said city and within the said district, towards defraying the expenses of watching and guarding such part of the said city; and also a further sum not exceeding the sum of one hundred and ten thousand dollars, by a tax on the real estate situated within that part of the City of New-York, which is or may be designated by an ordinance or resolution of the Common Council of the said City, as the "Lamp District," and on such persons as are or may be by law, liable to taxation on personal property in the said city, and within the said district and within the said city, to be applied towards defraying the expenses of lighting such parts of the said city last mentioned; and also such further sum by tax as aforesaid as may be necessary for supplying the deficiencies of taxes upon all that part of the city constituting the lamp and watch districts, during the year one thousand eight hundred and forty-two, owing to the insolvencies of the collectors of any of the wards of the said city, within the said districts respectively, and their sureties, or their inability to collect the said tax, and also for defraying the expenses of assessing and collecting said taxes: such deficiencies to be assessed upon the estates and persons liable to taxation within the said districts respectively."—*Session Laws of* 1838, *p.* 170.

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REMARKS.

It will be seen by a comparison of the Act of the last session, with the Bill proposed at the present session, authorising the annual tax, that but $990,000 was authorised to be raised. The Bill now proposed provides for the raising of near $1,300,000. It will be seen by referring to the resolutions of the Board of Supervisors, passed October 3d, 1843, that under the Act authorising the raising of $990,000, they deemed it only necessary to raise $866,844.91. The Board of Supervisors in this, raised more than was necessary, for by the Comptroller's Report it will be seen that it was much of it improperly expended. More than $800 for a Corporation Manual, upwards of a thousand dollars to lobby members at Albany, near $5,500 for refreshments for the Banqueting Room at the City Hall, near $3,000 for carriage hire, more than $48,000 for Printing, Stationary, Books and Advertising. Will the State Legislature encourage such expenses by authorising the money to be wrung from the hard earning of the people, to support such profligacy.

The Common Council or officers of the Corporation, do not show any reasons whatever why the amount of the tax bill this year should be increased over last year, nor any reason why the amount assessed last year was not enough. The Tax Bill this year should be diminished as much below what it was last year, as the Board of Supervisors decreased the tax, and in addition to the difference between the amount in the Act last year and the amount in the bill this year which will reduce the amount to the sum of $743,719.82, instead of near $1,300,000.

There is no doubt but the Supervisors will avail themselves of the power contained in the Tax Act of April 17, 1843, to assess the difference between the amount assessed by the Supervisors and the amount authorised by that Act, and we think such an execution of the power a proper one, hence it is necessary that that sum should be deducted, or the amount should be prohibited from being raised in addition to the amount now asked for.

The Tax in 1822, as we have frequently before observed, that was authorised to be raised, was but $250,000, with a population of $140,000, and in 1830 but $450,000 with a population of 202,000; a greater sum is only needed as the population has increased, say $700,000, for, adding the population of 1822, to the population of 1830, we have the aggregate of the present population, say 342,000; add the tax of the two years together and we have $700,000, and from this deduct the excess in last year's law; and we have $576,874.91, which is as much as ought to be raised. The Croton Water, Mill Tax, and School and Floating Debt Tax, are independent of these.

The City departments are badly managed, and should be at once purified by placing other men in the place of the present incumbents, but these substitutes should not be politicians. Take such men as John M. Bradhurst, Saul Alley, Tallman J. Waters, Burtis Skidmore, and men of that stamp, and taxes will go down to almost nothing, and abuses and impositions will vanish like a bad atmosphere when the thermometer is fifty degrees below zero. It is the rottenness of the departments which is the bane of the City Government, the corruption and profligacy.

THE ANNUAL TAX BILL.

The New-York annual Tax Bill was presented in the Senate on Friday morning, and referred to the Judiciary Committee, reported upon by that Committee on Saturday morning, when Mr. Scott, of New-York, at once moved it be ordered to a third reading, it was so ordered, read a third time, and passed.

This is very hasty legislation, *hot haste.* Mr. Scott knew, if he had any knowledge at all of this bill, that it was not of that character which required it to be hurried through the Senate in this way. The interest of the

Public Debt is not to be paid out of this bill, and no good cause exists for this hasty proceeding.

GULIAN C. VERPLANCK.

New-York sustained an immense loss in the retirement of GULIAN C. VERPLANCK, from the Senate of this State. Mr. Verplanck understood our city interests, he is a man of enlarged views, strong discriminating mind, and possesses that firmness of purpose and decision of character, that well qualifies him for the duties of a Legislator. We have no hesitation in saying, that had he remained in the Senate until now, New-York city would have paid one million less taxes, and as much less in assessments. A Corporation lobby could not approach that man. All the advantages which the City of New-York has derived from legislation in taxes and assessments for the time Mr. Verplanck was in the Senate, it is indebted to Mr. Verplanck for. We should have been glad to have seen his name sent to the Senate of the United States for the Judge-ship, made vacant by the death of Judge Thompson.

Chancellor WALWORTH has been nominated to fill that vacancy. This gentleman is well qualified in every other respect except what we call a constitutional disqualification, *see Municipal Gazette, No.* 16, *page* 287, reciting the 25th section of the former Constitution of this State, and section 7, of Art 5, of the present Constitution. We will notice this hereafter.

Judge SAVAGE, late Chief Justice of this State, is well qualified for the vacant seat on the bench of the Supreme Court of the United States. Judge Savage is one of the best men in our country, and we should be glad to see him made Governor of this State.

MEETING AT TAMMANY HALL.

At the meeting held by the Democratic party at Tammany Hall, last week, the abuses of the Corporation officers, and members of the Common Council, were denounced in strong terms, and measures adopted for reinforcing the negative of the Mayor upon the acts of the Common Council, and to give to that officer the nomination of persons for public office, &c. This is right. We presume this measure originated with John M. Bradhurst and Saul Alley, both of whom are old fashioned citizens, men of pure minds, and each, and both, possessing that firmness and independence of opinion and action, so necessary to constitute useful citizens. There is great need of re-organizing the City Government, for it is, as now constituted, a PETTY DESPOTISM.

CITY COMPTROLLER'S REPORT.

The mode of making up this Report is very bad. Take for example, the balance in the Treasury on the 31st of December, 1843, stated on page 67 at $144,654.72, and against this balance is unpaid outstanding checks to the amount of $228,586.76, the Treasury was therefore over-drawn on that day $83,932.04; the shortest way of stating it would have been to have said over-drawn, $83,932.04.

A merchant would not count a balance in bank, when his account was already overdrawn.

In addition to the over-draw, the Treasury had received of the Tax of 1844, in 1843, the large sum of $739,245.84 to aid them in their deficiencies of 1843, see page 21. They had also in Revenue Bonds, outstanding on 31st December, 1843, $260,000.00; all these make a sum of $1,083,177,88, in addition to the moneys of the Sinking Fund, used for ordinary expenses.

BILL OF RIGHTS.

"§1. No authority can, under any pretence whatsoever, be exercised over the citizens of this State, but such as is or shall be derived from and granted by the people of this State.

"§2. No tax, duty, aid or imposition whatsoever, except such as may be laid by law of the United States, can be taken or levied within this State, without the grant and assent of the people of this State, by their representatives in Senate and Assembly; and no citizen of this State can be by any means compelled to contribute to any gift, loan tax, or other like charge, not laid or imposed by a law of the United States, or by the Legislature of this State.

"§19. It is the right of the Citizens of this State to petition the Governor, or either House of the Legislature; and all commitments and prosecutions for such petitioning, is illegal."

Revised Statutes New-York, Vol. 1, *Ch.* 4, *pg*, 83, *new edition.*

MANUFACTURING SALT.

In a letter of my correspondent, Wm. P. Milnor, Esq., of Saltville, of March 15th, 1844, he remarks:

"Messrs. Findley, Mitchell and Co., are now altering and repairing their large steam furnace, which. when completed, will closely resemble the one lately erected at Onondaga, by Messrs. Ives, Spencer & Nolton, as described by them in Dr. Wrights' report."

This report of Dr. Wright, which my correspondent refers to, is that of the superintendent of the Onondaga Salines, to the Legislature, in January, 1844, which I forwarded to these gentlemen immediately on receipt of it. It is thus the public are benefitted by the improvements which the manufacturers make. Messrs. Ives, Spencer & Nolton, deserve thanks for communicating this information to the Superintendent, and Dr. Wright for communicating it to the Legislature.

UNITED STATES SALINE.

I have a letter from my correspondent, JOHN STICKNEY, Esq., of Shawneetown, Illinois, dated 2d March, 1844, which states that coal is abundant on the Saline Creek. The water produces a bushel of salt to 80 gallons. The salt wells now used is but 125 feet deep. About 100,000 bushels of salt is made here annually. The Government reserve is now reduced to forty acres, or one sixteenth of a section. The United States Government own these Salines, and rent them out to the salt makers.

VOLCANIC MOUNTAIN IN GEORGIA.

I have a letter from my correspondent Wm. P. Milnor, Esq., of Saltville, Washington County, Virginia dated, March 15th, 1844, which contains the following statement in relation to the volcanic mountain in Georgia.

"Immediately after the receipt of yours of the 15th January in which you make enquiry respecting a report of the existence of a volcanic mountain, in Rabun County, Georgia. I wrote to that place, and am indebted to Mr. James Bleckly, of Clayton, for the following: Mr. B. has never visited the mountain, his information is gathered from persons residing near and who have seen it. It is situated 15 or 20 miles from Clayton, in the midst of the GOLD region of that section of the country."

"Upon various occasions it has been observed 'to produce small lights similar to a burning heap of charcoal.' Upon one occasion, at night, the entire mountain for a short time appeared one burning mass, 'shining most brilliantly' and enabling those within view of it to distinguish most distinctly the trees, rocks, &c., upon its summit."

"On the morning after 'a low rumbling noise was heard' coming from the body of the mountain' resembling the noise which would be produced by loose boards drawn in the bed of a wagon.' At other times smoke has been seen issuing through the fissures in the rocks, and flames have been noticed in daylight, emitted to the height of 10 or 12 feet. Such is the amount of Mr. B.'s communication. I regret it is not in my power to render a more extensive description. Should I learn any thing further of interest connected with the subject, it shall be communicated to you."

My correspondent resides in the region of country through which this range of mountains pass. Washington County, Virginia, borders on the States of North Carolina, and Tennessee. It is the extreme South Western County of the State of Virginia. Saltville is between the Cumberland and Clinch mountains.

There are numerous burning, hot, and warm springs in the country in which this range of mountains are, and also vast subterranean storehouses of inflamable gas.

How wonderful is every thing around us, above us, below us. The bellowing of the Earth, the moaning and raging of the wind, the crash of thunder, the lightnings' fire, the earthquake's terrific heaving, are wonderfully grand and sublime.

A volcanic mountain in the United States, would be a wonderful phenomenon. I think little need be apprehended from the convulsions of that in Rabun County.

NEW YORK MUNICIPAL GAZETTE.

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ASSESSMENT AND TAXATION.

The Pittsfield Sun mentions a case recently decided in Berkshire, Mass., in which Hendrick Eastland sued and claimed damages of the Assessors of Egremont, *for neglecting to tax him.* The principles contained in the charge of Judge Williams are of importance :

"Judge Williams instructed the Jury that in the assessment of Taxes, Assessors were liable only for want of integrity and fidelity on their own part, according to chap. 7, sec. 44, of the Revised Statutes, that if they *knew* the plaintiff was an inhabitant of Egremont, they were responsible for not taxing him, or if they were ignorant of the fact, and did not use due diligence to acquire correct information in regard to the plaintiff's residence, they were also liable; that it was the duty of the Assessors to take reasonable pains to ascertain who were, and who were not, taxable in their respective towns; to tax those who were properly liable, and to omit those who were not, and their neglect or refusal in either of these respects, would be a violation of integrity and fidelity.

The jury returned a verdict for the plaintiff of $100 damages."—*Journal of Commerce, March* 30, 1844.

The above decision is in accordance with the views we expressed, *Ante. page* 111 and 115, and is applicable to the New-York City Assessors.

From the Journal of Commerce, April 22, 1843.

ASHES.

There has been from time to time a good deal of trouble, in consequence of the discrepancy between the inspection of Ashes here and at Boston. In Boston the same Inspector has been in office for a long series of years. He was put in, not because he knew how to call votes and inspect elections and make up a party, but because he was a man of practical science in the matters of the office, and in the wise policy of that State, he has been kept in office for the same reason during all the ups and downs of party. However respectable as citizens our own Inspectors may have been during the same period, they have generally been appointed on account of their skill in the science of politics, rather than that of chemistry. Under such circumstances, the Boston inspection, every one will say, is much more likely to be correct than our own, and we have heard of some cases in which ours has appeared in a way signally ridiculous, without any comparison with others. Ashes have been sent in a perfectly pure state to try the inspection, and have been marked down; in fact it seems to be understood, that if ashes are to secure the brand of first sort, they must not be perfectly pure. A discussion has lately sprung up between the New-York and Boston inspections, in consequence of a house in Boston having sent sixty-nine barrels of pearl ashes from that market to this, which were all branded firsts there, but here,

10	Firsts,
42	Seconds,
14	Thirds,
3	Condemned.

The reduction in the market value by this reduction of the grade, was about five hundred dollars, or one third of the whole value of the shipment. The matter was referred back to the Boston Inspector, and we find his Letter, addressed to the merchants here, hoping that the matter may be discussed until the evil is corrected, wherever it may be.

INSPECTION OFFICE OF POT AND PEARL ASHES,
Boston, April 17, 1843.

"I have examined the parcels of Pearl Ash sent me, and which you state were taken from lots branded by me 1st sort. I am perfectly willing to endorse my opinion heretofore given upon the same lots, and upon a careful revision of my decision, after examining the samples by solution, &c., I find them free from impurities, or sufficiently so to pass them 1st sort. The only substance which is ever mixed with Pearl Ash, which adulterates it and of course diminishes its value, is what is commonly called by the workmen neutral salts or Sulphat of Potass; this is easily detected, because the pure Alkali is readily soluble in cold water, while the Sulphat of Potass is precipitated; in this way I judge of the relative value of the different casks, and not by sight. Now these samples do not contain this substance but in a minute proportion, and are what I have always called, and should to day, in similar cases, pronounce 1st sort. In regard to that which is branded "condemned," I acknowledge it does not look so white as the others; this however, is owing to its purity and strength, not pearling easily, but being disposed to melt like Potash, and is occasioned by its being made from recently burned ashes, which have not imbibed the carbonic acid from the atmosphere. Pearl Ash like this is constantly used by the glass manufacturers in this vicinity, and is considered by them more valuable, because it is stronger and contains no impurity.

I will state, in confirmation of my opinion, that hundreds of casks of Pearl Ash, from the same sources, particularly that from O. A. Bryant, who is a large maker, and whose Ash your Inspector calls 3d sort, have been used for several years back in this vicinity, and no complaints have been made. The two Glass Manufactories use about eight hundred casks per year, all of my inspection, and their mode of using it requires them to subject it to a strict analysis, by boiling it all over again and separating the impurities from the pure alkali. Surely if I was in the habit of making such *wholesale* mistakes as this, detection and exposure would sometime follow, but it is never the case. The manufacturers of Saleratus also, in this vicinity, have been satisfied with the quality of this same Pearl Ash, from the same manufacturers, so much so as to buy it without inspection.

As no complaints are made of my inspection, which has stood the test of *twenty years*, I would candidly submit to you to decide, whose opinion, under these circumstances, you would be inclined to adopt, mine, after an experience of twenty years, tested and approved by all who use the article in this vicinity, or that of the New-York Inspector, of recent appointment, and of course of very limited experience. I think he must have taken but a bird's eye view of the Pearl Ash, without attempting to ascertain its intrinsic value.

All the Pearl Ash of which you have sent me parcels, will sell readily as 1st sort, is returned to this market.

All the Ash received at this office, passes under my personal Inspection, not having any one in my employ in whose opinion I can entirely trust.

I think, upon a review of the case, you will be satisfied that the mistake lies at the door of your Inspector, and not at that of your humble servant,

S. D. TOWNSEND,
Inspector of Pot and Pearl Ash,
for the State of Massachusetts."

From the Journal of Commerce, April 26, 1843.

OFFICE FOR THE INSPECTION OF POT AND PEARL ASHES.

NEW-YORK, April 22d, 1843.

Gentlemen,—In answer to an Editorial article in your Journal of Saturday last, as well as the "letter" appended of Mr. S. D. Townsend, inspector of pot and pearl ashes, Boston, in relation to the inspection of sixty-nine barrels of pearl ashes in my office, which had been previously inspected in Boston, I would remark as follows:

You say that the letter appended was addressed to the merchants of this city. You should have said to Messrs. —— & Co., New-York—and instead of sixty-nine barrels of first sort pearls, you should have said forty-nine barrels first sort, and twenty barrels of second sorts. From the manner you have been pleased to express yourself in relation to the Boston inspector's letter, it

would appear that it was intended as a circular to the New-York merchants, when in fact it was published unauthorized by the author. The ashes after inspection, were shown to Mr. ——— and his agent, and compared with the New-York inspection, and by them pronounced a very inferior lot of ashes.—They were also shown to a gentleman from Boston, largely engaged in the manufacture of saleratus, who expressed great surprise that such ashes should have been inspected First sort in Boston, and took with him a sample on his return.

You also say that there was a depreciation of five hundred dollars by the New-York inspection. I presume that this is correct, and the loss must have fallen on the purchasers in this city; a fact that in the sequel you will discover is one of the strongest arguments in favor of the existing inspection laws.

The other parts of your Editorial, I consider of such a character as to require no comment from *myself.* Those who are acquainted with the previous character, (under the late inspector) that ashes of New-York maintained, are best able to judge of the justice of your remark respecting it.

In reference to the communication of the Boston inspector, and of the rules laid down by him, as his guide in the inspection of pearl ashes generally, I beg leave to offer some remarks, and make known the principles, in determining the grade of pearl ashes submitted to my inspection.

The Pearl Ashes above alluded to were faulty in consequence of not being perfected in the "the pearling process," as well as from objectionable color, to such an extent as to render it inadmissible to classify them otherwise than as they were by me, and which I feel fully authorised in saying is in strict conformity with the standard of inspection in this City, and which has prevailed for many years; the accuracy of which, I believe stands undoubted by the manufacturers and consumers, (parties who may fairly be claimed as having a tolerable knowledge of the article.)

The Boston Inspector seems to be governed altogether by alkaline strength, in determining his judgment of the grade of Pearl Ash. In this point I think he commits an error, and the operation of which is likely to produce results unfavorable to the consumer as well as the manufacturer; as the former cannot have a perfect article made in view of such a standard of inspection; and the manufacture, if led astray by such a belief, must eventually suffer loss.

I am well aware that there are considerable quantities of alkaline substance sent to market under the title of Pearl Ash, a crude, imperfect article, though free from impurities, and possessing great strength of alkali, and for some purposes, as in the manufacture of glass, and whenever a strong alkaline agent, merely, is required, may answer as well as the thoroughly perfected Pearl Ashes. But will any one urge these instances as an argument that such will answer equally as well all the purposes for which genuine Pearl Ashes is required? I think not—for with as much show of reason it might be said of the vegetable or "black salts," from which Pearl Ash is produced, and which are some times used in the manufacture of glass, that they were equal to the best Pearl Ash, because in the manufacture of that article, they answer the desired end. The substance has great alkaline strength, equal if not greater than Pearl Ash; and if that principle is to be the test, why is not that article entitled to be classed on the same footing as to value as the best Pearl Ash.—The answer is obvious; it has not been wrought upon by the process necessary to place it in the alkaline position known as Pearl Ash, and until this is accomplished to a good degree of perfection, the article is more or less faulty, and must so be estimated. A large and very superior manufacturer of Pearl Ash residing in this State, states that he has frequently been compelled to reduce his pearl ashes to a solution, after they had been *baked*, in consequence of their strength being too great to admit of their pearling; thus showing very conclusively what his views are upon the properties that go to make first sort Pearl Ash.

I am therefore led to the conclusion that alkaline strength alone must not be the guide in determining the quality of Pearl Ash; and that would seem to be an established point; as in this city the question of chemical analysis for the purpose of determining the alkaline strength of Pearl Ash, has never been mooted. In confirmation of this opinion, I will state that at the time the subject of the manufacture of Pot and Pearl Ash was before the Legislature of this State for the purpose of ascertaining the mode of production, as also to obtain information relative to the substances with which Pot Ashes are sometimes adulterated, as well as all other matters connected with this important branch of our exports, application was made to Professer Beck for his views; and the result of his eminent chemical *experience* in the matter, was communicated by that gentleman, in a very able and full report, submitting the results of a number of analysis of various specimens of Pot Ash made on different plans, together with much valuable information connected with the subject; but no mention was made of the analysis of Pearl Ash, shewing that the alkaline properties of Pot Ash were not alone necessary to determine their proper and just grade.

What then is the correct rule of conduct for the Inspector? It is my opinion, in the first place, to establish a true standard of what the best Pearl Ash is,—and will be if the material is right, and the process rightly performed,—and then be governed in his decision of the grade of the different parcels submitted, as they may fall short by reason of the *presence* of objectionable matter, or fault in manufacture; always making a due allowance for an unavoidable peculiar appearance characteristic of some Pearl Ash made of certain kinds of crude ashes. These views I hold to be sound, and based upon *true principles;* and they will be sustained, if necessary, by the testimony of practical and skillful manufacturers; and also verified in the experience of consumers in its diversified uses, with perhaps some few exceptions.

At any rate, such has been the governing rule in the inspection of some hundred thousands casks, occurring in a series of years, and if it is founded in error, it is passing strange that it should have remained till this late day without discovery, and that too in the face and eyes of practical and scientific men, both of our own country and Europe.

In my opinion Ashes should be classified by their *merits*, without reference to the use they are to be applied to.

Mr. Townsend seems to attach considerable weight to the declaration that Pearl Ash of his inspection gives good satisfaction to the makers of Saleratus in Boston, and that they purchase the same style of Ashes without inspection, having full confidence in their goodness for this purpose. We have no means of determining the quality of Boston Saleratus, but we are assured that the purchasers in this market make their selections with greater caution.

In regard to the manufacturers of Saleratus in our city, I am informed that they find it necessary to use the primest of first sort Pearls in order to obtain a merchantable article, and that their experience in the use of Boston first sort of Pearls (by late experiments) has not been productive of satisfactory results; and they are obliged to mix New-York "First Sorts" with them in consequence of the inferior grade of the former, and *that*, after rejecting a considerable portion from each cask of the most objectionable quality.

Mr. Townsend speaks of my inexperience as an inspector, and concludes from his being "twenty years" in office, that he must from this circumstance be the most competent judge. It is true that changes are frequently taking place in our State Appointments, but notwithstanding these changes, Deputies are always retained of practical experience. The person under whose suprvision the Ashes were inspected, has been for several years an inspector in the office, during which time he has taken part in inspecting two hundred thousand barrels. I think Mr. Townsend will admit that this far exceeds the number of barrels of Pearl Ashes that has passed through his office during his entire term—so much for experience.

With these remarks I submit this case to the impartial decision of a discerning public.

Yours, Respectfully,

T. J. STEVENS,

Inspector of Pot and Pearl Ashes.

(Copy.)

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REMARKS.

We have here given two letters, one written by an experienced Inspector of Pot and Pearl Ashes, in Boston, the other written by a newly appointed and inexperienced In-

spector of Pot and Pearl Ashes, in the City of New-York; and also the prefatory remarks of the highly respected Editors of the Journal of Commerce.

Dr. Townsend was many years Inspector of Pot and Pearl Ashes, in Boston, and I considered him the best judge of the quality of Ashes in the United States. He wrote a Treatise upon the manufacture of Pot and Pearl Ashes, many years ago, which was highly prized by the manufacturers. The present Inspector of Ashes in Boston, we presume, is a son of Dr. Townsend. He is at any rate, his successor, and the two individuals have the experience of near half a century.

We have had very extensive experience in the manufacture of Black Salts, Pot Ash and Pearl Ash. We have also used very large quantities of all three of these alkalies, in the manufacture of Salt Petre, Glass and Soap. We therefore, claim to have some practical knowledge, which is far better than theory.

Black Salt is the crude alkali resulting from the evaporation of the leys, derived from lixivation of wood ashes, and is of very various qualities.

Pot Ash is made by melting in iron kettles, heated to a red heat, the Black Salt.

Pearl Ash is made by calcining the Black Salt in a reverbatory furnace, or iron pans.

Pot Ash is a very caustic alkali. Pearl Ash is a mild alkali, being partially saturated with carbonic acid.

In the manufacture of black bottle-glass, black salts is the best alkali which can be used, and I should prefer them to Pot Ash, for common soap. In the manufacture of white glass, Pearl Ash is preferred, and that which has been glazed is equally as good as that which is porous and white. I should, however, prefer for white glass, Pot Ash which had been dissolved and re-melted, and it will be found far more valuable.

In melting black salts into Pot Ash, the earthy matter held by the leys of the crude ashes in suspension, are retained in the first melt of the pot ash, unless these are of a combustible nature, in which case it will take fire in the melting and burn out, which combustion leaves a soot in the Pot Ash, and such Pot Ash, when moistened, shows a black surface.

What are called field ashes, are mostly used for making Pearl Ash. This kind of ashes is not so pure as house ashes, and are not often made into Pot Ash on account of the difficulty of melting the salts. The pure crude ashes made salts that are easily fused, but the field ashes become mixed with the earth the wood is burnt upon, and are therefore, impure. I have, for the manufacture of Pearl Ash, employed large gangs of hands to fell trees and burn the timber for the purpose of obtaining the ashes, and I have purchased large quantities of house ashes and made these into both Pot and Pearl Ash. I have also purchased the black salts for the same purposes, and will treat of this more at large in subsequent remarks, under another head.

Ashes in the New-York Inspection Office, are not inspected and put up as is contemplated by the law, extracts of which are as follows:

"DUTY OF INSPECTOR.

"§ 66. [Sec. 64.] It shall be the duty of every Inspector of Pot and Pearl Ashes,

1. To empty the cask containing ashes brought to him for inspection, and to examine and determine the quality of the ashes, and re-pack the same, "putting the ashes of each quality in a separate cask:

2. To brand, in plain letters and figures, on each cask containing ashes of the first quality, the words "First Sort:" of the second quality, the words "Second Sort:" and of the third quality, the words "Third Sort:" together with the words "Pot Ash" or "Pearl Ash," as the same may be; also his own name, and that of the place where the ashes are inspected; and on one head, the year when such inspection is made:

3. To weigh each cask, and to mark with a marking iron, on the branded head, the weight thereof, including tare, and the weight of the tare under the same:

4. To collect the crustings or scrapings of the barrels and casks of pot ash, unfit for inspection, having the same brand, and to weigh and put the same in some suitable cask; and to deliver to the owner or his agent, a weigh-note signed by him of such scrapings and crustings, entered on the back of the copy of the inspection bill, designating therein, the quantity taken from each lot, separately marked:

5. To brand the word "condemned" on every cask which he shall discover to contain ashes fraudulently adulterated with stone, sand, lime, or other improper substance:

6. To make and deliver to the owner or his agent, an invoice or weigh-note, under his hand, of the ashes by him inspected, containing the weight of each cask and of the tare, and distinguishing the quality thereof, in the manner before directed, and to enter the same in a book, to be kept by him for that purpose:

7. To make and enter in his book another invoice or weigh-note, in which shall be contained the original private marks and numbers, and the scrapings and crustings in each lot, and the quality, weight and tare of each barrel, and specifying, as particularly as possible, the extent and damage appearing on such inspection, *and the apparent cause thereof, whether by exposure or injury in the course of transportation, or in consequence of the original putting up of such ashes;* and to deliver, if required, a true copy of such weigh-note, to the owner of the ashes inspected, or his agent."—*1st vol. R. S., page* 540.

The law, it will be seen, contemplates a separation of the different qualities of ashes, and these are to be found in the same piece. A *batch* of Pot Ash, which is what the workmen term one, melting, may have three sorts of ashes in one lump. When the fused salts are dipped off into iron coolers, the Pot Ash is of the color of melted iron, and of about the same consistency, the quantity is generally from four to five hundred weight. If this is dipped into a single cooler, the most impure of the parcel will settle at the bottom; this sediment, as contrasted with the other stratas, is *second* or *third* sort ashes. If ashes are adulterated, the law expressly requires that they shall be branded as condemned. If ashes become damaged after being put up, the manufacturer is required to note the fact.

The law is very vague in respect to the classification of the quality of ashes. We will take for illustration, six barrels of Pot Ash, numbered from one to six: No. 1 yields 90 per cent. of free alkali; No. 2, 80; No. 3, 70; No. 4, 60; No. 5, 50; and No. 6, 40 per cent. How are each of these six parcels to be branded? If that which yields 90 per cent. is to be denominated 1st sort, that at 70, 2d sort, and that at 40, 3d sort, how shall that at 50, 60, and 80, be branded? To the home manufacturer, the Pot Ash which yields 40 per cent. free alkali, is worth four ninths the price of that which yields 90, or nearly so for some purposes, but to the exporter it is worth little or nothing, or rather to the consumer in a foreign inland country, to whom it comes taxed with all the freight, duty, cartage, &c., of that of the best quality. The English and French manufacturers send to this country a large quantity of Soda Ash. This is an alkali made from common salt. It yields from 35 to 92 per cent. free alkali, and is sold at the relative proportion of its alkaline yield by p.c., and so should Pot Ash be rated.

The quality of Pot Ash can only be determined by an experienced manufacturer of the article, or by chemical analysis. Dissolving Pot Ash and allowing the solution to stand until a precipitate is formed, will only show the insoluble earths held in suspension, and not the impurities held in solution.

I had in my employ for several years, a man by the name of Sanford, who prided that the ashes which he made, had always been branded 1st sort, and I valued his skill greatly on that account. He was a careful workman, and kept his platforms, receivers and kettles clean, and placed the crude ashes in the Hoppers so that his leaches never run foul. When his salts were in a proper state for melting, he managed his fire so well, that he never missed a good melt. Other workmen would pride themselves of the great quantity of Pot Ash they could make out of a given quantity of ashes, but their Pot Ash was the more impure.

It is never for the interest of a manufacturer to make poor Pot Ash; if the Pot Ash is not of the first quality, dissolve it, boil down and re-melt it. If the quality of the crude ashes is bad, use a greater quantity of lime in the leaches. Alkaline salts which have a jet black color, are better for calcination than for melting. Salts which make the best Pot Ash, have a bright appearance.

Mr. Stevens, in his letter to the Editors of the Journal of Commerce, which we have

quoted, says: "a manufacturer dissolved his Pot Ash because it was too strong," such a remedy is labor lost. The ashes would not become less caustic by being dissolved. If his Pearl Ash was dirty, dissolving and settling the solution, would allow the dirt to settle, but would not decrease the strength. If perchance the salts become melted in the furnace before they become calcined, then he had a Pot Ash instead of a Pearl Ash, and probably worth double for any and every purpose that the porous Pearl Ash is.

It is not the carbonic acid, combined with the alkali, which constitutes its greater value; it is the alkali divested of its coloring matter. For saleratus, the melted or glazed Pearl Ashes should be broken in pieces with a hammer, in order that the whole surface may be presented to the action of the carbonic acid gas.

I have seen great injury done to ashes by the Inspectors in the City of New-York, arising from the exposure of the casks to the rain and wet, and from inspecting Pot Ash in damp weather.

The law is very defective as to the barrels and manner of hooping the casks, &c. The following is the provision of the Statutes:

"§ 65. [Sec. 63.] All Pot and Pearl Ashes subject to such inspection, shall be put in casks of good seasoned white oak or white ash timber, well made, hooped with substantial hoops, for the distance of, at least, ten inches from each end; the staves not to be more than thirty-one, nor less than thirty inches in length, and the head of a Pot Ash barrel shall not exceed twenty inches, nor be less than nineteen inches, in diameter; and that of a Pearl Ash barrel shall not exceed twenty-three inches, nor be less than twenty-one inches, in diameter. No Inspector shall brand casks not agreeing with the description given in this section."–*R. S. v.* 1, *p.* 540.

POT ASH AND PEARL ASH.

The quality of Pot Ash depends much upon the quality of the crude ashes from which it is made, and upon the mode of manufacture.

I have found the ashes of Elm and Hickory wood, make the best Pot Ash, and when properly treated with quick lime, the alkaline salts fuse or melt with great ease.

From 400 to 500 bushels of good house ashes, will make a ton of Pot Ash.

I propose in this essay, to treat the subject in such a way as to make it intelligible to those unacquainted with the manufacture of Pot and Pearl Ashes, and useful to those who are, or may be, engaged in the manufacture of this alkaline salt.

In the manufacture of both Pot and Pearl Ash, I have had many years experience on a large scale, and in the use of Pot and Pearl Ashes, I have a like experience. In looking over the Inspection bills of the Ashes which I have purchased in the New-York market, and used in the manufacture of Soap, I find they number 1100 barrels. My practice has been in preparing the leys for use, to dissolve the Pot Ashes in iron cauldrons, about half full of boiling water. When the Pot Ash is thrown into the water, which should be on the boil at the time, the commotion is greatly increased, and unless care is taken the leys will boil over and thus waste the alkali. The Pot Ash should be constantly kept stirred with a strong iron spade, and the cauldron kept on the boil until all is dissolved. When this is finished the leys should be immediately ladled off into an iron cooler, and if it is desired to make the leys more caustic, a quantity of quick lime should be slaked and mixed with the leys by thoroughly stirring up the mixture with an iron spud. When this is completed, pour a bucket of cold water carefully over the surface, so as to condense the steam which is escaping, and a precipitate will soon commence forming at the bottom. In a short time the clarified leys will be fit to be ladled off for use. This mode of dissolving Pot Ash, detects any earthy matter held in suspension in the leys, and I have, in numerous instances, found this to be very considerable. The impurities which are held in solution are not detected by this process, but the experienced manufacturer will discover these by the taste or smell of the leys to a certain extent, and by the charge of his pan, if he works it by rule, with great accuracy. I will now make a remark that may be useful to the inexperienced in dissolving Pot Ash, it is this: In a cauldron of water not heated to the boiling point, place a barrel of Pot Ash, and it will require four times the fuel and four times the labor to dissolve it, that it does when placed in water in a state of rapid ebulition. In the breaking of large cakes of Pot Ash into smaller pieces, a gentle rapp of a hammer is ten times more effectual than the heaviest blow from an axe. The Hydrometer is the instrument used for testing the strength of alkaline solutions. This instrument only determines the specific gravity, and if an alkaline solution should be found by that instrument to denote 50 deg., the addition of a quantity of molasses, would show an increase of specific gravity but not of strength or causticy.

I have, in the use of Pot Ash, found that which was sometimes branded 3d sort, better than that which was sometimes branded 1st sort. I have in some instances, paid $10 per ton extra for Pot Ash, above the market price of that article, for the privilege of opening the ashes and making a personal examination of the qaulity, and have uniformly found that I was a gainer by this course. In one instance I purchased a lot of Pot Ash without seeing them, and on opening the ashes to dissolve them, I found although they were branded 1st sort, that they were poor 3d sorts, and at once returned the lot to the Inspector, whose name was branded upon the casks.

In the manufacture of Pot Ash I was always careful to keep the crude ashes in a building that was dry, and which had a plank instead of a ground floor, for the ashes to lie upon.

When the ashes were to be placed in the Hoppers for lixivation, I made a bed of them, like a mason does with sand and lime for mortar, opened the top and placed there as much of the unslaked lime as I judged necessary to make the leys sufficiently caustic to make the salts fuse easy. This lime I saturated with water and then covered it up with ashes. After remaining in this state until the lime was completely slacked, I took a shovel and mixed the ashes and lime well together, this done, I prepared the Hopper by leaving in it above the loose second bottom, a layer of about ten inches of leached ashes. The fresh ashes and lime mixed, were then thrown into the Hopper and stamped down a little, this being completed, the water was let on moderately, until the new ashes and lime were well saturated; after this, I allowed the whole to stand one day. The next thing to be done was to clean out the Receiver and wash off the platform, and throw the wash upon the top of the ashes in the leach, and then let on the water gradually until the leach gave out the leys. If the first running should not be clear, put the leys back upon the leach until the leys run clear. Leys thus treated are more easily evaporated, and the salts which result from the process, will be found to melt easy. In furnaces for making Pot Ash, three kettles of 90 to 100 gallons capacity each, are set in a range, and one fire heats the three kettles. When the salts are reduced to a consistency of mush, the fires should be increased until the kettles become red hot; the salts soon become of the same color, and when thoroughly melted look like melted iron. In this state it is dipped off into iron coolers, which should be made perfectly dry beforehand. In about twelve hours the whole mass becomes hard as a rock. The wood for melting fires should be very dry and split small. In the cooling, the most impure part of the mass falls to the bottom, hence the bottom of the mass will often be of one quality and the top of another, and should be packed in different casks as being of different sorts, or that which is inferior should be de dissolved and run through the leach again, as it is a losing business for the manufacturer to send inferior ashes to market, as the expense of freight and transportation are the same of the bad as of the good, and frequently amounts to so much, as that when the ashes reach the hands of the consumer, that the cost of the two qualities will be nearly equal; as for example, a barrel of 1st sort Pot Ash, put up at Buffalo, weighing five hundred weight, and worth $20, or $4 per hundred weight, and a barrel of 3d sort, put up at same place, of same weight, and worth at the usual difference in price, $13.75, or $2.75 per cwt. When these two casks reach the manufacturer in the interior of England, the difference in cost, as compared with their relative worth, will be found nearly equal. The freight duties, transportation, &c., being the same of the one as the other.

In the packing of Pot Ash, it is important that the barrels should be made of dry timber and strong enough to bear the great weight of the ashes. The barrels should

have sixteen large and strong hoops. If the stave is twenty-nine inches, which is the New-York size, there should be three spaces left instead of one, a space between each four hoops instead of between each eight hoops, that is, the cask should be hooped in the same way as a whiskey barrel, four hoops in each division. Barrels hooped in this way, when piled up in tiers, will not open at the bilge joints like barrels which have eight hoops at each end and all the space in the middle, for in such cases the whole bilge is unprotected, while in the other case only four or five inches of the bilge is left uncovered by the hoops. The barrels after being packed, should be kept dry, or otherwise the ashes will attract the moisture from the outside, dissolve, stain the cask, and become crusted, which materially depreciates the price in all foreign markets as well as our own. It is a very common practice for the Inspectors to leave barrels of ashes out of doors exposed to the weather. This is a violation of law. The ashes are greatly injured by this exposure, and more than ten times the cost of storage upon an average.

Pearl Ash is a carbonate of Pot Ash. There are two processes of calcining the alkaline salts. One which is the most common, is to perform the process in a reverbatory furnace; the other is by heating the salts to a red heat in iron cauldrons or kettles, at the same time keeping the salts constantly in motion with an iron spade, to prevent them caking on the iron and also to expose the salts to the heat and the air at the same time. The ashes calcined in a reverbatory furnace, are generally tinged with a bluish caste, and those calcined in iron kettles are tinged with a slight yellow caste. In calcining ashes, in both processes care should be taken to so moderate the heat in the commencement of the process as to prevent their becoming fused. This is done by keeping the salt constantly stirred, and keeping the fire moderate until the salts are well dried. I have made Pearl Ash by both processes. I constructed a reverbatory furnace of large size, having an arch of fourteen feet in width, with a rise of but fourteen inches in the centre. The hearth was made of fire brick, fourteen inches square and eight inches thick, and the partition between the furnace and the hearth floor, was raised three inches, and was eight inches wide of the same kind of brick; the arch was made of fire brick, moulded so as to make the arch without the use of mortar for the bevel. When the arch frame was taken out, although of great width, the crown only settled one inch. The first arch I constructed I used mortar, and when the centre was burnt out, the whole arch settled down upon the hearth. A reverbatory furnace constructed in this way, possesses the advantage of confining the flame of the fire to the surface of the salts. The grate for the wood was fourteen inches below the hearth of the oven. The furnace extended the entire length of the oven on one side, on the opposite side were flues every six inches, which met in a chimney in the centre. In this way, with dry ash wood, split fine, a sheet of flame could be spread at the same time, over the whole surface of the hearth, and the calcination was therefore a speedy operation when managed by an experienced workman. In the manufacture of Pearl Ash in iron kettles, there is one advantage which deserves particular notice. It is this, the fixtures cost but a trifle. Take for example a thirty gallon iron kettle, set it in a furnace of stone or brick, and in this put the common leys, such as are used by families for making soft soap, may be evaporated and calcined. In evaporating or boiling down the leys, care should be taken to keep the salts well stirred when they become thick as molasses, the stirring must be kept up until they are thoroughly dry, when this is attained the heat may be gradually increased until the salts become of a light greenish hue, and finally they will, by a continuance of the heat and constant stirring, become white. If it is desirous to make the Pearl ashes very good, dissolve the calcined salts in clear water, allow the solution to settle and then carefully take it off into the kettle and boil down as before, and stir off as in the first process, and a beautiful white Pearl Ash will be the result. I use no lime in the ashes for making Pearl Ash. Care should be taken when the salts become quite thick, not to have the fire so hot as to melt or fuse them, otherwise these may run down into Pot Ash.

Ashes are an abundant production, and every family can save several dollars worth every year. E. MERIAM.

From the Journal of Commerce, April 28, 1843.

NEW YORK INSPECTION LAWS.

"The operation of the New-York Inspection Laws, may be judged of by a case which I will state.

In 1818, a large lot of Pot and Pearl Ashes were shipped from New-Orleans to New-York, to be put on board a vessel for Boston, which was to come alongside and receive the ashes on board, to avoid the expense of cartage; but the house (Mr. Joseph Osborn,) to whom the ashes were forwarded for transhipment to Boston, found that the law of this State prohibited the export, unless the ashes should be first sent to the Inspection office and inspected. The Ashes were, therefore, landed, sent to the Inspectors' office, &c. These Ashes had all been manufactured by one house, and put up with great care, in the best of casks, made of kiln-dried staves. The Pearl Ashes were packed in casks so large, as that five would contain one ton. This was a size larger than the New-York law required, and the casks were consequently all condemned, and new casks of the legal size furnished, at an expense of seven dollars and fifty cents per ton for casks alone. Added to this, was cartage, inspection fees, fire risk, waste, delay, &c., &c. Besides this, much of the Pearl Ash was branded 2d and 3d sorts. The Pot Ash was in smaller casks, and no objection was made to the size, but the barrels were hooped so as to leave three spaces, instead of one, (which kept the air from crusting the ashes by confining the staves.) These hoops were many of them knocked off, and new hoops substituted at a considerable cost. After this expensive ceremony was through with, the Ashes were allowed to continue on the voyage to Boston. Shortly after they had left here, one of the manufacturers of the ashes, arrived in this city, and being furnished with the Inspector's bills, called upon that officer to enquire how it was that he had put a bad brand upon part of the ashes; and was told by him that his foreman had stated that many barrels of the Pearl Ashes were discolored, by having small pieces of red brick mixed through the Ashes, which had been broken off the pearling oven in the process of manufacturing. The manufacturer replied, that such could not be the case, for the reason that the ashes had been calcined in a reverbatory furnace, made of white crucible clay, besides which, the Ashes were all of a most superior quality, having been made in a very large establishment, where both Pots and Pearls were made, which afforded the opportunity of selecting such sorts only for Pearl Ash as would calcine without fusion, and were made in a furnace having but a fourteen inch arch, in a span of fourteen feet, so that the flame of the fire was confined to the floor of the furnace, so as to make the process of calcination perfect.

On the arrival of the ashes in Boston, the entire parcel was sent to the office of Dr. David Townsend, one of the best judges of the quality of Ashes, in the United States, and who had some years previously, published a work on the manufacture of Ashes, which was much esteemed by manufacturers.

Dr. Townsend opened this lot of Ashes, and sent for several of the dealers in Ashes, to come and examine the quality, which he pronounced, without exception, the best Ashes he had ever seen. Dr. Townsend advised the owners of the Ashes to advertise them for sale at public Auction, and to give notice in the newspapers that they would be sold in lots to suit purchasers. They were so advertised, and were all sold for home use, at from five to fifteen dollars per ton above the market price of export Ashes. Some of these Ashes came back to New-York, Philadelphia and Baltimore. The manufacturer took duplicate bills from the Inspector at Boston, with which, and the account of sales of the Ashes, he waited on the New-York Inspector, who, with great promptitude, discharged the foreman who had deceived him in the quality of the Ashes. The initials below are those of the brand of those Ashes, which a reference to the New-York and Boston Inspection Books will fully explain and show.

M. M. C."

From the Journal of Commerce, June 10, 1843.

POT AND PEARL ASHES.

There are at present in this market, about ten thousand barrels of Ashes, esti-

manufacturer, commission merchant, and shipper, and particularly to

Your friend,
CYCLOPS."

From the Journal of Commerce, July 21, 1843.

MESSRS. EDITORS :—Several weeks since you were furnished with the information that there was a very considerable difference in the prices of Ashes at Liverpool, whether from the Canadas or the United States, and that the difference was then three shillings sterling per cwt. By the steamer Great Western, a few days thereafter, this information was verified by actual quotations, Montreal Ashes being quoted at twenty-nine shillings, and New-York Ashes at from twenty-six to twenty-nine shillings. By this quotation it then appeared that some New-York Ashes brought as high price as Montreal, while some was depreciated by the before named difference of three shillings. By your quotations of yesterday, per steamer Caledonia, of date the 4th instant, Montreal Ashes maintain their price, while those from New-York have declined to twenty-four shillings, making the great difference of five shillings, or one cent and one quarter of a cent per pound. While Colonial Ashes are free of import duty, the States pay duty of nearly one half cent per pound. Thus the exporter of Ashes from this country, has to face a difference against him of nearly one cent and three quarters per pound.

The cause of this difference, in the first instance, is from the deterioration of Ashes in its manufacture ; and now that you have proof to back assertion, you may state the fact and the cause. As in the manufacture of salt, manufacturers have used lime to an extent injurious to themselves and others, so the manufacturers of Ashes have used large quantities of salt in the production of Ashes, to the injury of the exporting merchant and consumer. By adding a considerable quantity of salt, the quantity and weight is increased, while the appearance of the Ashes is not altered. The deception escapes the inspection of the merchant, and of the legally appointed Inspector, while a chemical analysis discovers the adulteration. There is now a larger quantity in the hands of the Inspector, than ever before at any one time, and now is the time for investigation and close inspection, while the deception may be traced to where it belongs. The Ashes now in hand are held on account of the manufacturers, by commission merchants, who have to render accounts, which must reach back to the very makers of the article. By the Inspector's returns, the settlements with the manufacturers must be made, and let the penalty fall where the guilt lies ; or, as there is no penalty, let the misdemeanor be properly attacked. There are probably 15,000 casks on hand to be inspected, all of which exported, will be subject to this condemnation. The difference of one cent per pound, would produce the sum of about $75,000. Perhaps but few of the makers are guilty, and nearly all of this large amount can be saved. At all events, let the guilty suffer, and let the innocent escape.

IMPORTER.

REMARKS ON THE ABOVE.

I have on my files, a Circular of Messrs. Cropper, Benson & Co., of Liverpool, England, dated 11th month, 16th, 1816, which states the price of New-York Pot Ash at £57 to £58, and Boston Pot Ash at £60 per ton at Liverpool.

I have had Pot Ashes inspected in the Montreal, Boston, and New-York Inspection Offices, and Pearl Ashes inspected in the New-York and Boston Inspection Offices, and the same quality of Ashes going from each of these different ports, to the foreign markets, would be varied in the estimated value of the purchaser by no other guide than the reputation of the Inspector's brand. This is all wrong. No Inspector's brand should be allowed to depreciate the price of an article.

E. MERIAM.

CIRCULAR.

" INSPECTOR'S OFFICE,
New-York, March 19, 1828.

" That there has existed for a number of years past, in the Inspection Offices here, the practice of cancelling old bills, and issuing new ones, (without *re-inspection*,) and altering the brands, so as to give to old and crusted, and frequently damaged Ashes, (almost in a muriatic state,) the ostensible character of freshly inspected Ashes, will not be denied by any clerk, &c., in or out of office.

" The detection of frauds in the New-York Ashes, per the Alfred at Antwerp, about the 29th of May last, and the further discovery at Havre, on the 12th of June last, (putting the others which might be named out of the question,) conclusively show the truth of my assertion, as " Aen Yrel," the sworn broker, in his protest avers, that the brands on 150 casks of Ashes, per the Helen Mar, had been falsified, 1826 being effaced by 1827. That 134 of the casks were inferior Ashes, instead of superior, and that he had allowed damages to the buyer on that principle.

" Had the names of the Inspectors implicated in these fraudulent transactions, been given to the public, an effectual stop would probably have been put to such practices for the future, but it was not done, consequently they have been continued in certain offices down to the 1st instant. Such deceptive inspection is injurious to the interest of the shipper and the consumer, (at home and in Europe, to the Inspector, (who does his duty,) and will eventually be so to the manufacturer, &c., as a diminution in the credit of our brands, will necessarily affect the price abroad and at home.

" The alteration in the brands and bills generally, have taken place (covertly) almost immediately preceding the shipment, so that detection of the frauds can only take place at the point of destination. I would there-

fore respectfully suggest, that Ashes branded (we omit names, Ed.,) 1827 1828, should be emptied out and examined, and if they are found much crusted and damaged, to a moral certainty they have not been inspected, or re-inspected at the time the "Weigh Note" is dated. Let a Notarial Act be framed, stating the per centum of unmerchantable Ashes of each inspection, which will show which Inspector has done his duty, and let the correspondent in this city, be directed to give it publicity, (in the public prints,) and a preference in future purchases, &c., to the person whose Ashes show he has acted faithfully and honestly as an umpire between the seller and purchaser, which in fact is his real capacity in the eye of the law.

"A few exposures of this kind, in the public prints, would do more to correct illegal practices here, than all the provisions in the Statutes; because it would make it the interest of an Inspector to act honestly, (if principle and law cannot induce him uniformly to do so,) but emphatically, if the Inspector was compelled to make good the damages sustained.

"Having notoriously been one of the largest purchasers and shippers of Ashes, I had reason to remember the heavy deductions made for crusted Ashes on the account sales in Europe on my account. At that time the inspection laws did not require the year of inspection to be branded on the casks. I had to depend solely on the date of the "Weigh Bill," on which (both then and now) I find no dependance should be placed.

"From the 7th of January, 1825, to the 1st of March, 1828, I have, as an Inspector, known that the shipper has been systematically imposed on by the alteration of brands and bills, and have remonstrated verbally and in writing, on its illegality (to say the least) in vain. But being notoriously poor, as a matter of course, my remonstrances have not been attended to.

"My motto is, that whoever pays for a fresh article, (immaterial what,) he is entitled to it.

"How stands the fact? An Inspector wishing to save the charge of re-inspection, adopts one of the following modes: the year 1827 is shaved or dubbed off, and 1828 is substituted; or the brand of 1828 is applied, and 1827 burnt out; or the brand with the figure eight is impressed over the seven, and the deception is perfected, merely by cancelling the old and issuing the new bills. Clerks, foremen, &c., have remonstrated against such illegal acts, but having yielded and altered the brands and bills, have imprudently committed themselves, so that they must, from necessity, sanction the acts of their superiors.

"If, however, the consumer abroad and at home, will submit quietly to the impositions I have mentioned, (after being apprized of the mode and manner of effecting them,) I of course must acquiesce.

"The discoveries which have from time to time been made, of frauds in Cottton, to the South, (see our daily prints,) have been justly reprobated; but similar frauds in Northern Inspectors, are deemed merely venial offences. I am not casuist enough to discover, that a bad article enclosed in a 'bit of bagging,' or a bad article enclosed in 'a cask,' can make any difference on principle.

"Will the Gastons, Perkins, Thompsons, Croppers, Lenoxes, Gracies, Remsens, De Rhams, De Ruyters, Thorndykes, Hones, and a host of other equally *conspicuous* merchants, both at home and abroad, say that *frauds in Cotton*, by a Southern man, is an unpardonable offence, but *frauds in Ashes*, by a Northern man, is a venial one.

"As I have, from experience, found that half way measures are always the worst when "principle is at issue," I now aver that the New-York Inspectors who have altered their brands and bills without re-inspection, (we omit names, Ed.). The charge is direct, which I can prove by their friends. The Ashes shipped since the 1st of January last, by the Henry IV., the Henry and other vessels will ensure their silence, but if they wish an inquiry, I give them a *carte blanche* as to the mode and manner.

I am, your most obedient servant,

R. R. HENRY,

Inspector of Pot and Pearl Ashes."

Note.--March 24—I have just ascertained that Ashes have recently been shipped, (uncertain where,) inspected early in 1826, altered to 1827, and also of 1827 altered to 1828, without even examination, much less actual re-inspection.

"The very agent employed to make the changes, (privately) objected, on the simple principle, that absolute injustice was done either to the shipper or consumer, abroad or at home, but from interested motives they succumbed to their superiors.

"The files of the Executive of this State will show, that remonstrances against malpractices, here and elsewhere, have been made by me officially, dated 4th March, 1825, of 6th March, 29th September, and 13th October, 1827; also to the Chamber of Commerce, dated 9th and 13th June, 1825, to which, and the Report of their Committee, Jeromus Johnson and James Boyd, Esqs., dated some time last fall, I specially refer for particulars.

"That I have protested, as a merchant and Inspector, for nearly four years past, against such secret and illegal practices, will not be denied, as I could not certify to a re-inspection having actually taken place, (if called upon either legally or equitably,) within six, twelve, eighteen, or probably twenty-four months. Will shippers not even make the inquiry on behalf of their constituents? "Are these things so?" when character is in jeopardy.

"Without the *direct interference of shippers*, even the revised law (to go into operation some time hence) will not absolutely prevent illegal inspection, as I can easily make appear. *Individual opposition*, however, to *illegal practices*, of long standing, is only productive of the *oppression of the individual*, if not his absolute *ruin*, of which I am *personally* a striking example.

R. R. HENRY."

To Messrs. Meriam & Co., New-York.

INSPECTION OF ASHES.

We have here given three entire letters, from three different Inspectors of Ashes. We have also given our own remarks, &c., and also two communications published in the Journal of Commerce, and remarks of the Editors of that paper.

We think these letters, communications, and remarks, show the absurdity of having Pot and Pearl Ashes inspected by Public Inspectors. Ashes are no more liable to adulteration, than molasses or sugar, or soap, or tea, and hundreds of other articles we could name, and as to putting up stones in the barrels, there is as little danger as there is of enclosing such deceptions in bags of cotton.

The Soda Ash which comes to our market, is not inspected, neither is the Barrilla, and both these alkalies are capable of the same adulteration as Pot and Pearl Ash, and vary more in quality. I have found, from near thirty years extensive experience, that the brand of the manufacturer is a far better reliance than the brand of the Inspector. I believe also, that the process which the casks and ashes undergo in the overhauling, examination, &c., &c., is, on an average, an injury to the maker and consumer of more than ten dollars per ton.

Compulsory inspection is a restraint upon trade. Manufacturers have not that inducement to make a good article if it is to be inspected, for in such case it is only necessary to make of it a quality to pass inspection, but if there is no inspection, the manufacturer will make his goods of the best quality, in order that they may command a ready sale and the highest price.

Eggs are an article of very extensive sale, and it is often the case that bad eggs are sold for good ones; will it be contended that this article shall be inspected.

Butter and Lard are sold without inspection, and these articles vary as much in quality as Ashes; the purchaser prefers his own opinion to that of an Inspector.

If the law requires Inspectors to be appointed, it is the duty of the appointing power, to select a person who is competent from experience, to form an opinion of the quality of the article.

The Constitution never contemplated that the appointment to office should be a political patronage. What would be said of a Chief Magistrate who would appoint a shoe maker for Port Physician? and such an appointment would be no more absurd than the appointments which have been made of Inspectors of Pearl Ash. We do not mean our remarks to apply solely to the New-York Inspector, who we believe is a worthy citizen, but to his predecessors also, who, like himself, had no experience to qualify them

for its collection was not sufficiently effective. The tax on the interest of money bonds has been more available, yielding about $15,000, and would undoubtedly have reached the estimated sum of $20,000, if the assessment had not been restricted to the actual amount of interest received within the year, allowing not only the deduction of interest paid, but also what was due and unpaid to the creditor.

"It was expected by the Committee of Finance, in its supplemental Report to the last Legislature, that the change in the mode of taxing licenses to merchants and auctioneers would produce an additional revenue of $20,000, but the result is that the amount has only increased from $90,000 to $96,000. The whole product of the taxes on licenses generally, has been diminished about three thousand dollars compared with the year 1842, an effect which is partly ascribable to the imposition of a rate upon some subjects too high for revenue, and amounting almost to prohibition. The tax on hawkers and pedlars, for example, has lessened more than one half the income from that source, and the revenue derived from exhibitors of shows, which was heretofore considerable, has dwindled to almost nothing. I recommend particularly, a reduction of the tax upon the last mentioned subject. As the law now is, every performance or exibition for reward, except lectures on literary or scientific subjects, is burthened with the onerous taxation of sixty dollars, which, if not amounting to prohibition in a majority of cases, leads directly to plausible and ingenious evasions of the law. The most innocent and beneficial recreations, such as musical concerts, sacred or otherwise, are either totally excluded, or the performers are driven to the expedient of relying upon voluntary contribution. A moderate tax would not only legalize harmless and useful exhibitions, and open a profitable source of revenue, but might be so regulated as to operate as a discouragement to every thing demoralizing and pernicious.

"I recommend also, if the policy of the Legislature be revenue and not prohibition, that the tax on pedlars and hawkers be reduced. If the policy be prohibitory, the existing tax will probably accomplish the object. The tax on deeds, probats, and administrations, appear to me to be moderate and expedient, but it is essentially necessary that the law should be so modified as to make the Clerks of Courts the exclusive collectors of the tax, rendering them accountable, precisely as they are now accountable, for the taxes on law process. I respectfully suggest also, if it be deemed proper to continue the tax on interest and income, that the law should be so amended as to render these sources of revenue more effectual and abundant. A tax on moneyed capital employed in loans or upon accruing interest, whether actually received or not, might be conveniently substituted for the present regulation; and I think it would also be advisable to abolish the distinction which exists, or is supposed to exist between bonds or notes which represent money actually loaned, and similar paper received in exchange for the sale of property.

"As it is desirable at present to guard against any diminution of the revenue, I also respectfully suggest that the tax on attorneys and physicians, should be graduated and made specific, so as not to depend on the amount of professional income. The ascertainment of income or annual receipts is in itself so difficult and uncertain, that without supposing any sufficient temptation to evade the law, it must in some instances, at least, be necessarily inoperative.

"Presuming that the general assembly, in the present condition of things, would be indisposed to reduce the State taxes, but that probably some item of taxation might be preferred to others which have been recently tried, I respectfully suggest, as worthy of consideration, a tax upon collateral inheritances, bequests and devices; a tax which has been long tried in some of our sister States, and particularly in Pennsylvania, where, without producing public dissatisfaction, it has proved highly productive to the State. It is imposed only upon the recipients of an unexpected bounty, and cannot be supposed to be a subject of just complaint.

"Whilst it gives me pleasure to concede that a very large proportion of the County Courts make good selections of Commissioners of the revenue, I have not changed my conviction that the public interests would be benefitted by placing the tenure of that important office upon a more permanent footing. The correct and faithful exercise of its duties, is at the very foundation of our revenue system, and that cannot be secured or expected in those cases where frequent changes are made of the incumbent."

PUBLIC PRINTING.

A gentleman informed us yesterday, that he called on the Anti-Assessment Printer, Mr. F. Hart, at the corner of Pine street and Broadway, with a Case, which he wished to have printed, and requested Mr. Hart to make an estimate of what he could afford to do the work for. Mr. Hart, after making the calculation, named Thirty-Four Dollars for the job. The gentleman then called on one of the Corporation Printers, to ascertain what he would do the same work for. The Corporation Printer made an estimate and named *SIXTY DOLLARS* for the job. Mr. Hart, of course, had the preference.

The City Comptroller's Report of 1841, is charged at $1,107.75. Mr. Hart would have printed that Report for one seventh that sum.

NEW YORK MUNICIPAL GAZETTE.

Published by the ANTI-ASSESSMENT COMMITTEE, and Distributed Gratuitously---Edited by E. Meriam.

VOL. I.] NEW-YORK, APRIL 12, 1844. [No. 22

MORGAN LEWIS.

The individual whose name heads this obituary notice, departed this life on Monday morning, April 8th, at the age of ninety years. He had held the office of Governor of this State, Judge of the Supreme Court of this State, Major General of the Army of the United States, and many other important offices. The strength of body and powers of mind were continued to him to a late period in life. We have had several conversations with him during the last few years, in reference to occurrences that took place shortly subsequent to the Revolution, and were astonished at the excellence of his memory. In 1839 he signed an Anti-Assessment Memorial to the Legislature, which is now in the Archives of the Senate of this State. His signature to this Memorial is well worth examining. The hand writing is without the least evidence of old age, and is the most bold and firm penmanship of any name upon the Memorial. During the last few years of his life, his hearing became difficult, but in every other particular he retained the powers of body and mind to a suprising degree to the last, for a person who had undergone so much of the labors of public life.

Governor Lewis was an excellent man, and one of the old school gentlemen. When we met with him, his appearance and manner at once carried us back to the remembrance of venerable citizens who lived in the early days of the Republic, and who, one after another, have since passed away.

From the Journal of Commerce of March 27, 1844.

EXTRAORDINARY NARRATIVE.

The Port Hope (Canada) Gazette, furnishes the following narrative, which it conceives to be worthy of narration, as well on account of the singular nature of circumstances, as the moral which they involve:

Mr. Peter Moffat, who has for several years been in the habit of teaming between Peterboro', this place and Cobourg, states that a team of horses, which cost him about £75, were missing on the morning of the 6th September, 1842. After fruitless search and inquiries in the neighborhood, imagining they were stolen, he started towards Toronto in search of them, and from some account received on the way, was induced to go on as far as 100 miles beyond Buffalo, but in vain, and after spending six weeks in the pursuit, he returned home. A day or two afterwards, observing that the crows and dogs were frequenting a thicket near his barn, he searched it, and there, in a stream, discovered both his horses dead. As there was but little water at the time, he suspected they had been poisoned, and upon opening them a substance was found, which on examination turned out to be arsenic. But the most singular part of the story remains to be told. A person named C——b, who died shortly afterward, acknowledged on his death bed, that he and another person, named C——y, and one M——y, (C——b and M——y being also teamsters,) had poisoned the team: and Mr. Moffat states that C., on his returning home after the act, found one of his own horses hanging at the rack or manger, and soon after lost two of his cows, and that then he himself was taken ill and died; and M——y soon afterwards lost his team, either by drowning or having fallen into the river, and that he and two of his children shortly afterwards died; and that C——y, who is said to have lent himself to assist the others on this occasion, was subsequently shot dead in a broil at an inn in Peterboro'. Thus does an inscrutable Providence, sooner or later, overtake the guilty, however secret or well devised their schemes may be for a season.

☞ The Baptist Record states, that during a late revival in the Greenport Baptist Church, New-York, a Deacon of the church, named Randall, having engaged in prayer, told the Lord, that if his death could be the means of the conversion of sinners, he was willing to go. In about three minutes after he closed, he was suddenly attacked with a paralysis of his right side, and all sensation left him. He was carried home, and died after three days illness.—*Journal of Commerce.*

BIRDS.

During the Winter and thus far in the Spring, I have had as daily visitors, a flock of birds, consisting of fourteen snow birds and two ground sparrows. The sparrows and the snow birds appear to be on the most friendly terms with each other, and during their visits, which have been frequent and often, I have never noticed any want of harmony among them.

The previous winter, I had as visitors for a number of weeks, a flock of snow birds, but there were no ground sparrows among them. I provided food for this little flock, and they seemed very thankful for the attentions shown them. On the 29th of March, which was a fine day, one of the sparrows came and brought with him in company a beautiful bird of much larger size, and of rich plumage. This ærial stranger appeared both hungry and weary; he fed in the garden for several hours, during the whole of which time he was attended by the sparrow. It came so near the house as to look into one of the windows, and did not appear to be alarmed when approached. It was about 10 o'clock in the morning when it first made its appearance, and left a little before sun down, the sparrow all the time bearing it company. The sparrow returned next day and every day since, but the stranger has not again made its appearance. The sparrow deserves much credit for its hospitality and kind attentions. It was instructing to the mind to watch the little innocents. They are alive to kind treatment, and are confiding in exact proportion as they are well treated.

☞ We have received from ABRAHAM G. THOMPSON, Esq., a distinguished merchant of New-York, who some years since retired from business with a large estate, which he accumulated by a life of industry and economy, several Reports of the City Commissioners of the City of Philadelphia, of the Expenditures of that City.

Mr. Thompson made the following synopsis, for the year 1843:

EXPENDITURES OF THE CITY OF PHILADELPHIA, FOR THE YEAR 1843.

Watering Committee,		$63,171.84
COM. ON FINANCE.		
Int. on City Loan,	$117,432.75	
Exp.	29,309.92	—146,742.67
Committee on Police,		109,919.23
" Highways,		32,605.19
" City Property,		21,580.50
" Mending Streets,		3,334.56
" Repairing,		2,788.94
" Mending S. district,		6,365.36
" Paving do.		8,440.72
		$394,949.01

The Police includes the City Watch.

RIGHTS OF PROPERTY OF MARRIED WOMEN.

Judge Hertell, of New-York, has labored with great industry and perseverance, to introduce into the Statutes of the various States composing the Union, an improvement in the laws in relation to the rights of property of married women.

In the laws of descent and the distribution of property in this State, there is great need of amendment. We will state a case of which we have personal knowledge. A Mr. Smith, of Connecticut, some years ago married a rich farmer's daughter, of that State. On the marriage, the father of Mrs. Smith, gave her what is called in that State, a handsome setting out, They removed to this State, and resided in this city several years. Mr. Smith was taken suddenly ill

"§ 111. No power vested in a married woman, during her infancy, can be exercised by her, until she attains her full age."

"§ 117. If a married woman execute a power by grant, the concurrence of her husband, as a party, shall not be requisite, but the grant shall not be a valid execution of the power, unless it be acknowledged by her on a private examination, in the manner prescribed in the third chapter of this act, in relation to conveyances by married women."

"§ 130. When a married woman, entitled to an estate in fee, shall be authorised by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if un-married."

With regard to personal estate, the Revised Statutes allow any trusts to be created by Will or Deed, which could have been created under the Revised Laws. The only difference between the provisions of the Revised Laws and of the Revised Statutes, is that the latter have limited the duration of such trusts to two lives in being at the creation of the estate. See, Opinion of Chief Justice Savage, Ante. page 9.

With regard to the creation of trusts of real estate, to receive the rent and profits, and to apply them to *the use* of any person, the Revised Statutes have made great alteration, and so essential a change, that we have deemed it important to give in full, the manuscript Opinion of CHIEF JUSTICE SAVAGE, on this question, written since he left the Bench of the Supreme Court of this State. It will be found in number six, of this volume, page 97.

In 1837, when at Albany during the Session of the Legislature, we drew up a Bill in relation to the rights of property of married women, consisting of nine sections, which we subsequently submitted to Chief Justice Savage, and it met his approval. Judge Hertell added a Section to this Bill, it was then sent to JOHN C. SPENCER, Esq., now Secretary of the U. S. Treasury Department, and he added ten Sections more, making twenty sections; it was then reported to the Legislature by the Committee of the House of Assembly having that subject in charge, and is to be found in the printed Assembly Bills of that year, No.

POISONED SEWERS.

Exertions are making to infect the atmosphere of the whole city, by making the Public Sewers the receptacles of the discharges from night vaults. When the Yellow Fever was in New-York, in 1822, the Old Sewer from the Old Bridewell, through Warren street, or a Sewer which communicated with the drains of the houses in that street, was found to be a conduit for infection.

The Sewer in Leonard street, corner of Elm, some years since, sickened a great number of individuals in Leonard street, between Broadway and Elm street.

If the city is visited with an infectious disease, it will seize upon the atmosphere of Sewers thus used, and spread over the city with electric speed, and find its way into every habitation that has any connection with such conduits of Mephetic air. Place in one of these receptacles of destructive gases, a piece of plank painted with white lead, and it will be found stained a blue-black, and silver metal will be found to become almost instantly tarnished.

There is a great desire among Corporation officers to have Sewers put down, for the sake of giving jobs to Surveyors and Contractors.

THE ELECTION.

The result of the Election has astounded the office holders. The abuses and impositions which have been practised for years, by both political parties in power, in the Corporation, have aroused the indignation of the People to such an extent, that they were determined to drive the depredators from office.

The Democrats brought into the field as a candidate for Mayor, a man of great excellence of character, and who was wholly unexceptionable. Mr. Codington, had he been elected, would have been a Public Magistrate that politicians could not have *diddled* with. As a citizen, he is greatly beloved. The defeat of such a candidate, makes the victory of ten-*fold* force.

Very many voted for Mr. Codington, because they did not like to scratch off the name of a good man. Any other of the candidates brought forward at Tammany Hall, would not have received one quarter of the votes cast for Mr. Codington.

We perceive in the list published on Wednesday morning, the 10th instant, by the Journal of Commerce, that the new party has of the Board of Aldermen, 12 members. They have therefore, in the Board of Supervisors, 13 members, which give them the power to reduce the Taxes.

Among the candidates for re-election, of both parties, which have been defeated, were several who had, while members of the Board, been large dealers, and they had received large sums from the City Treasury. These men have been signally defeated, and the result is good.

The district in the 5th Ward, (Chapel street,) where the Anti-Assessment Banner was displayed, gave for Mr. Franklin, 116; Mr. Codington, 198; Mr. Harper, 406. This district embraces the section of the City where the Corporation officers depredated so shamefully upon Chapel street.

The new party have a great work to accomplish in the affairs of the Corporation. The Public officers, now holding office, with few exceptions, should be re-placed by the best citizens who can be found.

The Receiver of Taxes, is an important office. Oliver Cobb, of the 1st Ward, is probably the best qualified for that office of any person of whom we have a general knowledge. His experience in the collection of Taxes, should not be lost to the City. He is a good man.

Some person who has been an expert discount clerk in one of our banks, should be selected for a clerk in that department.

REMARKS

Upon the Saltville Fossil Salt Formation, in Washington County, Virginia, read by Eben Meriam before the Members of the Department of Natural History, of the Brooklyn Institute, April 11th, 1844.

Mr. Chairman and Gentlemen:

I have the pleasure to exhibit for your examination this evening, specimens of Salt Rock, red and blue Clay, Plaster, Shell Lime, black Bituminous Shale, and Slate, from the Saltville Salines, in Washington County, Virginia. Also, a bottle of Salt Water, from a well sunk at that place, in 1841, to the depth of 214 feet. Also, a sample of Salt, formed in the back kettles of the furnace heated by wood fire, and chrystalized by slow heat. Also, a sample of Salt, in large pieces, formed upon the steam pipe. Also, a piece of blocking, formed on the inside bottom of the kettle, in the process of evaporation. Also, Salt, &c., formed on the cisterns. These specimens and samples have been sent me by Alexander Findlay, Esq., of the house of Messrs. Findlay, Mitchell & Co., extensive Salt manufacturers at Saltville, Virginia, and have come to hand in good order, a distance of 700 miles, 330 of which was by wagon.

The numerous Salines in the United States, and which are only to be found in the interior of the country, derive their saline properties, without doubt, from the fossil salt embedded in the earth, and these specimens may be highly useful to the persons engaged in boring for salt water, to compare with the stratas they pass through in the sinking of the shafts. The nearness of the fossil salt, I think, may be judged pretty accurately of, from the formation of the surface, and the strength of the brine.

These specimens are interesting, from the fact that they are from the first Salt Mine discovered in the United States.

These specimens are marked and numbered, and are accompanied with a memorandum stating the positions they respectively occupied in the stratas, which there form the upper crust of the earth.

The salt water, of which the bottle exhibited is a sample, was taken from the well on the 31st of January, 1844. The temperature when raised, was 51 degrees of Farenheit, the depth of the well 214 feet. The specific gravity, as denoted by the Hydrometer, is 23 deg. The Hydrometer is graduated at 0 for fresh water, and 25 deg. for water fully saturated with salt. This salt water has no superior, and I am satisfied contains as much salt as cold water can be made to dissolve; boiling water will take up a little more.

The sample of Salt marked No. 26, is a beautiful article. The chrystals are of the Hopper shape, and are well formed, having a translucent appearance and possessing a greater portion of *chloride of sodium* than any Salt made in the United States which I have ever met with. This salt was chrystalized in the back kettles in the range, which are not heated to that degree which the kettles nearer the mouth of the furnace are subjected to. The more moderate the heat the larger the chrystals, and the more valuable the Salt.

These specimens of salt rock are numerous and of good size, the largest weighing upwards of four pounds. One parcel of these are numbered from 1 to 13 inclusive, and show the formation of the strata, commencing with a depth of 220 feet below the surface, and extending to the depth of 273 feet, in the order in which they are numbered, commencing with number one, at 220 feet, and ending with number thirteen, at 273 feet. Intermixed with the salt, is clay, plaster, and slate, in lumps and particles, showing as I think, conclusively, that the strata was a confused promiscuous mass when it became deposited in its present bed, and had been broken up from a previous deposit by some convulsive throw.

In many of the Salt mines, the stratas of salt are of a wavy structure, showing that the salt had been formed in a quiet and calm precipitating of the earthy impurities, but here it would seem, such a deposite had once taken place, but had subsequently been entirely broken up. I have dissolved some of the specimens in water. A precipitate of clay is formed in powder, but the slate and plaster are in small lumps of uneven fracture, and of every variety of shape.

From a depth of 273 feet, to the depth of 386 feet, the shaft was made by an augur. The pieces of salt rock raised from this depth, differ in appearance from the upper stratas, being more free from plaster, slate, and clay. Specimen marked number 31, is a piece of pure rock salt, and free from any earthy mixture. This piece is from the deep boring.

Specimens marked numbers 21 and 22, are plaster or gypsum, and nearly a pure sulphate of lime. The strata which immediately overlays the salt rock, is nearly forty feet in thickness of solid gypsum.

The surface is alluvium to the depth of eighteen or twenty feet. These stratas of plaster, red and blue clay, and slate, are to be found alternately, until reaching the depth of 180 feet, where the strata of forty feet of gypsum or plaster is reached, which strata reposes upon the salt rock.

The specimens marked number 14 to 20, inclusive, are of red and blue clay. These, with the plaster, form the stratas between the alluvium and the 40 feet strata of plaster, which lies directly upon the salt rock. These clay stratas are intermixed with the stratas of plaster, and occupy a position between the alluvium of 20 feet upon the surface, and the 40 feet of plaster reposing upon the salt rock, constituitng a body of 180 feet in thickness.

The other specimens I will notice after giving some quotations from the letters of my correspondent, Alexander Findlay, Esq., one of the proprietors of these mines, and some remarks thereon.

In his letter dated Saltville, Sept. 7, 1841, he says:

"About forty-five feet from the old Salt Well, and the same distance from the new one in which the salt rock was discovered, we commenced two or three weeks since to bore another hole (not having reached water in the one we were sinking, we are however, still going on with it,) which we have sunk to the depth of 125 or 130 feet; in this hole, at the distance of about 18 or 19 feet, we came to a small strata of plaster, and have since been principally in red clay, occasionally going through small stratas of plaster and slate; at about 120 feet we got into a large body of plaster and slate, which we have been in ever since. At about 150 or 200 yards north from where we are digging or boring, we come to slate, next a layer of bituminous shale, then shell lime stone. On the South, the first rock we came to was lime stone. In digging or boring we have never come to lime stone. Bituminous stone coal is found about eight or ten miles from us, but not in sufficient quantities to work. At the distance of from forty to fifty miles, a supply might be had, but it is difficult to get roads to it, that at present we would not be compensated for making them, and we use wood in the manufacture of salt."

In Mr. Findlay's letter of Nov. 8, 1841, he says:

"Since I wrote you in September, we have succeeded in getting salt water in the augur hole we had then just commenced, at the depth of 209 feet. We have at present no idea of excavating to the salt rock. The water we get is as strong or stronger than we could make it by raising the rock and dissolving it, and we think it much cheaper to raise the water."

The same gentleman, in a letter to me of April 27th, 1842, states:

"In the well we dug, and in which the salt rock is found from 180 to about 220 feet, it is nearly a solid bed of plaster. In the augur hole, from 190 to 214 feet, its greatest depth, we find stratas of plaster, then clay, sand, and slate, mixed. The slate being such as is in the salt rock sent you, and not in layers or solid masses. In this augur hole we did not strike any salt rock, nor did we bore to the depth at which we struck it in the well. We got the water, at first but a small quantity, in the clay, sand and slate strata; by pumping, the quantity of water has increased, until we have now an abundant supply to make as much salt as we can vend in our market. The water from this augur hole or well, is no doubt superior to any in the world. From the experiment that we have made, we do not see how it could yield more salt in solution. The strongest brine taken out of our kettles when boiling, and half filled with salt, and let stand until cool, stands with the Hydrometer in use, at from 22 to 22½ degrees, and the water in this well, when worked moderately and as hard

ed ; perhaps the settlers in the neighborhood did make what salt they wanted at them. At a very early date wells were dug, and have since been extensively worked. One of the oldest wells, and one of the best, having, some thirty or thirty-five years since, caved partly in. The proprietors of Saltville, about twenty-five years since, at the distance of about fifty feet from it, commenced digging a new well, which they sunk to the depth of about 110 or 115 feet, and stopped, finding the old well likely to hold out and answer their purpose. This new well was afterwards sunk to about 178 or 180 feet, and again stopped. About eighteen months since, we determined to sink still further in this well, and if possible, get salt water. We again commenced digging in plaster, mixed with blue slate, and continued in it about 40 feet, when we struck the salt rock. In this we dug about 50 feet, and have since bored about 100 feet, when we got out of the salt rock and got into slate, with small portions of plaster, which we have been in for six or seven feet."

Thus this important discovery of the fossil salt, was accidental. Nature had provided for the Buffalo, Deer, &c., the saline springs to the surface, and as the country became settled, the wells furnished the salt water for the wants of the settlers, but now he great population is provided with the mineral itself, which has been carefully treasured up against the time of need. It is thus that Nature has in readiness in the great terrestrial store, a supply for all the wants of our race, as these are developed in the progress of time. This mineral deposit, like all the saline deposits on our continent, is placed in the interior of the country, where a supply of salt from the seaboard would be expensive to the consumer. Here also, is the wood for fuel, and when this is exhausted, coal is near by, and they have only to make a good road, and this is obtained also. Not only the fossil salt is furnished, but Nature also dissolves it ready for the evaperators, and it has only to be raised from the ground and made into salt. Nature also, in the rays of the Sun, affords the solar heat by which the water can be evaporated without one cent expense of fuel. How benificent ! how bounteous, is the source of all good !

The description of the stratas which overlay the mineral salt of the Saltville mines, is very much the same as those of the Cheshire salt mines, in England. I have a drawing of the stratas of the Cheshire mines. The only difference is, that the overlays of the Cheshire mines contain some sand stone. The Cheshire mines were discovered by accident, in mining at the depth of 120 feet. I have some of the fossil salt of these mines, which I exhibited to you at a previous meeting of the members of the Institute.

The sample of plaster marked No. 23, is from a location about five miles distant from the Saltville mines.

The sample of red clay, marked No. 24, is from the Artesian well, a boring about 40 feet from the shaft, sunk in the salt rock. It is a little remarkable, that in sinking a shaft to the depth of about 400 feet, no water should be found, while in one only 40 feet distant, water should be found at the depth of 214 feet, in such abundance, as to furnish all the works, and leave a large surplus.

The sample marked No. 25, is salt formed on the steam pipe. This is as solid and of as large size as the Bonaire salt. Samples marked Nos. 27 and 28, are of saline incrustation, formed on the cisterns which contain brine. I have not examined these particularly.

Specimen marked No. 29, is shell lime stone. The marine shells which form this rock, you will perceive, are very perfect, and discover the form of each individual shell with great distinctness.

Specimen marked 30, is a small piece of shell lime stone, which has a piece of white yarn wound around it. When these specimens arrived, on opening the box I discovered this piece, and carefully unwound the thread, examining its fibre, presuming that it was the wool which it was spun from, that was the curiosity, until the whole was unwound, when I discovered the specimen was in two pieces, and that the fracture was caused by a shell which extended across the whole interior, and that the yarn thread was used to confine the pieces together.

Specimen No. 32, is black bituminous shale.

You will perceive by my quotations of Mr. Findlay's letters, the locations in which these several specimens were found. This particular description is important, and will be very interesting to those having salt springs, in forming opinions as to the nearness of the fossil salt.

Mr. Milnor writes to me from Saltville, under date of March,15th, 1844, and says :

" Messrs. Findlay, Mitchell & Co., are now altering and repairing their large steam furnace, which when completed, will closely resemble the one lately erected at Onondago, by Messrs. Ives, Spencer & Nolton, as described by them in Dr. Wright's Report."

You will see in this, the importance of Messrs. Ives, Spencer & Nolton's communication to the Superintendent of the Salines, the advantage of annexing it to his Report, and the benefit of the publication of it by the Legislature. This Report of Dr. Wright's, I forwarded to Messrs. Findlay, Mitchell & Co., of Saltville, early in February.

I shall place some of these specimens in the State Geological Cabinet, at Albany, in the course of a few days, for the benefit of persons who may desire to examine them, and also furnish a printed copy of this paper to each member of the Legislature. I shall also furnish a set of these specimens to the DEPARTMENT OF NATURAL HISTORY, OF THE BROOKLYN INSTITUTE.

EBEN MERIAM.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, DEC. 11, 1844. [VOL. I....No. 23.

UNITED STATES STOCK EXEMPT FROM TAXATION.

The Supreme Court of the United States, in 1829, made a very important decision in the suit of *Weston, and others*, vs. *The City Council of Charleston, S. C.*, touching the validity of an Assessment or Tax upon United States Stock, or Loans. The opinion of the Court was delivered by Chief Justice MARSHALL, and is set forth below. There was another question involved in the suit, which was that of Jurisdiction, the proceedings having been had in a local Court to obtain a prohibition to restrain the City Council of Charleston and their officers from collecting the tax from the holders of Government Stock, which was attempted to be enforced under a city ordinance. For our present purpose we deem it only necessary to give that portion of this opinion which determines absolutely the EXEMPTION of U. S. Stock. It may be well here to remark that the different modes of making the assessment or levying the tax, does not in the opinion of the Supreme Court of the United States, alter the principle. This doctrine is laid down by the Court in the case of *Brown*, vs. *The State of Maryland*, reported, in 12, Wheaton, R. 419. The Court say:

"Is the stock issued for loans to the government of the United States, liable to be taxed by States and Corporations? Congress has power 'to borrow money on the credit of the United States.' The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract, while subsisting, and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract. If the States and Corporations throughout the Union possess the power to tax a contract for the loan of money, what shall arrest this principle in its application to every other contract? What measure can government adopt, which will not be exposed to its influence?

"But it is unnecessary to pursue this principle, through its diversified application to all the contracts, and to the various operations of government. No one can be selected which is of more vital interest to the community, than this of borrowing money on the credit of the United States. No power has been conferred by the American people on their government, the free and unburthened exercise of which more deeply affects every member of our republic. In war, when the honor, the safety, the independence of the nation are to be defended, when all its resources are to be strained to the utmost, credit must be brought in aid of taxation, and the abundant revenue of peace and prosperity must be anticipated to supply the exigencies, the urgent demands of the moment. The people, for objects the most important, which can occur in the progress of nations, have empowered their government to make these anticipations 'to borrow money on the credit of the United States.' Can any thing be more dangerous, or more injurious, than the admission of a principle which authorises every State, and every Corporation in the Union, which possesses the right of taxation, to burthen the exercise of this power at their discretion.

"If the right to impose the tax exists, it is a right which, in its nature, acknowledges no limits. It may be carried to any extent within the jurisdiction of the state or corporation, which imposes it, which the will of each state and corporation may prescribe. A power which is given, by the whole American people, for their common good; which is to be exercised at the most critical periods for the most important purposes; on the free exercise of which the interests certainly, perhaps the liberty, of the whole may depend; may be burthened, impeded, if not arrested, by any of the organized parts of the confederacy.

"In a society, formed like ours, with one supreme government for national purposes, and numerous state governments for other purposes; in many respects independent, and in the uncontrolled exercise of many important powers, occasional interferences ought not to surprise us. The power of taxation is one of the most essential to a state, and of the most extensive in its operation. The attempt to maintain a rule, which shall limit its exercise, is undoubtedly among the most delicate and difficult duties, which can devolve on those whose province it is to expound the supreme law of the land in its application to the cases of individuals. This duty has more than once devolved on this Court. In the performance of it we have considered it, as a necessary consequence, from the supremacy of the goverment of the whole, that its action in the exercise of its legitimate powers should be free and unembarrassed by any conflicting powers in the possession of its parts; that the powers of a state, cannot rightfully, be so exercised, as to impede and obstruct the free course of those measures which the government of the United States may rightfully adopt.

"This subject was brought before the Court in the case of *M'Culloch*, vs. *The State of Maryland**, when it was thoroughly argued, and deliberately considered. The question decided in that case bears a near resemblance to that, which is involved in this. It was discussed at the bar in all its relations and examined by the Court with its utmost attention. We will not repeat the reasoning, which conducted us to the conclusion thus formed; but that conclusion was, that 'all subjects, over which the sovereign power of a state extends, are objects of taxation; but those, over which it does not extend, are upon the soundest principles exempt from taxation.' The sovereignty of a state extends to every thing which exists by its own authority, or is introduced by its permission; but not to those means, which are employed by Congress to carry into execution powers conferred on that body by the people of the United States. 'The attempt to use' the power of taxation, 'on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse; because it is the usurpation of a power, which the people of a single state cannot give.'—'The States have no power by taxation, or otherwise, to retard, impede, burthen, or in any manner control the operation of the constitutional laws, enacted by Congress to carry into execution the powers vested in the general government." We retain the opinions, which were then expressed. A contract made by the government in the exercise of its power, to borrow money on the credit of the United States, is undoubtedly independent of the will of any state, in which the individual, who lends, may reside; and is undoubtedly an operation essential to the important objects, for which the government was created. It ought, therefore, on the principles settled in the case of *M'Culloch, vs. The State of Maryland*, to be exempt from State taxation, and consequently from being taxed by corporations, deriving their power from states.

"It is admitted that the power of the government to borrow money cannot be directly opposed; and that any law, directly obstructing its operations, would be void. But a distinction is taken between direct opposition and those measures, which may consequentially affect it; that is, a law prohibiting loans to the U. States would be void; but a tax on them to any amount is allowable. It is, we think, impossible not to perceive the intimate connection, which exists between these two modes of acting on the subject. It is not the want of original power in an independent sovereign state, to prohibit loans to a foreign government, which restrains the

* 4 Wheaton, 316.

supposed to be placed in the same condition with the property acquired by an individual. The tax on government stock is thought by this Court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the constitution."

ERRONEOUS TAXES.

The State Legislature at the last session passed the following amendment to the Tax Bill. Persons who have been erroneneously assessed are entitled to relief under it as a matter of right. But the application must be made before the 20th of March, 1845.

"§ 2. The Board of Supervisors in and for the city and county of New-York, may at any meeting of said Board, at which the Mayor or Recorder shall be present, correct any erroneous assessment which may have been made by the Assessors of either of the Wards of the said city for the year 1843, and may also correct any erroneous assessment which shall hereafter be made by any such Assessors as aforesaid, provided application for such relief shall be made upon assessments in 1843, within three months after the passage of this Act, and in all other cases within the period of *six months after the assessment rolls shall have been returned as required by law*, and provided also proof is made to the satisfaction of such board of Supervisors, by the affidavit of the applicant or other legal evidence that the said erroneous assessment did not result from any neglect on the part of the person or persons applying for relief."

It will be seen that in order to be entitled to relief in the tax which has been erroneously assessed in 1844, application must be made to the Mayor, Recorder, and Aldermen, Supervisors of the city and county of New-York, within *six months* from the return of the assessment rolls which was on the 20th day of September, 1844.

The applicant must address his or her petition to the Mayor, Recorder, and Aldermen, Supervisors of the city and county of New-York.

The petitioner must make affidavit to the truth of the facts set forth in his petition, before the Mayor, or other officer authorised to administer an oath, as required by the law above quoted.

The application must be made within the time named, and such application secures the claim to relief, even should it not be acted upon by the board, until after the expiration of the term named.

BOSTON SYSTEM OF TAXATION.

The following is a copy of a letter received in October, 1843, from the Hon. MARTIN BRIMMER, Mayor of Boston, a very intelligent public officer. This letter, at the time the other letters of Mayor BRIMMER were published, on pages 108 and 109 of this Volume, was supposed by us to have con-lost. We have since met with it, and here give it to the public:

"BOSTON, Oct. 6th, 1843.

"SIR,

"I have been for some days in receipt of your favor of Sept. 23d, but I have been so much engaged as to be quite unable to give it the attention its importance demands. I am now, however more at leisure and I shall endeavor to give you the information you require in relation to the mode of assessing taxes in this city."

"Respectfully,

"Your obt. Servt.

"M. BRIMMER,

"Mayor.

"E. Meriam, Esq.

"BOSTON, Oct. 10, 1843.

"SIR,

"Your favor of Sept. 23d, was received by me at a moment when I was so much occupied that it was impossible for me to give that attention its importance demands, I shall now take up your question *seriatim*. and endeavor to give you distinct answers.

"By the laws of this State, the same rate of taxes is assessed on Real and Personal Estate. The manner of assessing taxes in this city is as follows. Three persons are annually elected by the City Council, as "PERMANENT ASSESSORS," with salaries.—Two persons are also annually elected by the City Council from each of the twelve Wards, as "Assistant Assessors," *without salary*, whose duty it is to assist the permanent assessors in taking the valuation in the several Wards, commencing on the first day of May. The Board of Assessors have power to rectify errors within six months after the Tax Bills are issued, after which time the power to abate taxes, lies with the Mayor and Aldermen.

"In answer to your first query I would repeat,

"That the same *rate* is assessed on Real and Personal Estate.

"2d Query.—When A. owns a house and lot worth $12,000 and B. has a mortgage on it for the same amount, are they both taxed in your city?

"Answer.—A. pays tax on his land, B. on his mortgage as personal estate. The $12,000 is therefore taxed twice.

"3d Query.—If A. owns a house in Boston worth $12,000 and furniture worth $12,000, how is that individual taxed?

"Answer.—The house would be taxed on $12,000, and on the furniture all over $1,000 in value, say $11,000, would be *legally* taxed. But there is usually a very liberal valuation of furniture, it is rated at one-fourth its value, an examination rarely takes place. A person is supposed to have furniture fitted to his mode of living, his fortune, and the house in which he lives.—Furniture under $1000 in value is not taxed.

"4th Query.—Is Bank Capital taxed to the Stockholder or the Institution? Do you tax occupations or professions?

"Answer.—There is a State Tax of one per ct. on bank capital paid by the Institution.

The Stockholders also pay the City and County tax. By a recent law of this State it is made the duty of the Cashiers of the several Banks, the Clerks of Insurance Offices, (except Mutual Insurance Offices) the Clerks of Manufacturing, Bridge, Turnpike and Canal Corporations, annually to make returns to the assessors of every city or town in the Commonwealth, in which any Stockholder may reside, stating the name, number of shares, and par value of said shares. Occupations and professions are not taxed *as such*, but a person is taxed for his capacity or income from his profession or business.

"5th Q.–What is the tax (of a person*) worth $12,000, in your city? and what items constitute the tax?" I am not sure that I understand this question, but if you mean to ask what would $12,000 pay, I

"Answer.—The average rate of the City and County tax is $6. The rate varies from $5.70, to $6.20, on the $1000; $12,000, whether real or personal, or income, would pay $72, more or less.

"The following is the provisions of the Revised Statutes in relation to personal estates: 'Personal estate shall for the purpose of taxation, be construed to include all goods, chattels, money and effects wheresoever they may be, all ships and vessels whether at home or abroad, *all moneys at interest due to the person to be taxed, more than they pay interest for*, and all other debts due to them more than they are indebted for, all public stocks and securities, stocks in turnpikes, bridges and all monied corporations, whether within or without the State, and also income from any profession, trade or employment, or from an annuity, unless the capital of each annuity shall be taxed in this State, and all other property returned in the last preceding valuation, for the purpose of taxation."

"By a decision of our Courts, debts payable may be deducted from debts receivable, but for no other personal property.

"I have endeavored to furnish you with a succinct account of the mode in which taxes are assessed in this city. Any further information you may require will be given with pleasure by

Your obt. Servt.

E. Meriam, Esq. M. BRIMMER."

The Anti-Assessment Committee sent a delegate to Boston in Nov. 1844, to examine into the mode of doing business in the public offices of that city.

The first Office visited was that of the Permanent Assessors, which is kept in the City Buildings.

This office is kept open every business day throughout the year, from 9 o'clock in the morning till 1 o'clock in the afternoon.

The Permanent Assessors were all in attendance and are practical and intelligent business men.

Each of the Permanent Assessors receives a salary of twelve hundred dollars per annum, and they are allowed one Clerk whose salary is four hundred dollars per annum, making the expense of the tax department $4000 per annum, exclusive of fuel and stationary.

The Permanent Assessors are authorised by law to correct any erroneous taxes within six months after the bill has been delivered to the tax payer, and are also empowered to remit and discharge any tax which the person taxed is unable to pay by reason of poverty, infirmity, or old age.

The Permanent Assessors Department is precisely such an improvement as is required in the city of New-York.

*Omitted in the letter.

POWER OF APPOINTMENT.

The Street Law of April 9, 1813 is in direct violation of the following provisions of the Constitution of 1777, so far as the power of nominating and appointing Commissioners of Estimate and Assessment is concerned.

"XXIII. That *all* officers, other than those who, by this Constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit:

The Assembly shall, once in every year openly nominate and appoint one of the Senators from each great district, which Senators shall form a council for the appointment of the said officers, of which the Governor, for the time being, or the Lieut. Governor, or the President of the Senate, (when they shall respectively administer the government) shall be President, and have a casting voice, but no other vote; and with the advice and consent of the said council, shall appoint *all* the said officers; and that a majority of the said Council be a quorum: *and further*: The said Senators shall not be elegible to the said Council for two years successively."

"XXVII. *And be it further ordained*, That the Register and Clerk of the Court of Chancery, be appointed by the Chancellor; *The Clerks of the Supreme Court*, by the Judges of said Court."

The Commissioners of Estimate and Assessment nominated and appointed by the Judges of the Supreme Court, receive an amount of compensation, greater than all the other Executive, Judicial and Administrative Officers of this State put together!

Shall a tribunal usurping power, not only not conferred, *but absolutely prohibited* by the Constitution, be that tribunal which is to sit in judgment upon its own acts when the constitutionality of these acts are called in question?

Shall the party try his own cause, and be the judge in his own case?

Judges COWAN and BRONSON refused to act in view of the Constitutional disability, and we now add, as above, the suggestion of another constitutional prohibition.

PUBLIC PRINTING.

The Public Printing should be done by contract, and given to the owest bidder.

STREET PATCHING.

To the Hon. the Common Council:

The undersigned, Citizens of the city of New-York, most respectfully represent to your Honorable Body that great abuses have been practised for several years in extorting money from individuals for patching pavements in public streets, and vexatious suits have been commenced before some of the Justices appointed by the Common Council, who have considered the Ordinance of the Common Council paramount to the law of the State, and gave judgment accordingly. The undersigned respectfully ask your Hon. Body to repeal the Ordinance under which these abuses have been committed.

And your Memorialists, &c.

New-York, October 19th, 1844.

Stephen Allen,	Jona. Thompson,
James Brown,	Robert C. Cornell,
P. Schermerhorn,	Geo. Griswold,
John Haggerty,	Jacob Drake,
David Hale,	David S. Kennedy,
Wm. W. Fox,	Jas. McBride,
Nathl. Richards,	Thos. Lawrence,
Moses H. Grinnel,	Adam Treadwell,
John H. Tallman,	James Harriot,
John Onthank Fay,	Andrew Lockwood,
John Q. Jones,	John Newhouse,
Samuel Ward,	Wm. Bard,
H. Hendricks,	Robt. Ainslee,
Phelps, Dodge & Co.	Giles S. Ely,
A. G. Thompson, Jr.,	R. S. Williams,
D. E. Wheeler,	J. Cruickshanks,
Wm. B. Crosby,	Abm. Van Nest,
Philip Hone,	Geo. Ireland,
Jonathan Goodhue,	Burtis Skidmore,
Benj. L. Swan,	G. C. Verplanck,
C. V. S. Roosevelt,	John I. Palmer,
Silas Brown,	R. Kingsland,
Isaac Jones,	W. C. Rhinlander,
A. B. Hays,	John Outhout,
Stacy B. Collins,	John Newhouse,
A. P. Halsey,	A. A. Brown,
John C. Green,	J. C. Beeckman,
Robert Hyslop,	J. C. Rogers,
T. J. Waters,	Wm. H. Russel,
Anthony Lamb,	J. McBrair,
John R. Murray,	M. M. Hendricks,
Lora Nash,	Henry Parish,
G. A. Worth,	Joseph Kernochan,
Peter Cooper,	James Boorman,
Robert Smith,	Edward Prime,
Robert Jones,	David Thompson,
John Morss,	Charles H. Russell,
J. M. Morrison,	David Hadden,
Richard Mott,	Nathaniel Jarvis,
Abm. Schermerhorn,	J. L. Bowne,
Abm. Ogden,	R. H. Nevins,
David C. Colden,	Lambert Suydam,
Jacob Harvey,	Alfred Pell,
Henry Grinnell,	Adam Norrie,
Stewart Brown,	A. A. Alvord,
R. W. Martin,	Wm. H. Smith,
W. E. Dodge,	Joseph Sampson,
Robert Buloid,	A. B. Neilson,
Jonathan Sturges,	C. Swan,
J. Grosvenor,	G. G. Howland,
A. G. Thompson,	Saul Alley.

The above memorial is brief, strong, and well signed by the best men in the city of all

them, requiring it; further neglect or refusal was to be remedied by the employment of a paver licensed under proper regulations, by the Street Commissioner, to do the work, which was to be measured by the Street Inspector, and the bill certified by him, was made recoverable in an action of debt. These arrangements, which have been continued to the present time, appear reasonable in theory, the difficulties in practice are—the owners of property feel it an annoyance to be called upon to attend to these repairs of pavement, and within a few years the pavement over the Croton Water trenches, which is universally out of order, and the injury to the side walks, the flagging of which has been broken by fire engines drawn over them in frosty weather, furnish matter for great complaint, in addition to the alleged extortions and conspiracies of the licensed pavers and street inspectors. To obviate, if possible, the latter complaints, the undersigned, at the time of the last renewal of the pavers' licences, took pains to exclude those who did not produce certificates of good character from respectable persons, and good security was given by each of them in the sum of $200, for the faithful performance of his duties without overcharge; a statement that this had been done was inserted in all the newspapers employed by the Common Council.

Notwithstanding this, the system is most unpopular with many respectable citizens, who argue that those who have kept their streets in order for twenty years, during which the present arrangement has lasted, and in which time the streets that were most out of order at its institution, have re-paved, might now without injustice be placed on an equal footing with the owners of lots on streets recently paved, and that all the paved streets in the city, sidewalks as well as carriage-ways, should be kept in order at the public expense. The objection to this is the great addition it would make to the general tax if the present clumsy system of repairing was continued. But it is the opinion of the undersigned, that if the repairs of pavements in each ward (except 12th) were separately let by contract once a year, to be done under the direction of the Street Inspectors, and the satisfaction of the Aldermen and Assistant Aldermen of the Wards, that repairs to the pavement of the whole city including repairs with brick to side-walks, might be done for an amount not greatly exceeding that now paid for repairing the carriage-ways of the streets which have been accepted, for the contractors would watch the first break in the pavement, and mend it, which any Superintendent of pavements for the whole city, however industrious, cannot do; those who have seen how a small break in the pavement of any Omnibus route, or indeed any Street, soon widens into a gulf, will not think the foregoing estimate extravagant, if they will also reflect how little repairs would have to be done if the city were districted as herein proposed, and that by the foregoing plan the pavers' interest would be promoted by prevention rather than cure.

A reference to a Committee is asked to examine into these matters and report improvements in the system and arrangements for repairing pavements.

Respectfully sabmitted,
SAMUEL S. DOUGHTY,
Street Commissioner.

New-York, Sept. 9, 1844.

VETO.

His Honor Mayor HARPER, has done himself honor, rendered to the public a service, and to the individuals interested in the lands plundered by the 86th Street Assessment an act of Justice in withholding his asent to the proceeding referred to in the following VETO Message:

MAYOR'S OFFICE,
New-York, Nov. 30th, 1844.

To the Hon. the Board of Aldermen of the city of New-York:

Gentlemen—Pursuant to the provisions of the City Charter, I return herewith to your Board, where it originated, "A resolution for removing fences from 86th Street, between Bloomingdale Road and Hudson River," with my objections.

The opening of 86th Street, by removing the fences only, would, in my opinion, be of no benefit to the citizens, as the natural surface of the ground, near the River, is so uneven that no use could be made of the street without grading and levelling it: and if it were intended to work the street, the great expense it would require to be laid out, would, by no means, be justified by any advantage to be derived from the opening and regulating of said Street, at the present time.

As no benefit can arise from merely removing the fences, and it may lead to trespasses upon the neighboring grounds, it is believed that such removal should be delayed till some future period, when the public convenience will require and justify the removal of the fences and the regulation of the street, and the expenditure of large sums of money which will be necessary to accomplish that object.

When the time shall have arrived which will justify that expenditure, it will occupy but little time to remove the fences, and such removal and the grading of the street may go on simultaneously without any additional expense to that of grading and regulating.

The public burthens, in taxes and assessments, have been so onerous, that every operation or improvement involving expense and not imperiously demanded for public convenience, should be postponed until justified by the great benefit to be derived from it.

JAMES HARPER, Mayor.

REPORT OF THE STREET COMMISSIONER ON SEWERS.

The Street Commissioner, to whom was referred a Resolution of which the following is a copy, and which passed the Board of Assistant Aldermen on the 28th of October last, "Resolved, That the Street Commissioner report to this Board whether the sewers heretofore constructed are of sufficient capacity to discharge the filth now acmulating in them, without employing laborers to enter them and how often those labors have to be performed."

RESPECTFULLY REPORTS:

That shortly after entering upon the duties of his office in May last, notice was received by him from persons residing on those streets through and under which the principal sewers run, that the sewers were in a filthy condition and required cleaning; the measures indicated by the City Ordinances were immediately taken; and a great quantity of filth was taken out of the sewers by convicts from Blackwell's Island. The sewers which have most settled out of a right line, were of course, found to be in the worst condition, as the running of Croton and other water does not wash out the filth lying below a right line, but this washing out, though it may keep the sewers clean, saves but little, if the sewer be not carried out a sufficient distance into the river to cause the current to remove the filth; where the sewers empty into slips, the slips soon fill up, and it costs more to remove the filth from thence, than from the sewers. The sewers have been partially cleaned every summer for several years past; the amount paid the keepers of the convicts for wages, is estimated to average $750 per annum, it is not supposed that the necessity for cleaning out the sewers arises from want of sufficient capacity; for the largest—that in Canal Street, most frequently requires cleaning. Uneveness in the floor of the sewer and want of sufficient descent are the principal reasons for the necessity of resorting to manual labor. The amount paid for cleaning sewers the present year has somewhat exceeded the average before mentioned principally for the reason that certain individuals engaged in washing wool erected a bulkhead in the sewer in 18th Street near the first Avenue and inserted an iron pipe into the sewer near the top thereof, for the purpose of drawing off the water which ran in a clear and constant stream through this sewer, which is built under streets not yet improved by the erection of many houses, a great quantity of sand having been carried by heavy rains into the sewer, and being prevented from passing out by the bulkhead aforesaid, was precipitated at the bottom of the sewer where it remained and caused the sewer to be inadequate to the discharge of the water flowing into it during some of the heavy showers of the last summer. On attempting to clean out the sewer the bulkhead above mentioned was found and removed as have been several hundred loads of sand. All the information that could be obtained on this subject was immediately collected and placed in the hands of the Attorney of the Corporation, who it is understood is about to commence a prosecution against the individuals concerned in this proceeding, the effects of which might not only have been, to cost the city some hundreds of dollars in cleaning out the sewer, but by overflowing the cellars of houses on 2d Avenue and other Streets, the sewers of which discharged themselves thro' the sewer in 18th Street aforesaid, have exposed the City to the payment of damages to a great amount, as the City Ordinances do not provide penalties sufficient to prevent such misdeeds, the following Resolution is respectfully submitted.

"Resolved, That it be referred to the Committee on Laws to examine the ordinances relative to the misuse of sewers, and if in their opinion requisite, report an amendment to the same, imposing a penalty of not less than two hundred and fifty dollars on each and every person who shall obstruct or attempt to use for any manufacturing or other purpose, the sewers of the city of New-York, or the water therein without the permission of the Common Council first had and obtained.

Since writing the above, information has been received that the bulkhead above referred to, has been either wholly or in part replaced.

SAMUEL S. DOUGHTY,
Street Commissioner.

New-York, Nov. 25th, 1844.

SUPREME COURT OF MASSACHUSETTS.

The following opinion of the Supreme Court of Massachusetts and communication of the City Solicitor, was politely furnished us when at Boston a few days since by Chas. B. Wells, Esq., Superintendent of Sewers in that city.

HON, JONATHAN CHAPMAN, MAYOR.

City Solicitor's Office,
July 6, 1840.

SIR,

I have to communicate, for the information of the City Government, a decision of the Supreme Court made on the 3d inst. in the actions pending before them, on the subject of the Common Sewers and the liability of the owners of real estate to contribute to the expenses of the same.

By this decision (a copy of which is herewith transmitted) the following principal points have been settled:

1. That the city has full power to take charge of and regulate the Common Sewers.
2. That the estates of the abutters are liable to contribute to the expense.
3. That the expense must be apportioned according to the value of the *lands* independently of the *buildings* upon them; and
4. That the City Ordinance of February 13, 1834, which apportions the expense according to the valuation of *lands and buildings jointly*, as heretofore practised, is unreasonable, and void in law.

Some other points were made in the argument of the causes; but the Court did not deem it necessary to make them the subject of their adjudication.

In conformity with the above views of the Court, the actions pending, which were founded mainly upon the Ordinance and the practice under it, have been decided against the city.

The existing regulations of the City on this subject being thus adjudged to be ineffectual for the purpose intended at the time of their enactment, it remains for the City Government to determine upon such further provisions in relation to this subject, as its high importance to the public convenience and the health of the city shall in their judgment demand.

I am, Sir,
Your obedient servant,
JOHN PICKERING,
City Solicitor.

(COPY.) Opinion of the Supreme Judicial Court in the cases of Shaw (and others) —on the subject of the Common Sewers, and the City Ordinance regulating them.

Putnam, J., delivered the opinion of the Court, as follows:

By the 15th section of the Charter of the City all powers which were vested in the *Town* of Boston are vested in the Mayor and Aldermen and Common Council of the City; and they may make all needful and salutary by-laws as Towns may make, and annex penalties, not exceeding $20, for the breach of the same—which shall be in force from and after the time therein limited, without the sanction or confirmation of any court or other authority whatsoever; provided that such by-laws shall not be repugnant to the Constitution and Laws of this Commonwealth. And the City Council shall have power to lay and assess taxes—Stat. 1821, ch. 110, §. 15—8th vol. Stat. at Large, 744.

The power given to *Towns* to make by-laws is in Rev. Stat. ch. 15, sect. 13, for the managing of the prudential affairs of the town; which are however to be approved by the Court of Common Pleas.

These by-laws, if reasonable, have as full force as if they were made by the Legislature itself; and it is for the Court to decide, whether they are reasonable or not. 3 Pick. 478, Commonwealth v. Worcester. If unreasonable, they are void. 6 Pick. 191, Vandine's case.

Anciently the law provided, that a main Drain or "Common Shore" might be laid by an individual at his own expense; and that those persons, who should enter their particular drains into such a main Drain, should be obliged to pay according to the judgment of the Selectmen or a major part of them; saving to the aggrieved party a right to appeal to the Court of Sessions.—Stat. 8 Anne, ch. 2—3 Geo. III. Ancient Charters, p. 389.

And, substantially, the same provisions were contained in Stat. 1796, ch. 47, passed 20 Feb. 1797.

there had been a house built upon the lot at that time. The assessment was not made until 1838. Now we think that such an assessment is not according to the true intent and meaning of the Ordinance, even if the Ordinance itself were valid.

But is the Ordinance a reasonable and just provision? We are constrained to answer this question in the negative.

It is better without doubt, that the City should do the work; and that the Mayor and Aldermen should judge when and where a Common Sewer should be built. If it were left to the individual abutters to build the part against their respective lots, the expense might not fall equally; for some might be obliged to carry the Common Sewer through ledges and rocks at great expense, while others at a trifling cost would go through a loose soil: It is better for the City own and to construct it.

And it must be considered as reasonable, that the charge should fall upon the lots abutting; which would have the privilege of entering particular drains from the respective lots in the main Drain or Common Sewer. The right and privilege would become apurtenant to the several lots, and their value would thereby be increased, probably quite as much as the amount which should be required to be paid towards the general expenditure. Thus no loss would fall upon the owners of the land.

It might happen, that some of the owners of the vacant lots would not at present want to have a Common Sewer built; while other owners having houses on their lots would consider such an accommodation to be absolutely necessary. Let the Mayor and Aldermen, then, judge when and where the public convenience requires such main Drains.

There is as much reason to subject the owners of the land abutting to contribution to this expenditure as there is to oblige them to pave the foot ways in front of their grounds and to keep the same in repair when the City shall pave the streets adjoining.

It should be a charge upon the land; just as it is the requisition on the owners of lands abutting on streets to clear away the snow at their own expense; which has been determined to be a reasonable provision. It is a charge upon real estate thus situated, and requisite for the comfort and convenience of all the citizens.

But how shall it be apportioned? Shall the owner of the lot next to the outlet be in any event held to contribute more than the owner of the lot six hundred feet above, if the former should happen to have a house upon it, and the latter lot should be vacant? We think not. Suppose A owns a house and lot of the value of $1000, and with the house upon it it would be of the value of $10,000, next to the outlet at Charles Street; and that B has a lot of the same dimensions, 600 feet from Charles Street valued at $1000; according to the Ordinance, the contribution should be made according to the valuation of these estates in the books of the Assessors. The owner of one lot would be held to pay ten times as much as the other. The apportionment should be made upon the value of the *land* independently of the *buildings;* and should be settled in the time of the transaction; so that the City would neither gain nor lose by the work, and the rights and liabilities of the owners of the land be definitely ascertained.

It is not for the Court to prescribe the mode by which the amount of the contribution should be ascertained; but we are bound to say, that this which has been provided is unequal and unreasonable, and therefore void.

In Common Council,
February 22, 1844.

Laid on the table, and with the accompanying Report, ordered to be printed.

Attest, W. P. Gregg, Clerk C. C.

In the Board of Aldermen,
February 19, 1844.

The Committee of the Board of Aldermen, on Common Sewers, ask leave to

REPORT:

That by the present provisions of the ordinance in relation to Common Sewers, the Mayor and Aldermen are required, after deducting one quarter part of the expense of constructing or repairing any Common Sewer, to assess the remainder on persons benefitted thereby. And it is made the duty of the Superintendent, to make out bills for such assessmeuts forthwith, and of the Treasurer to cause the same to be collected. The Committee are of opinion that some alteration in the present law is expedient, both in relation to the amount to be paid by the City and also in the time prescribed for payment of the assessments by persons benefitted. The proportion now assumed by the City is one fourth of the whole expense, and this is supposed to be generally correct, but cases are often occurring, where the assessment of so large a proportion as three fourths on those benefitted must operate as a hardship, and where the collection of it will of course be effected with great difficulty and delay—nor does it seem to be always expedient to enforce the payment of assessments at once, before entries are made into the Sewers.

The principle assumed in the ordinance is, that an estate is increased in value by the facility afforded for draining, whether any use is made of the power not—and this is probably to a great extent true, it may be doubted however, whether any practical effect of the kind is at all times felt—and in the opinion of the Committee it would be frequently advisable to postpone the payment, till the value of the Sewer is realized by entries actually made, even at the risk of increasing in some degree the expense to the City—the Committee would now propose, therefore an amendment to the ordinance, by which the Mayor and Aldermen shall be empowered to alter the proportion

to be paid by the City, and to postpone the time of payment by persons benefitted.

Respectfully submitted,

THO, WETMORE,
for the Committee.

CITY OF BOSTON.

An Ordinance in addition to an Ordinance in relation to Common Sewers and Drains.

Be it ordained by the Mayor, Aldermen, and Common Council of the City of Boston, in City Council assembled, as follows:

SECT. 1. It shall be the duty of the Mayor and Aldermen, in making assessments for defraying the expense of constructing or repairing Common Sewers, pursuant to the provisions of the ordinance to which this is in addition—to deduct from the said expense, such part, and not less than one quarter part, as they may deem it expedient should be charged to and paid by the City, and to assess the remainder thereof upon the persons and estates deriving benefit from such Common Sewers, either by the entry of their particular drains therein, or any more remote means,—apportioning the assessment according to the value of the lands thus benefitted, independently of any building or improvements thereon—and also to prescribe and establish the time when the proportion of the said assessments, which is charged upon persons benefitted, shall be paid.

SECT. 2. The eleventh section of an ordinance entitled "an ordinance in relation to Common Sewers and Drains," passed June 14th, 1841, and also so much of the said ordinance as is inconsistent with the provisions of this ordinance, are hereby repealed.

In the Board of Aldermen, February 19, 1844—Read and passed.

Sent down for concurrence.

M. BRIMMER, Mayor.

March 7th, 1844, in Common Council—Passed.

SEWERS IN NEW YORK.

Sewers under the streets in the city of New York are required for two purposes, viz: 1, to carry off the surface water, and 2, to drain the ground saturated by the Croton and the clouds. The wells when constantly used drained the ground, but since the introduction of the Croton, these reservoirs have been left to accumulate.

Sewers, to be useful, should be constructed in so substantial a manner as to be durable, for they are designed to be permanent.

Sewers should have abundant capacity to receive all the surplus surface water in the heaviest storms.

Sewers should be placed so low in the ground as to drain the cellars into the top of the sewer, and then, in the event of the sewers becoming filled by rain storms, the water would not inundate the basements and cellars of dwellings.

The assessments for Sewers should be apportioned among those benefitted in proportion to such benefit.

No Sewer should be constructed until a profile is first made of all the streets of the city, and not until a permanent Board of Commissioners of Sewers and Streets shall be created by the Legislature of the State. No improper use should be made of Sewers. We shall enlarge upon this subject, and give the particulars of our examination of the Boston and Philadelphia Sewers.

CHAPEL STREET SEWER.

This sewer has been disintered by order of a Special Committee of the Board of Assistant Aldermen. At Beach street, the lower half of the Sewer was found to be but four inches thick. Opposite the property of Andrew Lockwood, between Franklin and White streets, the new sewer was found to be raised above the surface of the former sewer seventeen and a half inches, and the same opposite Franklin street; and at a previous opening, still higher up towards Leonard street, twenty-two inches. This is science in construction, which is ruinous to the property on Chapel street, and should be extensively known to prevent similar doings in other streets.

ANCIENT SEWER.

The sewer in Broad street was constructed in 1717. An act of the Colonial Assembly was passed, authorising the raising of five hundred pounds by tax on the whole county, to pay the expense. The Surveyors' bills alone for the Chapel street Sewer exceeded that sum.

CANAL STREET SEWER.

This is the best built sewer in the city of New York. The builders were Thomas T. Woodruff, Esq., a member of the State Board of Croton Water Commissioners, and Gideon Tucker, Esq. We will publish the specifications of the contract.

TAXABLE PROPERTY IN BOSTON, NEW YORK AND BROOKLYN.

The amount of Real and Personal Estate taxed in the city of Boston, in 1843, is as follows:

Real Estate,	$67,673,400	62	419,575 08
Personal Estate,	42,372,600	62	262,710 12
Total,	$110,046,000		
Polls, 20,063, at $1 50,			30,094 50
Amount of Tax,			$712,379 70

The population of Boston may be stated at 100,000 inhabitants.

The Real and Personal Estate of the city of New York, as assessed in 1844, is as follows:

Real Estate,	$171,936,591 18
Personal Estate,	35,058,944 35
Capital of Incorporated Companies,	28,964,512 45
Total,	$235,960,047 98

The population of New York may be estimated at 360,000 inhabitants.

The amount of Tax imposed by the Board of Supervisors of the City and County of New York, in 1844, is $1,981,513 11, as follows:

Watch,	$265,995 72
Lamps,	120,877 69
Water,	469,340 40
Schools,	379,542 00
State,	259,556 05
Streets,	95,393 01
Mutes and Blind,	2,494 10
County charges,	388,321 05
	$1,981,520 12

We make a difference in the footing of the items from that made by the Fiscal Department, of seven dollars and one cent. This matters not for the purposes we have in view. Our purpose is to state, with great precision, the items which compose the Tax, and in such a manner, that it can be comprehended at a single view. The rate of taxation is about 86 cents on the hundred dollars.

The valuation of Real and Personal Estate, in the City of Brooklyn, in 1844, is as follows:

Real Estate,	$20,267,363 00
Personal Estate,	3,012,866 00
Total,	$23,280,229 00

The aggregate tax is $169,789 71, of which $25,608 19 is State Tax; city watch, $8,000; cleaning streets, $2,000; lighting streets, $15,000; repairs of streets and roads, $1,700; fire department, $6,000.

Population about 43,000. Average Tax in all the wards about 73 cents on the one hundred dollars. There is a city debt on which to pay interest.

The Boston Tax includes all the public improvements, with the exception of three fourths the costs of sewers, which three fourths is assessed upon the owners of property fronting on the street where the sewer is placed. In the New York Tax, the local public improvements are excluded, and collected in the shape of an arbitrary assessment.

OPINION OF THE SUPREME COURT IN AN ASSESSMENT CASE.

We shall publish the opinion of Mr. Justice Bronson and also that of Mr. Justice Beardsley, with a **Diagram,** in our next numbers. Also Mr. Webster's argument before the Court, and our review.

A SAMPLE ASSESSMENT.

A piece of ground on the First Avenue, containing eleven thousand eight hundred and seventy-five square feet, furnished the avenue two thousand eight hundred square feet and was assessed in addition thereto on the remaining nine thousand and seventy-five square feet, the sum of three hundred and twelve dollars. The same piece of ground was again assessed for opening Fortieth Street the sum of five hundred and seventy-five dollars although no portion of ground fronts on that Street; and was again assessed for opening 39th Street, eighteen dollars and seventy-five cents,

and is fraught with the most dangerous consequences. It would place corporations above the laws, and there is reason to fear that they would soon become an intolerable unisance."

CHIEF JUSTICE SAVAGE.

It was announced in the public papers that Chief Justice Savage had been appointed to represent the State of New-York in the Senate of the United States. The announcement of the appointment gave great satisfaction to the intelligent men of both parties and no one individual in this State could have been more acceptable. Judge Savage is every way qualified to fill any office in the gift of the American People.

RECEIVER OF TAXES.

The taxes of the County of New-York are now collected at one central office at an annual expense of a less sum than was formerly paid for collecting the arrears.

Gen. Kiersted, the Receiver of Taxes, is a worthy and efficient officer and the experience which he has acquired in the office, should not be lost to the public. Experience is the best schoolmaster in such an office, and politics should never be allowed to interfere in offices of this kind.

THE TEA ROOM.

The NATIVE Common Council have done themselves credit in relieving the Tax Payers from the expense of the Tea Room and the City Government from the odium of using the apartments of the Halls of Justice for a nocturnal Banqueting Room.

CLEANING STREETS.

The Native Common Council have lately contracted out the cleaning of the public streets, in districts. The price agreed to be paid is $45,000 per annum. The streets are now in an unmentionable condition and have been for some time past. We saw less dirt in the streets of Boston during a stay of three days in that city, than is now lying in Wall Street. It is probable that the contractors have not got ready to proceed. Time will illustrate.

We measured one of the dirt-carts in the streets of Boston and found the size as follows: Length 6 feet 3 inches, width 3 feet 9 inches, depth 1 foot 9 inches. This cart was drawn by one horse. The cart body was tight.

BOOTHS AROUND THE PARK.

Mayor HARPER deserves great credit for prohibiting the erection of Booths around the Park on the 4th of July.

These temporary grogeries were a nuisance.

WASHINGTON CITY.

The votes given in the House of Representatives seem to iudicate a breaking in upon party lines by the substitution of geographical lines.

SAMUEL STEVENS.

The individual whose name heads this obituary notice departed this life on the 25th ult, at the age of 61 years.

Mr. Stevens was a meber of the bar. On the announcement of his death, the various Courts of the city, as a token of respect for his memory, adjourned.

The previcus numbers of this volume contain some of the productions of the pen of Mr. Stevens, written in 1829, during the session of the Convention which framed the Amended Charter of the city. The views he there expressed in reference to the organization of the city government, are the productions of a strong and well-stored mind, anddiscover a qualification (of the individual for almost any station in the administration of government) rarely to be met with.

Mr. Stevens' views of the organization of government were in accordance with the great and fundamental principles of civil liberty, and such views as ought to possess the minds of men called by the voice of the people to fill the Executive Chair.

Mr. Stevens was appointed President of the Board of Water Commissioners and filled that office with credit to himself and with advantage to the city; and he was also, some years since, a member of the Common Council of the city, and in 1831 was Presi. dent of the Board of Aldermen.

We have, among our unpublished papers, a communication from the pen of Samuel Stevens, on the subject of the Croton Water tax, which we shall publish, with other papers on that subject, with an ccompanying note from the writer.

In the death of Mr. Stevens, the public have sustained a loss. He was a good man, and greatly beloved.

DEPUTY SECRETARY OF STATE.

Archibald Campbell, Esq., has filled ttha office for thirty-two years, and a more worthy and capable officer cannot be found in he United States.

The Municipal Gazette will be published for six months, weekly, on Wednesdays, and distributed gratuitously. It is proposed to accompany some of the numbers with diagrams of particular assessments. Also a statement of the fees in each street, avenue, or public square, accompanied by a statement of the proceedings as originated in the Common Council, whether by petition of the persons interested, or otherwise.

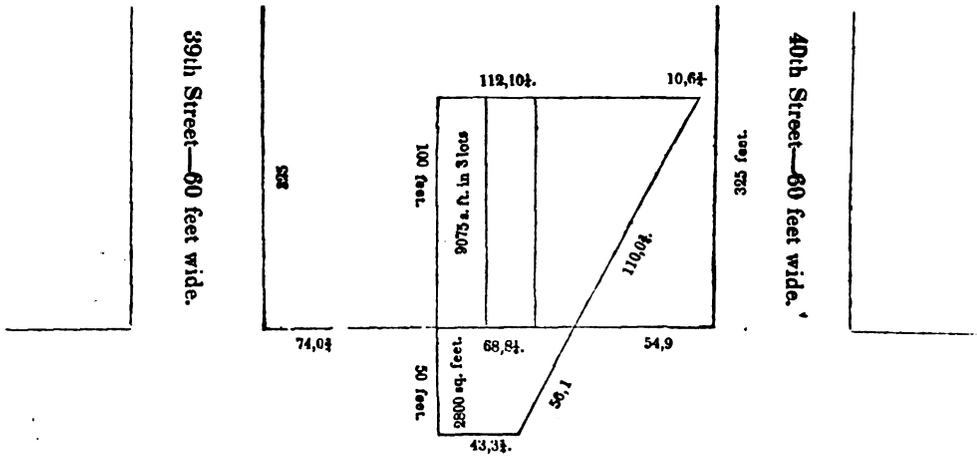
NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, DEC. 18, 1844. [VOL. I....No. 24.

RUINOUS ASSESSMENTS ILLUSTRATED.

The accompanying Diagram shows the dimensions of a lot of ground which has been assessed more than double its value, exclusive of the interest of the assessment.



The piece of ground of which the above Dingram is an accurate description as copied from the Commissioner's Map, belongs to Anson G. Phelps, Esq. The entire piece contains 11,875 square feet, of which 2,800 is taken for the first avenue. The first avenue Commissioners assessed the remaining 9075 square feet, (besides taking the 2800 and making no award for it,) the sum of $312,00 for benefit. The Commissioners, for 40th Street assessed the 9075 square feet for benefit $575,00, although none of this ground fronts on 40th Street. The Comissioners for 39th Street assessed the same 9075 square feet, $18,75 for benefit, making the three assessments in all $905.75 The interest upon the 1st Avenue assessment in $124.03. The interest of 40th Street assessment is $242.14. The 39th Street assessment is not due, making the assessments and interest to the 17th Dec. 1844, $1271.92. The ward assessors in making the assessments for Taxes in 1844, valued this property at $450.00, which is more than it will sell for. We shall present this diagram with further remarks in our next number.

The Commissioners fees in the First Avenue assessment are stated in the written receipts at $700, besides $123.25 cents room hire, &c. This is pay for each Commissioner $233.33 1-3, and is pay for 58 1-3 working days, equal to 9 weeks and 4 1-3 days each. The ground covered by the assessment was farming land, and is only 2758 feet in length, 631 feet 6 inches in width.—The awards amount to $6621.80. Only one building was in the line of the avenue, for which the owner was awarded $15—, and $25 paid the appraisers for making this valuation! This whole assessment of the 1st Avenue could have been made in two days by competent persons.

The Commissioner's fees in 39th Street are stated at $912.00, which is $304 for each Commissioner, equal to pay for 76 working days, or 12 weeks and four days, for each and all of the three Commissioner's besides room hire, &c., $113. The ground covered by the Assessment Map is 9433 feet by 197 feet 6 in. The awards $6901.28.

The Commissioners fees in 40th Street, are stated at $840.00. This is pay for each Commissioner $280, which is compensation for 70 days services, equal to 11 weeks and 4 days, constant employment, besides $193 room hire, &c. The assessment district is of the same size as that of 39th, as above. The awards $5164.00.

The aggregate time charged by the Commissioners in the three streets is eight months and twelve and one-third days.

The Common Council never at any time passed any resolution to authorise an application to the Supreme Court for the appointment of Commissioners of these Streets, and the reports of the Street Committees which were adopted by the Common Council, and approved by the Mayor only contemplated opening all the Sts. and Avenues up to and including 42d Street by one Commission, that, (as they state in the report,) nineteen-twentieths of the expense of opening in detail may be saved, and besides there will be but one assessment on any particular lot.

We shall follow up this subject in our next.

The Surveyor's fees in 1st Avenue are $373.37. This ground had all been surveyed and maps made of it by the Commissioners appointed by the Legislature in 1807, copies of which are on file in the office of Secretary of State at Albany, and at the City Hall, New-York, to which we refer.—The same ground had also been previously resurveyed and maps made of it for avenues, &c. The pay for the Surveyor is $4 per day, including his assistant. This is compensation for 404 days and five hours, equal to eleven months eighteen days and five hours, counting twenty-six working days to the month. Had the U. S. Government Lands been charged by the Surveyors at this rate, all the money coined since the deluge would not be equal to the amount of the Surveyor's Bill.

The Attorney's fees and Court charges in 1st Avenue are $390; 39th Street $1187.74, 40th Street $553.90, in the three Streets, $2131.64. The Clerk of the Supreme Court at Albany, in his Report to the Legislature in 1843, (see Senate Documents, No. 81 of vol. 3, pg. 23 to 28,) says: "*no Court charges appear on any of the files or records of this office.*" The Attorney's fees are $363.36, short of the salary of the Chancellor of this State for a whole year.

Mr. Flagg is a practical man and has been a faithful student in the school of experience. It is a matter of surprise that none of the Representatives of the county of New-York in the Legislature have not given attention to this matter. If Stephen Allen had had a seat in the Senate, this inequality would have been equalized long ago.

THE CROTON TAX.

The Legislature in 1841 passed an act containing the following provision for assessing the interest of the Croton Debt:

"§ 6. It shall be lawful for the Mayor, Recorder and Aldermen of the city of New-York, as the Supervisors of the city and County of New-York, of whom the Mayor or Recorder shall be one, from time to time and as often as they may deem necessary, to order and cause to be raised by tax on the estates, real and personal, of the freeholders and inhabitants of, and situated within the said City, and to be collected such amount of money as shall be requisite to defray the interest upon the water stock of the city of New-York."

"§ 7. The said tax shall be assessed and collected in the same manner as now provided by law for the assessment and collection of taxes in the city of New-York."

In 1843 the Legislature passed an act amending the sixth section, which amendment is as follows:

CHAP. 231.

AN ACT in relation to the Croton Water Works in the city of New-York.

Passed April 18, 1843, by a two-third vote.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for the mayor, recorder and aldermen of the city of New-York, acting as the supervisors of the said city, to order and cause to be raised annually and to be collected, such amount of money as shall be requisite to defray the interest upon the "water stock of the city of New-York," by tax on the estates, real and personal, of the freeholders and inhabitants of and situated within such portions of the said city, as may have been from time to time brought into use by the regulating and grading of the streets and avenues, and the laying down therein the necessary water pipes, and that may be designated the "water district" by the mayor, aldermen and commonalty of the city of New-York, (acting as the aforesaid supervisors,) and that until such designation shall be made, the water district shall be comprised within the following limits, to wit; all of the said city which lies south of a line commencing on the west bounds of the said city opposite the middle of Twenty-third-street, running thence easterly on a straight line through the middle of said Twenty-third-street to the middle of Lexington-avenue; thence northerly through the middle of Lexington-avenue to the middle of Twenty-eighth-street; thence easterly through the middle of Twenty-eighth-street to the east bounds of said city.

§ 2. The sixth section of the act entitled "An act to provide for supplying the city of New-York with pure and wholesome water," passed May 26, 1841, is hereby repealed.

§ 3. This act shall not in any manner be construed to affect any act done, or right accrued, proceeding, suit or prosecution commenced or pending under the said sixth section of the act hereby repealed.

This authority to levy a tax as provided in the sixth section is badly expressed, although restricted in the seventh section to an annual tax. The words "from time to time," should not have been used. The section is also wrong in this: an assessment on unimproved land which is only benefitted in a trifling degree is authorised to the same extent as on buildings which are greatly benefited by the protection afforded against damage by fire. Merchandize is not taxable by this law if the owner is indebted therefor, although the merchandize is greatly benefited. The Croton Tax is as much a local assessment as that for constructing a sewer, and why not assess it on the same principle of requiring the parties enjoying the benefit to pay a tax equal to that benefit?

There seems to be an obscurity in the sixth section which we think is not removed by the seventh section. Personal estates belonging to inhabitants of the city situated without its precincts, seems not liable to this tax, although the tax is to be assessed and collected as now provided by law for the assessment and collection of taxes in the city of New-York.—The amendment is bungled and conflicts.

Bank Capital should not be taxed for the Croton, neither should personal property owned by citizens of the city of New-York which is beyond its precincts, be taxed for this local expenditure but the tax should be upon buildings, goods, wares, and merchandise to the extent of the benefit enjoyed by each, and then if there remains a sum unprovided for, that sum should be assessed the same as the other county taxes, and if it is found that the benefit exceeds the interest, the excess should be applied annually to *cancel* an equal amount of the stock at its then market value. No sinking fund should be created to loose the money and leave the Bonds unpaid at maturity. It is an exceedingly difficult matter to frame a tax bill that will operate equally, but it is not difficult to ascertain what benefits the owners of personal property have in the lesser premiums on fire risks. Merchants insure on the amount of merchandize without regard to indebtedness, and the benefit of the Croton accrues to such in the same way. We place these remarks before the people for examination and consideration, and shall continue to follow up this subject in the succeeding numbers until it is disposed of by the State Legislature.

The Streets of Boston are cleaned at an expense of about nineteen thousand dollars per annum.

MANNER OF MAKING ASSESSMENTS OF TAXES IN BOSTON.

In Boston "all goods, chattels, money and effects wheresoever they may be, all ships and vessels whether at home or abroad, all money at interest due to the person to be taxed, more than he pays interest for, and all other debts due to them more than they are indebted for, all public stocks and securities, stocks in turnpikes, bridges, and all other monied corporations, whether within, or without the State, and also income from any profession, trade or employment, or from annuity, unless the capital of such an annuity shall be taxed, and all other property," &c., are assessed by the Assessors of annual Taxes on the first day of May, being the day fixed by law. It will be readily seen that the possessor of property is taxed without regard to indebtedness, and we were informed by the Permanent Assessors that property was sometimes three times assessed. The Importer for the note of the Jobber, the Jobber for the note of the retailer, and the retailer for the goods in possession on the first day of May.

Commission Merchants are assessed for income by Commissions on Sales. A commission merchant selling one million of dollars worth of goods per annum, at a commission of five per cent. would be taxed on $50,000. An individual owning personal property to the amount of one million, producing an annual income of $50,000 is taxed on a million, or twenty times as much as the commission merchant. This is unequal.—Commercial and mercantile firms are taxed in Boston. A merchant in Boston possessing on the first day of May, in merchandize, one million of dollars for all of which he may be in debt, would rate as high on the tax list as a merchant of New-York owning a million of dollars free of debt.

The holders of United States government stock are not taxed in Boston for such stock. Other stocks are assessed at the rate the respective stocks are worth in the market on the first day of May. The office of permanent assessors in Boston is kept in a large room and very convenient for the purpose for which it is used, and the business of the office is done in a very systematic manner. We are indebted to the permanent assessors of Boston, Messrs Norwood, Sargent, and Jackson, for much valuable information, furnished us while with them.

BOSTON WHARVES.

The Wharves in Boston, with the exception of two, are private property, and some of them very productive. They are kept in such good condition that goods landed from vessels are kept clean. Each barrel of flour pays two cents wharfage, whether going out or coming in. The vessels do not pay wharfage, unless they lay an unusual time at the wharf.

STREET PAVING.

The streets in Boston are paved at the public expense, and the pavements kept in good repair. The side-walks are made by the owners of property fronting on the street.

NEW-YORK CITY FINANCES.

In order to have a right view of the fiscal concerns of the New-York Corporation we must select some point to start from. We have before us Mayor Varian's Message to the Common Council when he entered the Mayoralty in 1839, known as Document No. 1, of May, 1839, in which he complains of the Whigs for running the City in debt, and gives the figures to sustain his statements.—We copy from his message of May 14th, 1839, his own words, as follows:

"The practise which has *within a few years* grown up in the Common Council, of borrowing large sums of money under that provision of the Charter which authorises temporary loans in anticipation of the annual tax, I consider injurious to the financial interests of the city, and not contemplated by provisions of the charter under which it is done. By a reference to the Comptroller's report, it will be seen that during the year 1838, temporary loans, amounting to EIGHT HUNDRED THOUSAND DOLLARS were made by him, in addition to the sum of *Four hundred and eleven thousand, nine hundred and seventy-five dollars and thirty-eight cents*, borrowed from the City Acqueduct, &c."

"These loans could, by the Charter, only be made in anticipation of the tax of 1838, as the tax of 1839, was not authorised by the legislature, and the amount so borrowed was more than the whole tax levied. Of this amount so borrowed in 1838, there still remains unpaid the sum of $504,271.27, and since the commencement of 1839 the borrowing of $300,000, has been authorised by resolution as a temporary loan, while there remains unpaid of the tax of 1838, comparatively a small amount. Such a system, if continued, must eventually end in direct violation of the provisions of the charter, and in the accumulation of a debt, which is paid from one year to another by temporary loans, and which will always be a heavy burden upon the financial department of the city."

"The provision of the charter was expressly intended to prevent the Common Council from incurring such debt, and to confine the expenditures of the city to its annual income; and the authority then given to borrow money in anticipation of the tax, was only intended to defray the ordinary expenses of the city, in cases when, from unforseen occurrences, the ordinary collection of taxes had not been made to a sufficient amount."

"Connected with this subject is another, worthy of your examination. A large amount of money is annually received by the Comptroller in trust, to be repaid to others. I refer to monies received on assessments for opening, regulating and paving streets, the whole of which is to be repaid to contractors or other persons entitled thereto. The money however is paid into the Treasury and applied to the general purposes of the city; and when called for, it becomes necessary to provide means for its payment, by temporary loans or other expedients. The union of these funds with the general funds of the city, tends to confusion in the public accounts, and at times to place at the disposal of the public authorities large sums of money, and thereby to induce more extravagant appropriations than otherwise would be done if these monies were kept separate from the common fund, and applied solely to the purposes for which they are received by the Common Council."

This language deserves a careful reading. Mayor Varian was several years a member of the Common Council, and was for some time President of the Board of Aldermen.

The provision of the charter to which Mr. Varian refers, is in these words:

§ 19. "The Common Council shall not have authority to borrow any sums of money *whatever*, on the credit of the Corporation, except in anticipation of the revenue of the year in which such loan shall be made, unless authorised by a special Act of the Legislature." *Session laws of* 1830, *ch.* 122.

Eight months after this, as appears by the memorial below, the Mayor states to the State Legislature that this floating debt had increased to the sum of $1.700.460., and there were no means of payment. Here is his own statement, under his hand and the corporate seal, as follows:

"To the Honorable the Legislature of the State of New-York.

"The memorial of the Mayor, Aldermen and Commonalty of the City of New-York, *Respectfully represents*,

"That by reason of the great expenses which they have incurred in consequence of the various improvements in the said city, they have found the ordinary revenues of the Corporation altogether inadequate to meet the demands which these expenses have produced, and that they have therefore from time to time been obliged to issue their bonds under their Corporate Seal, to defray some of these expenses, as a means of mere temporary relief. The amount of this floating debt on the 31st of December last amounted to ONE MILLION SEVEN HUNDRED THOUSAND, FOUR HUNDRED AND SIXTY DOLLARS, and can probably be reduced from anticipated sources of revenue to *one million three hundred thousand*.

"The amount to be raised by the annual tax bill will be required for the ordinary expenses that will accrue pending its collection, and will therefore furnish no relief in liquidation of the floating debt.

"Your memorialists therefore pray your honorable body will grant *to them authority* to fund such amount of the said floating debt as they may deem expedient, not exceeding *one million three hundred thousand dollars*, by the creation of a six per cent.

incur a penalty of *one per cent. per month, to be reckoned back to the day the assessment rolls were placed in the hands of the Receiver*, which was early in October, making near *six per cent.*

The office of the Receiver of Taxes is in the basement of the puplic buildings in the rear of the City Hall. The office is conveniently fitted up, and well arranged. The Natives deserve great credit for retaining General Kiersted in office as Receiver of Taxes. He is a worthy man, and a faithful public officer. General Striker, who is being plundered of his Estate by the odious assessment system, has been appointed by the Natives, Deputy Receiver of Taxes. The grey headed men are the right persons to hold public offices. Gen. Striker is a good public officer, and the Natives have done an act of Justice in holding out the helping hand to the veteran sufferer, affording him an employment in a station which he can render service to the public and at the same time obtain the means for the support of his worthy family.

PUBLIC MEN AND PUBLIC MEASURES.

There are very many citizens who voted the American ticket at the spring election who were the advocates of an independent party who should be unmixed with the two great political parties which keep the country in a constant state of excitement, and whose patronage in the shape of appointments to office, when successful, is dealt out without stint or measure to the noisiest partisans of their own clan, without regard to ability or any other necessary qualification.

On the 29th of December, 1842, a select meeting of Citizens was called at the Stuyvesant Institute, in Broadway, which was attended by gentlemen of high standing of both political parties. It was a cold stormy night, and the snow and wind blew furiously, but notwithstanding the inclemency of the weather a very respectable number attended. Abraham Van Nest, a democrat of high standing presided, and among the members was Philip Hone, Abraham G. Thompson, Peter Schermerhorn, Jonathan Goodhue, Peter I. Nevius, Thomas T. Woodruff, Hickson W. Field, Burtis Skidmore, Saml. Stevens, Charles H. Russell, Wm. B. Astor, Peter Cooper, Peter Embury, James Fellows, Arthur Bronson, James I. Jones, John R. Murray, and gentlemen of that stamp, who neither wanted office, or the emoluments of office. A second meeting took place at the same place on the 5th of January 1843, at which Jonathan Goodhue, a whig of high standing, and a member of one of the oldest and wealthiest Commercial firms of the city, presided. This meeting, like the first, was attended by gentlemen of both political parties. Subsequent to this, a public meeting was called at the Merchant's Exchange, on the 6th of March, 1843, at which Preserved Fish presided as Chairman, and Abraham G. Thompson, Peter Cooper, Charles H. Russell, Peter Embury, Wm. B. Crosby, George Griswold, Peter Schermerhorn, Peter Lorrilard, Jr., Jonathan Goodhue, John Haggerty, Peter I. Nevius, and Abraham Van Nest, Assistant Chairmen.

It will be seen by reference to the names stated, that the meeting was anti-political; that the officers which presided were of about equal numbers of both political parties, and the gentlemen named were all in their seats. These meetings had reference to the abuses of the Corporation under the administration of both political parties, and to invoking the interference of the State Legislature in correcting these abuses, and to the selecting of suitable persons without regard to politics, as candidates for public office.

The first two meetings were convened by a printed circular from the Anti-Assessment Committee, and the last by a public call, signed by Jonathan Thompson, James McBride, Brown, Brothers & Co., C. & L. Dennison, & Co., John Anthon, Elisha Riggs, William Gale, Hickson W. Field, William and John James, and several others of that class of Citizens.

THE STATE TAX.

We have before us a Report of the State Comptroller to the Legislature of 1840, giving the aggregate valuation of the real and personal property in all the counties of this State as made by the Assessors in 1839. We have selected from the list eighteen of the wealthiest counties of the State, the taxable property of all which are stated at less than that of the county of New-York, as follows:

Orange,	11,420,916.00
Westchester;	10,718,706.00
Albany,	13,626,100.00
Genesee,	11,569,268.00
Oneida,	12,138,770.00
Oswego,	8,541,000.00
Rensaleer,	11,245,113.00
Onondago,	16,768,635.00
Ontario,	14,140,793.00
Kings,	31,103,113.00
Monroe,	15,731,524.00
Cayuga,	12,569.075.00
Livingston,	11,246,124.00
Columbia,	8,878,392.00
Erie,	12,238,630.00
Queens,	10,781,650.00
Dutchess,	18,351,797.00
Jefferson,	7,559,535.00

These eighteen counties possess more than double the actual wealth of the county of New-York, and notwithstanding pay a much less mill or State tax than is paid by New-York. The shortest way to remedy the difficulty, is for the Legislature to pass an act to authorise the State Comptroller, to adjust the New-York tax by the payment of such a sum into the State Treasnry, as is an equitable proportion.

N. YORK WATCH DEPARTMENT.

The New-York Watch Department numbers 1100 men, and costs annually about $266,000.

MILITARY FINES.

The imposition of Military Fines is an abuse of great magnitude, and may be considered a nuisance of a very odious character. We intend to examine the system in detail, and to discuss it fully.

BROADWAY.

The pavements in Broadway are continually out of order, from the great travel of omnibusses in this great thoroughfare.—There is a plan of Rail-Road on foot for Broadway, which, if carried into effect, will become a great nuisance, destroy hundreds of lives, and injure the property on the street, to a vast amount, and besides there is no right in the corporation to make such an use of the street. The Macadamized road in Broadway should be paved upon with substantial round stones, of large size, for at present, in dry weather, the dust is very annoying, and in wet weather the mud is intolerable. This piece of road is in the near neighborhood of Alderman Cozzens, and we look to that energetic public officer to remedy the complaint of a bad road which lies in the path to his seat in the Council Chamber.

THE INCREASE OF TAXABLE PROPERTY.

The Assessors' returns for 1843, amounted to $227,997,090 58, and in 1844, to $235,960,047 78, making an increase of 1844, over 1843, of $7,982,057 20. This increse is mostly in the valuation of real estate, and not in additional buildings erected. The taxable personal property in the Sixth Ward is less in 1844 than in 1843, owing to the fact, that in 1843, one individual was taxed in that ward an amount equal to about one sixth the whole personal tax of the ward who, in 1844, was taxed in the 15th Ward, having removed his residence to that Ward. In 1843, Mr. John Jacob Astor was taxed for personal property in the 8th Ward, and in 1844 in the 12th Ward. He should have been taxed in the 12th Ward in 1843. This makes a change in the amount of personal property taxable in the 8th and 12th Wards, as compared with 1843. In the 3d Ward the assessment list of personal property was increased in 1843, by assessing Henry and Daniel Parish for half a million of personal property. Mr. Henry Parish was during the whole of that and a part of the previous and succeding year, a resident of Paris, in France, and was not taxable in New York, except for real estate, and Mr. Daniel Parish was owner of a large amount of stock of the Government of the United States, which is not subject to taxation. The Farmers' Loan Company in the 1st Ward was taxed by the Supervisors at two millions capital, which that institution once possessed, but which has been reduced by losses to about one fifth that sum. The Ward Assessors assessed the Company for what they possessed at the time the tax was imposed, *which is right and proper*, but the Board of Supervisors, without the shadow of authority in the premises, from the Statute, assessed the Compaay for what it had lost!!! A Company once possessing a million, and subsequently losing nine hundred and ninety-nine thousand of the capital, would, (according to this doctrine,) be assessable for the remaining *thousand*, as for a million! What nonsense! Public officers can only exercise the powers conferred upon them by the Statute. The Supervisors are not authorised by law to make assessments, but to confirm those which the Assessors have made, and to correct those which shall be complained of as erroneous by the party agrieved. We hope the Natives will not follow in the footsteps of their predecessors, and disregard the law in this.

PUBLIC PRINTING.

The price paid for printing the Comptroller's Report of 1840, consisting of 135 pages, was $1107.75 One hundred and fifty dollars would have been a fair price for the work. This was the patronage of the Democratic Corporation. The Whigs paid four hundred dollars for printing the Tax Bill, worth only sixty-six dollars. We shall chronicle the prices paid by the Natives. The party in power is obnoxious to censure for not having months ago contracted for the public printing. We are sorry that they should have omitted this duty. We mean to lithograph the prices of public Printing, and keep them before the tax payers.

CITY DELEGATION TO THE LEGISLATURE.

The delegates elected to the Legislature, from the County of New York, are highly respectable. We notice among the names of the members that of Abraham G. Thompson, Jr., son of the venerable Jonathan Thompson, formerly a distinguished Collector of the Port of New York. He is a good son of a worthy father. We also notice the name of D. E. Wheeler, an able lawyer, and at present a member of the Board of Education. Mr. Wheeler is a man of great firmness of purpose, and the right sort of a man for the Assembly. Mr. Morison is another of the members. From our acquaintance with Mr. M., we feel assured his constituents will be honored in their representative. Mr. Oakly and Mr. Du Puy also in the delegation, are young men, worthy, intelligent, and highly respectable. The other members of the delegation we have not the pleasure of a personal acquaintance with, but those who know those gentlemen speak highly of them. Mr. Folsom is elected from the First Senatorial District, to the Senate. Mr. F. is a worthy citizen, and the district will be honored in their Senator.

John M. Bradhurst was nominated on the Democratic ticket for Assembly, but he declined the nomination. Had he accepted the nomination, he would have been elected by a large majority. He is a man of great moral worth, and of firmness of purpose. Mr. Bradhurst was Chairman of the Citizens' Committee that was delegated by the public meeting held at the Merchants' Exchange to appear before the Legislature in reference to taxes and assessments in 1843. Mr. Bradhurst's knowledge of public affairs, and the great pecuniary interest he has at stake, will impose upon him the duties of public office. He has not the right to decline. There were several names on the Democratic ticket who were in favor of assessments. These persons were in a remote minority. The Whig ticket contained some names of persons who had been active in assessments, and who were therefore objectionable. If the Democrats had put on their ticket such names as John M. Bradhurst, Saul Alley, Peter Cooper, Hickson W. Field, Thomas Jeremiah, John E. Ross, and others of like standing, they would have had no difficulty in succeeding. The party which nominates the best men to represent the City will be successful.

MAYOR HARPER.

The administration of the executive department of the City government by Mayor HARPER, is approved by the intelligent citizens of New York, and it may be truly said that he is a very popular Mayor. The good order which was preserved on the day of general election in November, witnesses the efficiency of the arrangements made by the Mayor on that occasion.

VAULT GRATES.

At this season of the year, the grates over the openings of the vaults in the side walks, are often loose, and serious accidents happen from their neglect. The supernumerary of the Ward, to wit: the Street Inspector, should be required to attend the examination of the grates, and for neglect should be made to respond for the consequences.

WATCHMEN.

Twenty four mounted Watchmen would be of more service to the City of New-York, than five hundred footmen. The expense of horses, equipments, and keeping, would not exceed in amount per annum, the pay of as many foot Watchmen. A force of this kind would be able to look after the Watchmen, and if one of these guardians of the night should be found asleep, a trumpet could be sounded to wake him up.

THE POLICE BILL.

The public mind is kept agitated by the frequent attempts of the Common Council to frame a Police Bill. The two Boards would have been far better employed in devising means to bring the assessment depredators to account for their misdeeds. The little urchins that steal wood to keep from freezing, are hunted up, while the great assessment depredators are left undisturbed.

BOSTON SEWERS.

The following is a copy of a letter received from Charles B. Wells, Esq. Superintendant of Sewers of the City of Boston, an experienced and intelligent public officer.

City of Boston.

Office of the Sup't of Common Sewers, December 10, 1844.

E. MERIAM, ESQ.

Dear Sir—The packages by Adams & Co. were duly received and distributed as per directions. Allow me Sir, to thank you for your prompt attention to my request; also your favor of the 27th ult. came duly to hand. An engagement in our Court of Common Pleas, as one of the Jurors, added to sickness in my family, must be my apology for not acknowledging your kindness before, as also the queries propounded in your last communication. Our citizens are this day to take the subject of water into consideration, and give in their votes for or against. Our annual election for City Officers, also takes place this day. I shall loose no time upon the organization of the new government, on the 1st Monday in January, of laying your remarks upon the water question, &c., before the proper officers. Your remarks seem to me to be very just, and are very conclusive in my own mind. In relation to the subject of Common Sewers, I would say that as it regards the price of building drains, it depends very much upon the depth we have to go, and whether the street is paved or *unpaved*. I should think that our 20 inch barrel drains laid in cement, from 7 to 9 feet deep, would cost from 7s. 6d. ($1 25,) to 9s. ($1 50,) per foot; a great deal depends upon the nature of the soil through which we have to dig, whether it is liable to cave off and fall into the trench. Cases have occurred where the trench has been dug three feet wide, and from the pressure from the bank, or from striking a bed of gravel below, it would cave off six feet. Much also depends upon having a dry bottom to lay the drains in. The timber drains which we lay are from two to four feet in the clear. I use the best dimension timber for the sides, for which I pay from 12s. to 14s. per M., according to the state of the market. I only use the timber drains where the tide has free inlet and outlet, and where the timber will be wet with the salt water, which of course will preserve it for many years. A plan which I have adopted to clear out some of our large drains which lie very deep, and flat, is, to make in our reservoir water-tight gates, which I shut down when the tide is in, and open at low water. This large body of water rushing, out carries with it an immense quantity of sediment and mud, and is attended with very beneficial results, at little cost.

As to the price of bricks, I am paying this season from $6 to $6 50 per thousand for a fair article of hard burnt. It takes about 50 bricks to a running foot for top and bottom of a barrel drain 20 inches in diameter. As to the cess pools or mud catchers, I explained that in our interview last month. I place them at distances of two hundred feet or thereabouts apart, and always at the intersection of drains. These I sink two or more feet below the bottom of the sewer, and top them up to a level with the pavement, with a stone curb around them, and cover the tops with oak plank. They are cleaned out twice a year or oftener, as occasion requires. In relation to the outlet of our Sewers, there is always more or less of offensive matter discharged into the docks from them, and more especially since the practice is so universal of building water closets to all the new dwellings. The gas arising from this discharge is so great as to discolor the paint of the vessels and newly painted houses. It also turns the silver and plated ware on board the vessels. I am decidedly opposed to the contents of water-closets being carried into the drains; but I see no great objection to the liquid contents of the vaults being carried off by suitable strainers attached to the vault, *provided* nothing else escapes with it. Any further information I can furnish to you or to your Committee, I will cheerfully do.

On the subject of assessing the cost of our Common Sewers, I entered fully into that subject at our interview in November last. I think of nothing more that can be said on that subject. Allow me once more to thank you for your attention in forwarding the documents.

With much respect,
I am, &c., your ob't
CHARLES B. WELLS, Sup't.

CHAPEL STREET SEWER.

The following is a copy of a remonstrance presented to the Board of Assistant Ald., June 13th, 1836, prior to any contract being made for destroying the Chapel Street Sewer, and which is now on file in the office of the Clerk of the Common Council.

"To the Honorable the Common Council of the City of New York:

"Your Memorialists, owners &c. of lots on Chapel Street, and streets intersecting the same, beg leave most respectfully to represent to your Honorable body, that they have learned with much surprise and regret, that an ordinance has been passed by the Common Council for raising and grading of Chapel Street, and for constructing a Sewer through the same.

"Your Memorialists are free to express themselves in plain but respectful language on the subject, and to remonstrate against a measure uncalled for, unnecessary, and wholly disapproved of by those interested in the property affected by it.

"Chapel Street, from Franklin to Canal Street, is in the best possible condition, wide, well paved, and well drained by a large and well constructed Sewer, which fully answers every needed purpose.

"Already have your Memorialists been repeatedly heavily assessed for improvements in Chapel Street, and now another assessment, very heavy, is laid upon them for widening Chapel Street below Leonard St., and still another is sought by this contemplated alteration here referred to, which will be worse than useless, and moreover of very great expense, and burthensome and injurious in the extreme to your Memorialists, who now look to your Honorable body for relief in the premises.

"The expense of filling, grading, paving, &c., and constructing a new Sewer will exceed fifty thousand dollars, and will fall on a very few persons, who consider it a cruel and oppressive measure.

"The damage to the property of your Memorialists will exceed one hundred thousand dollars. Their cellars and basements will be destroyed.

"Many of your Memorialists have resided in Chapel Street and Streets intersecting it ever since the present Sewer has been in use, and they are satisfied and fully convinced that it answers every needed purpose.

"The signatures to this Memorial embrace more than three fourths the persons interested in the property, which is situate on that part of the street which is designed to be altered.

"Your Memorialists have noticed an advertisement of the Street Commissioner, inviting proposals for building a Sewer in Chapel Street, about half the size of the present one, and are anxious that the same should be suspended altogether, and also that the ordinance here set forth should be repealed.

"And your Memorialists, &c.

E. Meriam, 180 Chapel, 10 York, and 178 Chapel Street,
A. Vaillant, 176 Chapel Street,
J. B. Elmendorf, 148 Chapel Street,
John Morton, 185 and 187 Chapel Street, 109 and 111 Canal Street,
Agnes Galley, 7 York Street,
M. R. Berry, 1 St. Johns Lane,
James H. Sayre, 167 Chapel Street,
Henry N. Britton, 8 York Street,
Gideon Tucker, (4 houses on Chapel, 4 on White Street,
John C. Tucker,
David Miller,
Mary Gagan, 17 York Street, corner of Chapel Street,
Mahlon Bonnel 163 Chapel Street,
Amelia Judah, 138 Chapel Street,
Joseph D. Everingham, represents estate of T. Everingham, Jr., corner of Chapel, and houses in Walker,
Albert Journeay, 3 houses in Franklin St.
James Hatfield, 13 York Street,
E. B. Loomis, 9 York Street,
G. Vandoren, ag't altering Sewer, No. 120 Franklin Street,
Peter Hull, 136 Chapel Street,
E. Disbrow, North Moore, Nos. 9 and 11,
Mary Johnson, 7 North Moore Street,
M. S. Remey, 3 Beech Street,
Joseph Meeks, 11 Beach Street,
Abraham Warner, Nos. 15 and 9 Beach Street,
J. Maunder, No. 11 York Street,
A. Lockwood, 13 houses,
Smith Bloomfield, 3 lots,

Samuel Delamater, 2 houses,
Peter D'bvoise, 127 Chapel, 2 lots,
Mary Baxter, corner of Leonard and Chapel Street,
John Johnson, 12 Chapel Street,
Lawrence Ackerman, 7 lots,
Henry Ogden, 2 lots,
Mrs. Rich, 1 lot, No. 7 Varick Street,
Frances Chandler, 1 lot, Chapel Street,
Samuel B. Banks, corner of Walker and Chapel Streets—Lessee for 8 years,
Walter Bowne,
Samuel Dixon, No. 131 Chapel, and 121 do. and No. 5 Beach Street.

"There are not more than five persons interested in all the property affected by this contemplated alteration, who are in favor of and more than 100 opposed to it."

"Mr. Stephens called to subscribe, (3 houses.)"

The Street Committee of the Board of Aldermen in their Report, made April 25th, 1836, in reference to re-grading of Chapel Street, say:

"There is, however, another branch of this subject, which the Committee deem it their indispensable duty to lay before this Board which relates to the Public Sewer in Chapel Street."

Again. The Committee in their report say, "*and although this branch of the subject was not specially referred to them*," &c. See proc. Bd. Ald. Vol. 10 pg. 471.

On the 27th of June 1836, the Street Committee of the Board of Assistants made the following Report:

"The Street Committee of the Board of Assistants, to whom was referred the memorial of E. Meriam and others, for a repeal of the ordinance for the raising and grading of Chapel Street, and for constructing a new sewer therein *Respectfully Report*,

That this subject has recently been before the Common Council, and was referred by them to the Street Committee of their respective Boards."

This statement of the Street Committee of the Board of Assistants as to the sewer, is plainly contradicted by the above extract from the report of the Street Committee of the Board of Assistant Aldermen.

The Committee conclude by saying:

"It would be exceedingly improper and unsafe as a precedent, and altogether unnecessary and unwise in point of fact, or in reference to its results to open anew the subject of a law, and commence a review of its merits immediately after its passage."

Again the Committee say:

"And there does not appear in reference to the object and operation of the above ordinance any good reason for repealing the same," *and then wind up by saying:* "Resolved, That it is inexpedient to grant the prayer of this memorial, and that the memorialists have leave to withdraw the same." "June 27th, 1836." See Doc. of Bd. Asst. Ald. vol. 8, pg. 57.

The following testimony taken before Ald. Tillou, of the Fifth Ward, in 1843, in which Ward Chapel Street is situate, is from Doc. No. 76 of 1844 of Bd. Ald., and illustrates our position:

SMITH BLOOMFIELD, sworn.—Constructed the sewer in Chapel Street, which existed previous to the present sewer in that street. The sewer I constructed was six feet, or six feet six inches, (I am not sure which) both wide and high, the bottom was paved with free stone flagging, lowest in the centre; a descent from each side, about six inches on the average; a little less at the end near Leonard Street; the side walls were of hammered stone, laid in courses, about two feet thick at the bottom, twenty inches at the top, sloped off to the top of the curve, to form a roof. The arch was eight inches thick of brick; the bottom was laid on timbers; first a floor laid, close together, then long stout timbers laid the whole length, as wide as the wall, to lay on; about from six inches to a foot of stone work then laid on the floor; the flagging was then laid on it, and bedded in mortar; the descent was about two inches to one hundred feet; it was about two feet to the whole length; the whole length, I think, was about 1100 feet; it tapered off in size, from Canal Street to near Leonard Street, both in width and height; it was four and a half feet high, and five feet wide at near Leonard Street; cannot recollect the precise year I built it; it was previous to 1820; it was a perfectly substantial sewer, it answered the purpose of draining the cellars excellently; I previously owned two houses, one in Chapel Street and one in North Moore Street, which I could not occupy, on account of the water; after the drain was built, the cellars were quite drained in these houses, and indeed in all the cellars adjacent. I think the sewer I built, cost about eleven thousand dollars; I think at the rate of six and a half dollars per foot, that is to say without the timber; I saw the present sewer; saw it when it was building, and saw it to-day; measured to-day the relative elevation of the bottom of the present and the bottom of the old sewer; the inside surface of the bottom of the present sewer, I find to be about twenty inches, opposite Mr. Riley's, above the inside surface of the sewer I built; when they were building this sewer I frequently passed and saw the old one opened; I recollect only one place where the bottom of the old sewer appeared to be settled, and that was a place near Canal Street; but near North Moore and Franklin Streets, it was perfectly clear; the ground on which it was built was not very good, but the heavy timbers on which it was built were used to obviate that; the ground was so near York Street, not near Franklin Street; the present sewer, in its form, is circular; the present sewer, in its shape, is most calculated to be filled up with mud; the old one not so much; it is not as large as the old one; the old one would, I should think, hold at least one-third more than the new one; in the new grade at Leonard Street, the street was raised about three feet, it tapered off towards Canal Street; never heard any complaints of the old sewer not carrying the water off to Canal Street sewer; since the new sewer was made, water has been in the cellars; in that of Mr. Lockwood, who had to cement them; in those of Mr. Tucker; have heard great complaints about it; no question at all but the cause of this is the elevation of the bottom of the new sewer; I should say, if the cellars were higher than the bottom of the sewer, that they would be dry; in heavy rains they might get some in, but they would soon get dry again, this even without lateral drains; the filling up of Chapel Street, would have no effect in driving the water into the cellars, the sewer would, if low enough, drain it off; I except one place, near Walker Street, where it is clay soil, including about one hundred feet, where it is solid land, particularly the upper side near the Park; I informed Mr. Banks, before the new sewer was made, exactly of the operation of rising the sewer on the ground, and stated to him that the effect would be to throw the water into the cellars, and at his request, I went to the Commissioner's Office to talk about it; I was never before examined as a witness before any Committee of the Corporation; I owe no assessment for the building of the sewer; I have paid all assessments for every thing that was against me; I think the old sewer could not wear out; the new sewer I think could; I mean that the present sewer is not by any means as substantsal as the old one, nor as well calculated to answer the purpose; if the present sewer was removed, and the old one built upon, the end would be answered; the present one, I think, is entirely the cause of the cellars being filled with water; I base my opinion upon the bottom of the present sewer being elevated higher than the old one; I know that Mr. Lockwood had to make a lateral sewer, a considerable length, so as to get the water out of his cellar; in heavy rains, I have no doubt, the sewer will be quite full; I think the tide ebbs and flows into the sewer at Canal Street, at very high tides, but will not affect the cellars; I do not think the present sewer is sufficient to drain the cellars, though sufficient to carry off the water; if there are lateral drains, the water will get into the cellars, unless safety valves are used.

SMITH BLOOMFIELD.

JOHN SHEPHARD, jr., being sworn, deposes as follows:

I reside at No. 155 West Broadway; am a boat builder; I am acquainted with the old sewer and the new sewer on Chapel Street; the new sewer was built on the old sewer; as near as I can recollect, they laid a stone on the gutter or centre of the bottom of the old sewer, and then laid brick end ways on the top of the stone; the bottom of the new sewer was about a foot above the bottom of the old sewer; I was inspector of the work at that time, appointed by the Street Commissioner and Alderman Banks; I was in the habit seeing the work, while the new sewer was progressing almost hourly, very frequently during every day; when they got somewhere about between Leonard Street and Riley's, near Mr. Riley's, they were

tearing away the old sewer, I stopped Mr. Ogden, and said the old sewer was a better sewer than any new one they could build; I stopped the work; he asked me if I vetoed the work, I said I did, so they knocked off the men. Mr. Ogden then went for Mr. Price, who went for the Street Commissioner, who came and enquired what the matter was. I told him the old sewer was too good to be taken up; he answered, so is the profile, so is the contract, and so the work must go on, and accordingly the work did go on; so far as my knowledge extends, throughout the whole line of the old sewer, it was substantial; far better than the new one; and I so stated to them at the time; it was said the old sewer had sunk at the bottom, I could only find it so in one or two spots, which appeared to me not to be very long but small, I should say not over two or three yards; the depression very little, cannot say precisely; I personally inspected all this; cannot remember the capacity of the old sewer; I remember it was much larger than the new sewer; cannot recollect how much, but there was a good deal of difference; the brick that lay end ways under the bottom, it strikes me, was laid on sand; the part above it was laid in mortar; at the time it was building, I had a copy of the contract; I never superintended the building of any other sewer before or since; cannot tell why sand was used at the bottom; I think the new sewer was substantially built; it would not have been, if I had not been as strict as I was; I sent off a number of loads of brick; I was never applied to for or gave any certificate as Superintendent, of the work being properly done; if I had been applied to for it, I would not have given it; I was not satisfied, because I did not think it was as good a sewer as the old one; and because the materials were not as good as required by the contract.

Previous to the building of the new sewer, I was acquainted with the condition of the cellars in the neighborhood, and along Chapel Street; I have lived in that neighborhood about twenty years; I never heard of any water being in the cellars, previous to the building of the new sewer; since the new sewer was built, the cellars have been generally very bad, some worse than others; have heard some of the families complain; Tucker's houses have had water in them, he has had a great deal of trouble; Disbrow's house in North Moore Street, and generally the cellars in the neighborhood, have water in them; I think the raising of the new sewer has caused it; the old sewer drained them; do not recollect whether there were lateral drains from the cellars to the old sewers; do not know what would have been the expense of repairing the old sewer, I should say not much, for it wanted very little done to it; I think the average height of elevation of the bottom of the new sewer above that of the old, is about a foot, might be more; there is I should judge, about three feet fall, from the bottom of the new Chapel Street sewer, to the bottom of the Canal Street sewer. The filling in and regrading, where I reside, is about two feet; it was filled up with all kinds of rubbish, some from the large fire, and in fact, with all kinds of rubbish; there has, I think, been a depreciation in the value of property in the neighborhood since the new sewer was built; that has been owing to the water running into the cellars: a house in Walker Street, two or three doors from West Broadway, has had to be raised, and the cellar filled up with earth, in consequence of the water coming into the cellar; the house belongs to Mr. Ruckle; the tenants moved out in consequence of the water being in the cellar; that house is depreciated, though how much I do not know; the house next door, I am informed, is in the same situation; I think the water was not therein previous to the new sewer, or I would have heard it; I received three dollars per day as Inspector, when the work was completed; I made no objections, then, to the contract not being performed; I have been assessed for the new sewer, for two houses I own in the neighborhood, and have paid the assessment; also, for the pavement and grading and widening the street; they come to a great deal of money, though how much I do not remember; I was perfectly willing, at the first start, to give up the three dollars per day, if they would only leave the old sewer alone; I think they were about three months building the new sewer; the fact is, it was a sad piece of work to tear the old sewer up; every body in the neighborhood seemed to be opposed to it, when it was torn up; Mr. Lockwood has, in consequence of the new sewer, had a great deal of trouble, and been at great expense, his cellars, I am informed, have had water in them, he has been draining them all the time; there was all kinds of filth brought and filled in the street; in some instances the contents of sinks; the pavement of the street before the old sewer was taken up, was as good as it is now; the contents of the sinks were not brought by the contractors, but where it came from I don't know; originally the pavement was made with the gutter in the centre, the owners of the lots paid for that pavement; then when the old sewer was built, a new pavement was made, and the owners of the adjoining lots paid for that, and now they are called on for a 3d pavement; I was not inspector for the filling in the street, had nothing to do with it; I had only to inspect the building of the sewer; there was a man employed to inspect the filling, I do not remember his name; I remember Mr. Ackerman remonstrating against the offensive substances being dumped there, and my telling him it was not my department, yet in one instance, at his request, I compelled one man to take away a load of offensive stuff he had put down: at the time I received my pay as inspector I did not make any complaint that the Contractor had not done the work, because he had done the work according to contract.

JOHN SHEPHARD.

The Joint Committee on Laws and Assessments of the Board of Assistants in 1839 made a lengthy report which is set forth in full on page 31 of this volume, which closes with the following:

"Resolved, That the Comptroller draw warrants in favor of the owners of property on Chapel Street, between Canal Street and the centre of the block, between Franklin and Leonard Streets; and also on the intersecting streets intermediate, for the sums paid by them for the building of the new sewer, and the recent regulating and paving of Chapel Street and Streets intersecting the same."

Resolved that the Assessments upon property, as above, which have not been paid be remitted and that the Comptroller draw his warrant for the amount in favor of the contractor.

DANIEL F. TIEMAN,
C. C. CROLIUS, Jr.,
FREEMAN CAMPBELL,
Committee on Assessments.

DAVID GRAHAM, Jr.,
ABEL T. ANDERSON,
M. B. HART,
Committee on Laws.

These resolutions were passed by the Board of Assistants by the followihg vote:

AFFIRMATIVE—Messrs. Sparks, Anderson, Crolius, Barnes, Campbell, Howe, Hart, Bunting, Graham, Tieman and Nash—11.

Negative—Messrs. Woodhul land Potter. 2.

This matter is now pending in the Common Council and the Chapel Street sufferers expect speedy relief from this outrage and the numerous abuses which followed it.

HON. D. S. DICKINSON.

Lieut. Gov. Dickinson has been appointed, by Gov. Bouck, United States Senator. He was some years a member of the Senate of this State, and for the present and last year President of that body by virtue of his office of Lieut. Governor,. In 1842, he was elected Lieut. Governor, although he very reluctantly consented to be a candidate. The Senate of the United States are honored in their new member, and the State of New-York will be honored in their representative. He is an estimable man, and a most worthy public officer, The public meeting held at Merchant's Exchange in the city of New-York in reference to taxes and assessments in March 1843, at which Preserved Fish, presided as Chairman, assisted by Wm. B. Crosby, Abraham Van Nest, Abraham G. Thompson, Peter Cooper, Jonathan Goodhue, Peter Embury, Chas. H. Russell, George Griswold, John Haggerty, Peter Lorrillard, Peter Schermerhorn, and Peter I. Nevius, as Assistant Chairmen, passed a resolution directing their proceedings and memorial to be forwarded to Lieut. Gov, Dickinson, President of the Senate, to present to the body over which he presided.—The Citizens of the city of New-York are under high obligations to Lieut. Gov. Dickinson for attention to their interests while in the councils of this State, and he will no doubt be equally attentive to their interests in the councils of the National Government.

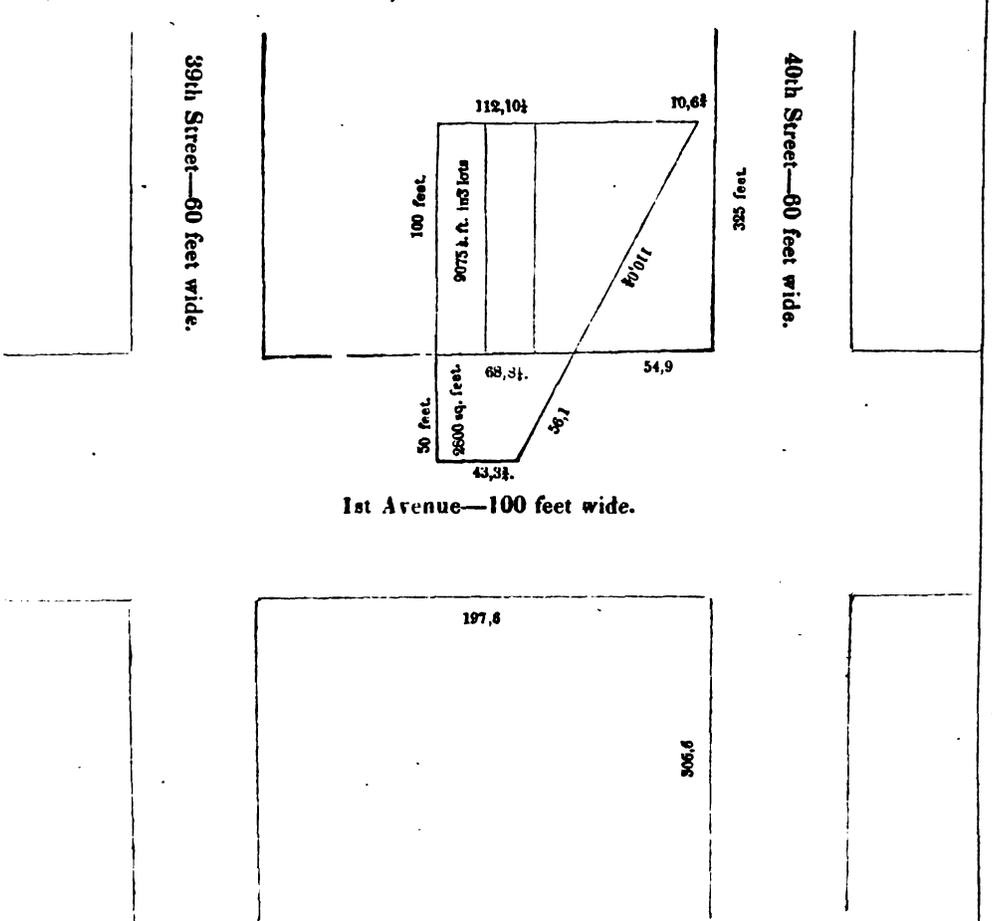
NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, DEC. 24, 1844. [VOL. I....No. 25.

RUINOUS ASSESSMENTS ILLUSTRATED.

The accompanying Diagram shows the dimensions of a lot of ground which has been susessed more than double its value, exclusive of the interest of the assessment.



We present again the Diagram of the piece of land on the First Avenue, between 40th and 39th Streets, containing 9075 square feet, which is valued by the 16th Ward Assessors at $450, and upon which there is an assessment for opening 39th and 40th Streets and the First Avenue, including interest of $1271.92, in addition to the taking of 2800 square feet for the Avenue, for which no award was made. The assessment for the First Avenue is $312, exclusive of the 2800 feet taken; for 40th Street $575, and for 39th Street $18,75. The interest on the First Avenue assessment is $124.03; on the 40th Street Assessment $242.14, (the 39th Street Assessments not yet due) making in all $1271.92. The length of the First Avenue, exclusive of cross streets, is 2758 feet, and the width of the land embraced in the assessment district 631 feet 6 inches. There was but one building in the line of the avenue, and for this the owner was awarded $15, and the appraisers paid $25 for appraising it, which is $10 more than their award. The Commissioner's fees in the First Avenue are $700; 40th Street $840, and 39th Street $912; in all $2452. The room hire, &c. of the Commissioners in 40th Street are $193, First Avenue, $123.25; 39th Street $113; in all for room hire, &c. $431.25. The Surveyor's fees in First Avenue are $373.37; 40th Street $378.00; 39th Street $468: in all $1219.37. This ground was before surveyed the Commissioners appointed by the Legislature in 1807, and a map made of it a copy of which is on file in the City Hall, and in the office of the Secretary of State at Albany. The Attorney's fees and Court charges are for the Streets $2231.64. The ground covered hy the 40th and 39th Street assessment is 9433 feet in length and 395 feet in width. Farming Land. Had the Lands of the Government of the United States been charged for surveying at this rate all the money coined since the deluge would be insufficient to pay the surveyor's Bill.

ANOTHER.

A piece of Salt Meadow near Harlem, and between 115th and 124th Streets and the 5th and 8th avenues, containing about ten and a half acres was assessed for filling in, the large sum of $16,153.60. The Surveyor divided the ground on paper into 165 lots and the Street Commissioner advertised the ground for sale for the assessment as one hundred and sixty-five distinct pieces of ground and charged two dollars for each of the 165 paper pieces for advertising, making a bill of $330 for advertising alone. This advertisement was placed by us before the Legislature, and that Body on the 14th of May, 1840, passed a law that thereafter all land which adjoined together should be advertised as one parcel. The assessment was confirmed on the 8th of March 1839. The interest on $16,153.60 from that time to the 9th of December 1844, is $6501,80, and the advertising of it in the month of March, 1840, $330, making in all $22,985.-40. This salt meadow is estimated to be worth $80 per acre. The interest of the assessment for less than nine months exceeds the value of the land, and the whole assessment, interest and advertising, is more than twenty seven times the value of the property thus assessed.

ANOTHER.

A gore of land having a front of 98 feet on 38th St. belonging to the estate of John Duffie, was assessed for opening 37th Street from 2d to 3d Avenue $1,289.80. This assessment was confirmed March 19th, 1836. The interest of the Assessment to Dec. 19th, 1844, is $790. This same piece of ground was again assessed for opening 38th St. from river to river, eight dollars, and again assessed for opening 2d Avenne from 28th to 86th Street $117.50. The interest of the 2d Avenue assessment is $43.80; the interest of the 38th Street assessment for second opening is $2,86, making altogether of assessment and interest to Dec. 19th, 1844, on this piece of ground $2251.96. Thomas R. Ludlum, a city surveyor, was examined before the Committee appointed by the Senate to investigate assessment abuses, and he stated in reference to this land as follows:

"Witness thinks the lots of John Duffie on 38th and 39th St. in the rear of the Norsworthy estate before spoken of, are not worth more than $50 per lot. He thinks the whole piece of grouud is not worth more than $450, because it is a low sunken piece of ground and will require deep filling to bring it up to the grade." The assessment is a little more than five times the value of the land. Shall such assessments be tolerated? Shall such abuses be countenanced? Where is the force of the guarantee of the Constitution of the United States, and that of this State, that private property shall not be taken for public use without just compensation? It is said these proceedings are "JUDICIAL"!!!

CHAPEL STREET SEWER.

We present copies of further testimony of this outrage upon the citizens of the Fifth Ward, which, with that in the preceding number is more than conclusive. The efforts made to cover up this scandalous transaction have been unceasing, and now the matter must come to an issue. The citizens of Chapel Street are resolved upon having indemnity. We commence with farther testimony taken before Alderman Tillou, of the 5th Ward, in 1843, as per Document No. 76 of the Board of Aldermen of 1844, pg. 1520.

"John Hunt, sworn: I reside at No. 42 Leonard Street; am a cartman. I saw the old Chapel Street sewer taken up, and the new one laid down; can't recollect the size of the old sewer; I remember the shape of it; the bottom was flagged and pitched to the centre; square side walls, and arched over the top; the shape of the present sewer is round; I know the difference between the elevation of the bottom of the old sewer, and the bottom of the present sewer; the difference is from twenty-two to twenty-six inches, as near as I could come at it; I ascertained it to be the fact by a stick run down to the bottom of the old sewer, and standing it next, and measuring to the bottom of the new sewer, and putting it as far under as I could reach; there was a hole dug down on each side of the sewer to the bottom of the old sewer; I examined it last week; there was a piece of flagging lay in the centre of the upper sewer; am sure that piece of flagging was not part of the bottom of the old sewer, for this flag stone lay lengthways, and the flag stones of the old sewer pitch into the centre; the space dug out was between three and four feet; I examined, carefully, to ascertain the difference between the two bottoms; the distance is a little greater on the east side than on the other; I have lived in that neighborhood since 1828 or 1829; I know that the condition of the cellars, while the old sewer was used was dry; used to go often in Captain Riley's cellar, and always found it dry; I was also in the cellar, next door to Captain Riley—I was in the basement of Mrs. Flender in Thomas Street, it was perfectly dry; I know, that since the new sewer was built Captain Riley's cellar was wet every time I have seen it—so was Mrs. Flender's; sometimes six to eight inches water above the floor, so they dont pretend to use it; the new sewer stands inside the old walls; I examined the sewer the other day, at the request of Mr. Meriam and Captain Riley; I am not interested in the event of this matter; I calculate, that the cause of the water getting into the cellars is, that the bottom of the new sewer is so much higher than the old one, that the water cannot run off; I heard a great many of the neighbors complain on the west side, more than on the east side; I ascertained where the bottom of the old sewer was, by actually feeling it with my hand; I saw the new sewer when building; they first laid, on the bottom of the old sewer, a parcel of earth, then a layer of stones, then a layer of dry sand, and then built the new sewer thereon.

I saw them when grading the street, opposite Captain Riley's, it was about three feet rise, or thereabouts, above the old street; the stuff filled in was every kind of rubbish—old bricks, lath, shavins, rubbish of old buildings torn down, whatever people were a mind to fetch; was there when the street was repaved; I thought they were pretty dilatory in grading and paving; dont remember how long they took; can't say as to whether there was any damage to the property from the delay; don't remember when the grading and paving was finished.

JOHN HUNT.

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Caleb M. Littell, being duly sworn, doth depose and say as follows, viz: I now reside at No. 5 Lispenard Street; am, by profession, a house mason; I resided at the time when the old sewer was broken up, and the new sewer built in Chapel Street, at the corner of Church and Walker Streets; I saw the old sewer when it was broken up at different places and at different times; I crossed the sewer from two to four times a day; not at one point; I frequently stopped to look at it as the workmen were at work; the condition of the old sewer, when broken up, was first rate—a good piece of work; I so told Mr. Shepherd, the Inspector of the new one; I dont think it appeared, in any of its parts to be out of repair or delapidated; the brick and mortar appeared to be as good as when put down, the mortar, better a great deal; the old sewer was larger than the new one; I did not observe that the bottom of the old was depressed or not; I noticed the building of the new sewer frequently; I observed that the new sewer was not put so low in the ground as the old sewer, nor so big in circumference; cannot say how much, but it was considerable, in size, smaller; I should think that the bottom of the new sewer was from eight to fifteen inches higher than the bottom of the old sewer; never examined particularly; this was between Leonard and Walker Streets; this was a subject of conversation between Mr. Shephard and myself; I noticed that the courses, from four to six of them on the side of the sewer, were laid dry; and it might have been on the bottom also so laid; I asked Mr. Shephard the cause of its being laid dry, without any mortar—he answered that it was to let the water soak out of the ground into the sewer—I told him it was full as natural for the water to soak out of the sewer, into the ground, as for the water to soak into the sewer; I think he said it was according to orders, or some such answer; I never heard any complaint about the cellars having water in them before the new sewer built; I have, since the new sewer was built, heard complaints; have seen people pumping water out of the cellars; the street in the new grading, was raised considerable—should think two or three feet; I am not interested in the subject matter of this reference, directly or indirectly.

CALEB M. LITTELL.

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John A. Russell, being duly sworn, deposes as follows, viz: I now reside at No. 92 Franklin Street, in this city; am an accountant; my mother, Mary Ann Woodward, is the owner of the house and premises corner of White Street and West Broadway—the north-east corner; I was there about two months ago; the cellar and basement of the premises then had water in them, and the floor was completely rotted out; there is no drain from the house to the sewer in Chapel Street; there was one to the old sewer: has been none to the new sewer; formerly we lived in the basement before the new sewer was built; the basement was then dry; the water has been in it ever since the new sewer was built; the cellar is about five feet in the ground; the drain, when the old sewer existed, was for the convenience of females in the kitchen in throwing out wash water; was for no other purpose; am sure of that; I remember my step-father telling Mr. Shephard he was doing very wrong in taking up the old sewer; the bottom of the new sewer is higher than the bottom of the old sewer, and the water will not run out of the cellars—am sure of this; the old drain remains, but the water will not run from it into the new sewer; this is the only reason I have for stating the bottom of the new sewer to be higher than the cellar; the old drain does not go into the sewer, because the bottom of the drain is lower than the bottom of the new sewer; we have had to reduce the rent fifty dollars per annum, in consequence of the cellar having water in it—this for the last two years only; we moved away five or six years ago from the property; after this the basement stood vacant for some time; previous to the last two years, no reduction of rent was made; the persons now occupying the premises, altogether want a reduction of one hundred dollars, which we shall have to give; the property is occupied thus—the store and the cellar by one tenant, and the dwelling and basement, (the latter for cooking purposes,) by another; each tenant wants a reduction of fifty dollars; the store and cellar rents for three hundred and twenty-five dollars, the dwelling for two hundred and eighty-seven dollars and fifty cents, I think—am not positive as to the amount.

JOHN A. RUSSELL,

Sworn, June 29, 1843, before F. R. Tillou, Alderman.

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City and County of New-York, ss.

John P. Flender, of said City, being duly sworn, says: That his late father, Thomas Flender, died seized or possessed of the houses Nos. 48 and 50 Thomas Street, in fee, and of the leasehold of the house and lot No. 49 Thomas Street, and of the house

and lot No. 44 Hudson Street, in fee, all in the city of New-York; that the property descended, on his death to his widow and children, who yet own the same. That previous to the sewer in Thomas Street, in 1836, being built the cellars of all the dwelling houses on said lots were dry, and susceptible of occupation by the persons residing therein. That after said sewer was built the water came into all of said cellars, and he has always believed, and yet believes, from the sewer; and the said cellars have been ever since, so full of water, more or less, from time to time, as to render said cellars not inhabitable, and they have all had to be partly filled with earth, above the level of the water, on an average to the height of about twenty inches. That the family of said Thomas Flender, before and since his death, continually resided in said house, No. 50 Thomas Street, and previous to said sewer being built, in the basement room of it; that since the said sewer was built, the family have not been able to occupy said basement, on account of the water that came in it, and have not since occupied it, and it has since been partly filled up with earth, as aforesaid. That from the knowledge the defendant has on the subject, and the best information he has been able to obtain, relative thereto, he verily believes that said property, (the said four houses and lots above mentioned,) have been damaged and depressed in value, by the building of said sewer, to at least five thousand dollars; that the loss of rents alone is considerable, besides the actual damage to the property; that the sewer, he believes, is badly built, and is not sufficiently large to carry the water off, and not sufficiently low in the ground to drain the cellars—but as he believes, it causes the water to run into the cellars. That the following assessments on said property have been paid, viz: for the building of the sewer, about one hundred and six dollars; for opening West Broadway, about twelve hundred dollars. Besides which, there are assessments for grading and paving and for curb and gutter stones, not yet paid by them; and to meet which, or a part of which, three of said houses and lots, for a term of years, have been sold by the Street Commissioner; that he is one of the children of said Thomas Flender.

JOHN P. FLENDER.

Sworn to this 28th October, 1843, before F. R. Tillou, Alderman.

The Assessment for the Chapel Street Sewer in 1836 and 1837, was $16,571.08, and for repaving the Street $33,613.46, both amounting to $50,184.54. The Assessment for widening Chapel Street between Leonard and Murray Streets, in 1836, was $210,810.40, making together an Assessment on a small district of over a quarter of a million of dollars. The price paid for repaving the street in 1839, was 8 cents per square yard, and the work was well done, and the contractor had a profit on his labor. In 1836, 40 cents per square yard was paid for repaving the same street, and the work so miserably done that it required repairing in less than twelve months. These facts speak for themselves. The citizens in Chapel Street had been assessed for the Canal Street Sewer placed under the Street in 1819. The proceedings in relation to the present Chapel Street Sewer, the persons interested in were ignorant of until the Street Commissioner's advertisement of May 21st, for the contract for building, appeared in one city paper, of limited circulation. The Report which recommended the sewer was not published, nor did any of the newspapers employed by the corporation publish any thing as having been done in the Board of Aldermen respecting the sewer when the report was adopted.

We shall follow up this subject and lay the facts before the people, and also before the public officers.

PUBLIC STREETS.

The New-York Streets are in the same *unmentionable* condition as when we last referred to this subject. *There is a screw loose somewhere.* The streets of St. Louis, after the subsiding of the waters of the Mississippi Deluge, could not have contained a much greater depth of alluvium than now lies upon the pavements in New-York. The frost, a few nights since, bridged the pavements by chrystalizing the mud, and for a few hours there was an earthen bridge over the paving stones. It melted again, and fortunately dissolved at the top first.—Some years ago, while travelling through the State of Kentucky, and through the town of Lexington, in the winter season, we met a Polish General entering the town on horseback, as we were leaving it by the same mode of conveyance. He inquired of us, "how far to the City?" We replied by informing him he was already in the city and upon one of its paved Streets. He expressed surprise at the information, and remarked that in his country they paved over the mud, but here the mud was over the pavement. New-York Streets are in this same plight. We saw a gentleman walking up Broadway the other day dressed in a new suit of black; a cart and horse drove along at full speed and spattered his clothes all over with a greasy mud; and we noticed a similar accident to a lady's pearl colored silk dress, in John Street.

The cleaning of the Streets should be under the Supervision of the Street Commissioner's Department and these highways kept in passable condition at least. Saturday Dec. 14th, and Monday 23d.

GRATES IN SIDEWALKS.

We notice in Monday's Journal of Commerce a paragraph stating that a Mr. Moore had recovered a verdict of two thousand dollars against the city of Lowell for injury sustained by Mrs. M., by falling into a cellar through the side-walk. The Ward Supernumeraries, called Ward Inspectors, should be required to pay better attention to the grates in the New-York side-walks.

TAX ASSESSORS.

Assessors should be elected for longer terms, say one Assessor for two years, and one Assessor for three years, and in addition to the two ward Assessors, there should be organized a permanent Board of Assessors like the Boston Permanent Assessors, noticed in the last number of this paper. A board of this description would be a great accommodation to the citizens of New-York, and a great saving to the public.

PUBLIC SEWERS IN BOSTON.

We visited the City Wharf in Boston, and had a conversation with the Wharfinger, an intelligent man. We enquired of him if any of the public sewers discharged into docks at this wharf; he replied in the affirmative, and accompanied us to the dock on the left hand side of the wharf where two sewers discharge. The tide was down, and the filth in the dock lay exposed to view. A mud scow was at work removing the accumulations, at an expense of four or five hundred dollars or more. The stores which are at the head of the dock had been painted but were black with sulphurated hydrogen gas which generates in the sewers and dock. The Wharfinger stated to us that when vessels came into the dock in the evening with a new coat of paint upon them, in the morning the Captain on coming on deck would find his new paint of another color, and very offensive, and if he had a silver watch in his cabin, that it had acquired a color of blue black also. The Wharfinger said that he did not consider the effluvia unhealthy. When sewers discharge into docks over which the wind blows at low water towards the dwellings, an unpleasant effluvia is carried into the houses to the great annoyance of the occupants. The tide rises higher in Boston than in New-York, and the mouths of the sewers at low water are open to the atmosphere. We will refer to this subject again.

LIGHTNING.

We have a Lightning Register which has been kept for two years with care, which we shall notice in the Gazette and discuss the use of Lightning Conductors of polished surfaces as compared with unpolished surfaces, and whether it is the greater breadth of surface which is preferred by the lightning or the lesser surface with a greater weight of metal in the conductor. We entertain the opinion that a tin tube 3 inches in diameter with a bright inside and outside surface is preferable for a conductor to an iron rod one inch in diameter. The one presents two surfaces both of 12 inches, the other but one of 3. Polished surfaces do not absorb heat, but reflect it, hence there is no danger of the tin conductor, which is bright, being fused by the heat of the lightning.

NEW-YORK SALINES.

The law passed in 1842, allowing a drawback of the State tribute upon Salt made at the Onondago Salines will expire shortly. The production of Salt at these Salines in the year 1843, was three million one hundred and twenty-seven thousand and five hundred bushels. This Salt now finds its way to the city of New-York, where it is sold at 20 cts. per bushel, including the cask.

In 1841 Salt was sold at the Salines as low as four cents per bushel, the purchasers paying the State duty besides. The import of Salt from foreign countries into the Port of New-York from January 1st, 1844 to Nov. 30th, 1844, inclusive--being eleven months--was 1,568,059 bushels, of 56 pounds each. In 1843, the import for the corresponding months was 1,511,609 bushels of 56 pounds each. Thus it appears that the quantity made at the State Salines is double the quantity of the import from abroad into this State. What a change.

We have a letter from our worthy correspondent, General Leonard White, of Equality, Illinois, (formerly called the United States Saline) of May 2d, 1844, in which among other things he states as follows:

"Previous to the year 1805, salt was made by the French and Indians, in small quantities, occasionally at a spring, the water of which flowed into the Saline Creek at fifty yards distant. This water, at that day, was thought to be very strong; but for many years has been suffered to flow on into the creek as it originally did without notice. It took upwards of 400 gallons of this water to make 50 lbs. of Salt. In the fall of 1804, the Government of the United States leased this place for three years for the purpose of Salt making and the object appears to be to get the greatest possible quantity made at the lowest price and to explore and extend the works as much as possible. The spring when wrought to its full extent yielded water to make 800 bushels per week. The lessees took possession in the spring season of 1805, and that same year as soon as they got into operation of making salt at the spring before mentioned, commenced digging at what is called the half moon lick four miles higher up the Saline Creek. This half moon is a sunken place of several acres, say 5 or 6, with the points on the creek, say 18 feet lower than the surface with steep banks. In this place they sunk three wells in all which they got water of double the strength of the Spring before mentioned, or nearly double, at 24 feet."

They erected their furnaces on the bank and went to work, but in the spring season when the Ohio River had a moderate rise, the back water up the Saline Creek overflowed the well and stopped their work. The idea then was to dig upon the level which would give 18 feet higher. This being done, at the same level below the same kind of water was obtained. Salt being in great demand, and a corresponding wish to supply it existed, another well say at 100 yards distant was sunk and water procured. This line of wells paralel with the creek up it, was extended until the water got so weak as to be good for nothing. This line is about 600 yards long. Another line at right angles across this one was then commenced and extended both ways as far as the water was worth working, and farther, and is, say 400 yards long. A line of several wells was then sunk down the creek below the point of the half moon, and water obtained and worked for several years, though not quite as good. This was all done in six years.—The next lease there was but little experimenting done, the manufactory was carried on to its fullest extent, the lease expiring in 1813. During the war a great demand for salt existed. *The government now seemed to change their policy*, and instead of leasing to those who would make the greatest quantity and sell the cheapest, *they wanted the most rent they could get and permitted higher prices, $1.25 the bushel, the former price having been 75 cents.* A new set of men came in and agreed to give $50,000 per annum, under the impression that the water was *inexhaustible*, and that the advance in price would enable them to pay this rent, and they would make fortunes; by this time the wood was exhausted, new lines of pipe had to be made, new wells to be sunk, old lines lengthened, new furnaces to be erected, and by the time this was done peace came and the Kenhawha Salines extended—*down came the price*—and ruined all here."

In another letter from the same correspondent, dated the 8th of May, 1844, he says:

"In 1809 I was appointed agent on the part of the United States for the works at this place, being then quite a young man, and was informed that the object of the Government was to make the greatest possible quantity of Salt, at as low a price to the consumer as possible. These were the propositions offered in the advertisements for leasing, and the leases were taken with strong covenants to made as much salt as could be made, and to sell at a given price, generally 75 cents, the first lease lower, but soon raised to that by permission of the Government. My duty consisted principally in distributing this salt among the applicants, as the demand was greater than the supply, and was a short distance off north from two to three dollars for fifty pounds."

My correspondent was a member of the Convention which framed the Constitution of the State of Illinois and was subsequently a member of the Senate of that State, and his practical knowledge in this became available to the public interest in the framing of the laws of the State in reference to these Salines.

Three dollars for fifty pounds of salt is equal to six cents per pound, which is two cents a pound more than one of the salt makers at Onondago, in 1841, obtained for a bushel of 56 lbs., subject to the State tribute of six cents per bushel.

Should it be the policy of the great State of New-York to collect a local tax upon salt? China has a tax on salt out of which they pay the British tribute!

The admonition contained in the letter of General White, by reciting the course of policy of the general government in 1813, is a lesson in the school of experience.

In a letter from my correspondent of the Kanhawha Salines, Lewis Ruffner, Esq., an extensive manufacturer of salt, he says:

"I will add that from one and a half to two millions of bushels of Salt of 50 lbs. weight is annually made here, and vended in the South and West."

In another letter from the same intelligent correspondent he remarks thus:

"I have not a doubt myself that Allum Salt can be made here of unequalled purity, to a very great advantage, and would be, should Congress give us a reasonable protective duty."

In a letter from my correspondent Alexander Findley, Esq., of Saltville, Washington County, Virginia, dated November 28th, 1844, he gives a statement of the temperature and specific gravity of the Salt Water of his Salt Wells, viz: specific gravity 23 degrees. Temperature 56 degrees, The hydrometer is graduated to 0 for fresh water, and 25 degrees for water fully saturated in the salt. The test was made on the 9th of Sep. 1844. The atmosphere on that day was 78 degrees, and fresh water 60 degrees. Mr. Findley sent me a bottle of the salt water last winter, raised from a well 214 feet deep, on the 31st of January, 1844. Specific gravity 23 degrees. Temperature 51 degrees. Mr. Findley in a letter to me of May 24th, 1843, says: "Our supply of Salt Water continues to be abundant and the specific gravity about the same, if any change, is increased. We have never required water enough to use for our manufactory to ascertain the increase of the quantity.—We have no doubt our well would supply enough to manufacture from three to five times as much as we make. We believe it cheaper to work the Salt Water than to raise the Salt Rock." The Salt Rock lies 220 feet below the surface and has been penetrated by a shaft 160 feet. In my address to the President and Managers of the American Institute, in 1842, I presented much detail in reference to the Salines and Salt Mines of the United States, in which I stated that the consumption of Salt in the United States is equal to three pecks to every inhabitant, and that the quantity of salt made in the United States exceeds the quantity imported from other countries. This address is to be found on p. 117 to 120, inclusive of this volume, and in the printed documents of the Senate of this State for 1843, vol. 3, doc. 108, p. 53 to 66 inclusive. I will refer to this subject again.

E. MERIAM.

Dec. 1844.

LONG POND, NEAR BOSTON.

The supply of water for the city of Boston is intended to be obtained from Long Pond which lies in the town of Framingham, Natick and Wayland. Ponds are subject to occasional or periodical depression. White Pond, in the southerly part of the town of Concord, 17 miles from Boston is thus influenced. White Pond contains one hundred acres. Long Pond contains 600 acres. The distance from White Pond to Long Pond, I presume, cannot be more than 6 or 8 miles. White Pond in some dry seasons is so full as to flood the bushes that surround its beach, and in some wet seasons so low that four ox-teams could pass abreast on the beach, between the water and the bushes. The cause of these changes has never been ascertained. The same state of things has been noticed with regard to the rise and fall of the waters of the great lakes. The Erie Canal was at one time in danger of becoming dry at its lake extremity, from this cause. At Chicago, during the rage for speculation in city lots, ground was laid out into lots to the shore of the lake, in the course of three or four years, the lake invaded this land, and covered it with water for two or three years, and then receded again. I made an extensive examination as to the rise and fall of waters of the Lakes in the summer of 1844, and previously. In July, 1844, I searched the northern shore of Lake Ontario for a natural object with which to make a Lakeometer, until I became convinced that any natural object would be liable to change, either from the expansion of the earth's land surface, from local causes, or from the wear of the frost, water and heat. I then sought for an artificial object and obtained one in the body of the new lighthouse, erected in 1837, upon Gull Island. This lighthouse is erected upon what was, forty years ago, an island of an acre of surface of rock. It is now a sunken ledge, covered with near two feet of water. I will refer to this subject again in the next number of the Gazette and detail my examinations and give my conclusions.

E. MERIAM.

WATER IN HEATED ROOMS.

Apartments heated by Anthracite Coal should be furnished with pure fresh water every day. The water should be placed in a clean earthen bowl. If the coal is consumed in a stove, an iron vessel filled with dry sand should be placed upon the stove, and the bowl placed in the sand. The heat of the sand will heat the bowl and evaporate the water, gradually, and this will moisten the atmosphere of the room with the vapor of pure water, and if the temperature of the room is high, the evaporation will go on from the heat of the atmosphere on the surface of the water also. A little perfumed water may be added, if it is desired to have an aroma in the atmosphere which may be respired, like that of the Rose, the Jessamine, the Lavender, &c. Putrid or dirty water evaporated in an iron or tin vessel upon a stove, is as noxious to breathe in winter, as the exhalations of a putrid pond is in the summer.

E. M.

ICY WALKS, AND DOOR STEPS.

A few quarts of fine salt thrown upon the sidewalks or door steps will at once liquify the ice. The water should be swept off before it freezes again. Salt thrown into a frozen pump will melt the ice and free the pump.

E. M.

BANK CAPITAL, TAX.

The tax upon the Capital of the Banks of the City of Boston, compared with the tax upon the Bank Capital of the city of New-York, is thus: In Boston the Banks pay a state tax of one per cent, on their capital stock annually. The Stockholder, resident in the city of Boston this year, pays a county and city Tax of 60 cents on the hundred dollars. The New-York Banks (Safety Fund) pay annually a State tax to the Safety Fund, of one-half of one per cent. on the amount of capital. The New-York city Safety Fund Banks also pay a State Tax of 11 cents on the $100, a Croton Water Tax of 21 cents on the $100, although their buildings are fire proof—a water tax of 11 cents, a lamp tax of 5 3-10 cents, a School tax of 16 cents, a street tax of 4 2-10 cents and a contingency tax of 17 cts. on the one hundred dollars, and besides, the institutions pay a charge for the registering of their notes, all of which may be set down at 86 1-10 on the one hundred dollars.

The Boston Stockholders of New-York Safety Fund Bank Stock pays $1.46 taxes to both cities, on the $100.

The New-York Stockholders of Boston Bank Stock, pay a tax to both cities of $1.86 on the $100.

MUTUAL INSURANCE COMPANIES.

These associations are not taxed in Boston. Whatever interest the associates have in the earnings in these partnerships form a part of their personal property. These earnings are a mere contingent fund, held liable to the assessed and when used to pay losses take the place of the property lost which has already been taxed. The New-York Supervisors insist on taxing Mutual Insurance Companies, but they have no law to warrant such an imposition, and moreover, these institutions were unknown here when the tax law was passed. They might as well tax the contingent fund of a bank, or tax a merchant for what profits he expects to make.

THE CROTON TAX.

The Croton Water Department should be put under the entire control of the State Commissioners, which is composed of Stephen Allen, Saul Alley, W. W. Fox, and Thomas T. Woodruff. A better organized Board could not be made in the City of New-York. All are estimable men, and men of experience, and such men as have the entire confidence of the good men of both parties. The members of the Common Council should have nothing to do with the Croton Water, for the plain reason that they lack that experience and particular knowledge of this costly concern, which is a necessary qualification to its management. Members of the Common Council come into office one year and go out the next, and they have no time to learn, and besides their attention is taken up with a thousand other things. The Aldermen are judges of the Court of Oyer and Terminer, Court of Sessions, County Court, are Supervisors of the County, and members of the Board of Health, besides having a great deal to do in every thing else. The Croton has cost a great amount of money—the work has been done on credit, and the means are to be provided to pay both the interest and the principal. It is just such an establishment as should be in the hands of the gentlemen that compose the State Board, who have both experience and talent. The benefit of the Croton should be paid for by those who enjoy the advantages. Why should Bank Capital or money loaned out on Bond and Mortgage in the State of New-Jersey, or a ship on a three years whaling voyage be taxed for the Croton? The Croton is a protection against fire to both buildings and merchandise—and how much?—that is the question. We shall follow up this subject.

PUBLIC PATRONAGE.

Public Officers reckon upon the pecuniary patronage they possess as so much political capital. For example—a public officer who can give a hundred thousand dollars patronage per annum to the public presses, can be puffed every day.

There is another class of Citizens who have patronage, and millions of it—the men of wealth, who live upon the interest of their money—the men of business, who give employmeat to a great number of individuals—these men have patronage, but that class of Citizens became alarmed at the slang of politicians in being called the silk-stocking gentry. It is the man of money, and the man of business, that put the Natives into the Common Council, and these Citizens are watching every step of the new party and setting down every misstep. They turn aside from seeing things they do not like, and hope the new party will do better next time. This is the public feeling. We see it, and hear it expressed. The Natives will obtain the support of leading men in the Whig and Democratic ranks in exact proportion as they deserve it. They can keep the power, if they will. It is an immense experiment, for good, or for evil.

PRICE OF REPAVING.

In 1820, Chapel Street was well repaved at 8 cents the square yard. In 1836, 40 cents the square yard was paid for repaving the same street, and it was badly done. What a fat job this. Shame on the public officers who paid such prices for such work.

INCREASE OF TAXES.

In 1830, the taxes of the city and county of New-York were $450.000, population 202,580. In 1844, the taxes are increased to $1,981,520.12, population about 360.000. Money is as dear in 1844, as it was in 1830. The Egyptian tax was one-fifth the income. The New-York tax is upon the principal, without regard to the income.

LOSS OF POWER.

The Mamalukes lost power in Egypt by increasing a heavy tax. The result will be the same in every civilized country.

ODIOUS ASSESSMENTS.

Attorney General Barker said to us sometime since that if the Emperor of Russia had imposed such burdens upon his people, as the Corporation of New-York had upon its Citizens in the imposition of ruinous local assessments for street improvements, that he would have lost his crown. It was a just remark. In other countries the assessment depredators would have been driven from society, and the finger of scorn pointed at them wherever they were seen.

CHANCELLOR WALWORTH.

This Equity Judge is probably the most industrious Judicial officer in this or any other country. His mental and physical labors are great, and but for his tee-totalism, would have worn out before this time. He will be an acquisition to the bench of the Supreme Court of the United States. Chancellor Walworth is a strict constructionist, and no other but strict constructionists should be upon the bench of the Supreme Court of the United States or upon any other judicial bench. His place cannot be made good.

AN ANCIENT TAX LAW.

In 1752, a bill was introduced into the General Court of the Colony of Massachusetts for the encouragement of industry.—The bill authorized bounties to be given and the amount of these to be raised by a tax upon carriages; but a carriage not used during the year, should not be taxed. The bill was directed to be published for the information of the people, and if no good objections should be made to it, to be brought forward at the next session.

FIRST AVENUE ASSESSMENT.

In our last number, on the title page, we notice an error in omitting a portion of the Surveyor's fees. The fees of the Surveyor for the 1st Avenue were $373.37; 40th Street, $378.00, and that for 39th Street, $468.00, making in all $1219.37, which is pay for 304 days and 5 hours, equal to 11 months and 18 days, and 5 hours, counting 26 working days to the month. We had it 404 days, and omitted the fees of 39th and 40th Street, in the summary.

PHILADELPHIA TAXES.

We present our readers in the present number, a letter received from the Hon. John M. Scott, Mayor of the city of Philadelphia, an intelligent public officer:

"Philadelphia, Sept. 14th, 1843.

"Dear Sir,

"I received your letter of the 8th, yesterday, on my return from a short absence.

"I will endeavor to obtain and forward to you in a few days, the documents you ask for, but it is very doubtful whether the scale of expenditure here can form a criterion for the guidance of another city, as this expenditure must depend upon the different characters of the several institutions to which it is applied, and would require great similarity of system to produce similarity of amount.

"I will make now one statement, which if well understood will throw light upon one branch of your enquiry. It refers to the city proper.

"In the city proper I own a house assessed at $12.000; which is intended to be its full valuation at a fair market price.

"Upon this house I pay the following taxes.

"State Tax, 20-100 on the $100	amounting to		$24.00
County Tax, 50-100	"	"	60.00
City Tax, 36-100	"	"	43.20
Poor Tax, 48-100,	"	"	21.60
			$148.80
"If I use the Schuylkill Water in my house, as I do, I pay for household purposes and bath,			8.00
			$156.80

"These coustitute all the taxes assessed upon that piece of property.

"I pay also to the city, to the county, and to the poor tax fund, what is called a personal tax, $2 to each fund. This is not rated upon personal property, but strictly upon the person—rated upon the trade or occupation—the lowest rate being 20-100—the highest $2.

"To the State I pay a tax upon personal property, emoluments of office, &c. which you could not understand without an accurate examination of the law.

"These taxes upon my house are, as I have said, *all* that it pays for the year 1843. The city tax pays for watching, lighting, paving, police, city government, cleansing, &c., &c., in fact for all city expenses.

"The city is included in, and forms part of the county, and therefore pays a county tax. This fund pays for roads, bridges, courts, (not including salaries of judges) damages, &c.

"Poor tax pays for the support of the poor.

"These are the taxes for the city proper. But this city proper is but a small portion of the city *apparent*. That includes corporations called Southwark, Moyamensing, Spring Garden, Penn Township, Kensington, each of which sustains its own local operations by its own taxes.

"Thus, Spring Garden—there a house value $12,000, would pay the same state tax, county tax, and poor tax, that is paid on my house—it would not pay a *city* tax, but it would pay a Spring Garden tax, laid by the authorities of the District, probably *less* than a city tax, the state of advancement of each district being the indication of the magnitude of the tax.

"In some of the districts they *pave* by assessments, upon the holders of the property in front of which the pavement is made.—Not so in the city.

"If you would pay us a visit and pass an hour with me, I would give you more information than by writing a volume.

Very Respectfully,
Your obt. servant.
J. M. SCOTT.

E. Meriam, Esq.

It will be seen by the foregoing letter that the Philadelphia taxes are assessed upon Real Estate and not upon personal property. The Supervisors of New-York impose a tax of $1,981,013.14, the present year, upon $234,360,047.98, Real and Personal Estate. The Real Estate amounts to $171,636,591,-18, and the aggregate tax if imposed upon this sum would be 115 on the 100 dollars and $138 upon $12,000 the sum which His Honor Mayor Scott takes forthe basis of his estimate. It should be borne in mind that the N. York tax does not include the expense of sewers, paving streets, opening streets, avenues and public squares, making wells and pumps, fencing vacant lots, filling low ground, &c., which together amount to an immense sum of money annually. In Philadelphia and Boston these are included in the general tax, with the exception of part of the sewers in Boston, which is paid for by the abuttors. The Croton Water in New-York is an extra charge to those who take it in their houses, and every wine glass used by Mr. Astor actually costs him two guineas, reckoning the annual Croton tax he pays and the Croton Water he uses.

PUBLIC PRINTING.

We do not hear anything said of the Public Printing being done by contract. The Natives will find that the footing of these bills will be scrutinized at the polls.

NEW-YORK CITY STOCKS.

We are enquired of as to the liability of the City Stocks to taxation? The taxes imposed in the city and county of New-York are State and County Taxes, and not a Corporation tax. The Corporation have no power to tax their own stocks or any thing else. The Supervisors assesses the taxes under an authority of the State Legislature, and Croton Water stock is assessable.

ASSESSMENT ABUSES.

We shall, in our first January number, endeavor to give that portion of the Report of the Select Committee appointed by the Honorable the Senate of the State of New-York to examine into assessment abuses in the city of New-York which relates particularly to the opening of Streets, and this may be considered as a sort of preamble to our review of the opinion of the Supreme Court recently delivered in the Striker Assessment Case. The Report of the Committee we shall accompany with Diagrams, for the information of our distant readers who are not familiar with New-York Assessments. The opinion of the Supreme Court and Mr. Websters argument are both lengthy and for that reason we shall be under the necessity of issuing a paper with double the usual number of pages, as our review of the last majority opinion of the Court will occupy several columns, and we shall place with the opinion of the Court, our review, section and section that the reader may see both in the same column, and on the same page. In this Republic, the People are Sovereigns, and it is therefore the highest tribunal in the land, and it is for this reason we come to argue the great assessment question before that great and august body.

DAILY AMERICAN CITIZEN.

A large and well conducted newspaper of the above title is published daily in the city of Albany. Terms of subscription 50 cents per month, payable in advance. The sheet is of the size of the New-York Express, except being not quite as long. Citizens who favor the American Republican interest and who are anxious to know what is going on in the Legislature during the approaching session will do well to patronize that journal. It is printed by Messrs. Stone & Henly and edited by James Stanley Smith, Esq.

STATE STOCKS.

It is asked can a State impose a tax on the Stock issued by their own officers? It would seem reasonable to presume that a State cannot pass a law to impose a tax on Stock which has been theretofore issued, for the exercise of such a power would be a violation of the contract made by the State with the taker of the loan, but a law passed prior to the issuing of the stock, taxing all personal property, would reach the property in the stock, the certificates being an evidence of debt from the borrower to the lender. Thus if the tax law was created prior to the loan, the loan is taken subject to the tax. This seems to be a common sense view of the question in our humble judgment: The State Mill Tax law was passed for the benefit of the holders of State Stock, and the title of that is as follows: "An act to provide for paying the debts and preserving the credit of the State." The tax has enhanced the value of this Stock to the holder.

In Mr. Well's letter, the cost of timber is stated at $12 to $14 per M., instead of 12s. to 14s. as we had it printed in our last number.

MAIDEN LANE SEWER.

The Sewer under Maiden Lane presents an opportunity of determining the means of relieving the cellars under the buildings in that street from water. The street at its intersection with South Street has two sewers, one above the other, but notwithstanding these, the water accumulates on the surface at the corner of Pearl, Water and Front Streets at the intersection with Maiden Lane.

George B. Smith, Esq., enquires of us how it is that the Commissioners Reports on several Streets were confirmed at the December Special Term held by Judge Bronson? We answer in the following

OFFICIAL NOTE:

"Supreme Court Clerks Office,
"Albany, Nov. 20th, 1844.

"Dear Sir,

"I am requested to inform you that the Court at its *late term* granted an order of affirmance in the New-York Street cases. The dissenting opinion of Judge Bronson will be found in the case of Striker vs. Kelly, on the constitutional question.

"I am respectfully,
"Your obt. Servant,
"Chas. Humphrey, Clerk.

"To Richard Mott, Esq.

The December Term was held subsequent to the term in which the Court decided this matter. Chief Justice Nelson, and Mr. Justice Beardsley are the only members of the Supreme Court that confirmed the Commissione'rs Reports.

PHILANTHROPY.

We notice a movement which is highly praiseworthy. The Hon. John W. Edwards, formerly a member of the Senate of this State, and formerly Recorder of the City of Hudson, and now President of the Board of Commissioners of the State Prison at Sing Sing, has called a public meeting to take measures to aid men who have served out their terms in prison with the means of obtaining employment and support on returning again to society. At this meeting Vice Chancellor McCoun presided, and that worthy citizen honored himself in the seat he filled on this occasion.

JUDICIARY PATRONAGE.

We are preparing a list of the Commissioners of Estimate and Assessment appointed by the Supreme Court with a statement of the fees of each, the room hire, &c., the Surveyor's fees, Attorney's fees and Court charges, and in order to enable the reader to make a comparison, will place along side of of that statement the Annual Expenses of various States of the Union. The constitution never contemplated giving to judicial officers the patronage of appointment, a a power far more dangerous to civil liberty than the command of the militia.

MAYOR HARPER.

At the time the mobs were so destructive in the city of Philadelphia, in May, 1844, a meeting was notified by public advertisement to take place in the Park with a view to pass resolutions sympathising with the sufferers in Philadelphia. The cruelties perpetrated in Philadelphia were so great that it became dangerous to collect together a multitude here for fear of the consequences which might grow out of a public recital of the bloodshed by the mob, and the meeting was accordingly given up, but two of the city papers had announced the meeting for a day previous to the time fixed upon and no sufficient time intervened to give notice of the mistake. Great numbers began to collect in the Park in the afternoon of the 9th of May, and the accounts of the Philadelphia butcheries was operating on the minds of some of the crowd when we applied to Mayor Harper on the subject. He at once addressed to us a note of which the following is a copy:

"Thursday Afternoon,
May 9th, 1844.

"Dear Sir,

"In reply to your note, I beg to say that there will be no authorised meeting of the American Republican Party in the Park this week. In haste.

Your obt. servant,
JAMES HARPER."

"To E. Meriam, Esq.

Mayor Harper had not then been sworn into office, but the position in which he stood toward the American Party gave him a commanding influence. This letter was read on the steps of the City Hall to the crowd and they dispersed immediately. Mayor Harper's doctrine is that "prevention is better than cure," and his views in this, are in accordance with those of all intelligent, deliberate men. The city has been quiet under the administrationof Mayor Harper, notwithstanding the great excitements which have prevailed elsewhere.

PUBLISHING OF PROCEEDINGS OF THE CITY BOARDS.

The Board of Aldermen and Board of Assistant Aldermen are very remiss in the publication of their proceedings. Citizens whose interests are to be affected by the acts of the Common Council should have knowledge immediately of the introduction of these proceedings into one Board, before they are consumated in the other. This would give persons interested, two opportunities for redress: the first with the concurring Board, and the second, with the Mayor.

This is not only the spirit but it is the mandatory provision of the Charter. We were in the room of the Board of Aldermen a few days ago, when a sewer proceeding involving an assessment, was being acted upon. It went through both Boards with railroad speed the same evening without any publication of the ayes and noes. We felt sorry to see the Natives thus hurrying through assessment proceedings. The other proceedings passed upon the same evening seemed to have the same projectile force.

MAP OF A STORM.

The snow storm which occurred on the 28th and 29th of September, 1844, illustrates a peculiar state of atmosphere in certain localities differing entirely from that of others of the same latitude.

I met with a gentleman yesterday, who states to me that he was, during those two days, in New Castle District, Upper Canada, and no snow fell in that vicinity. The weather, however, was cold and stormy; and I also seen a gentleman who was in Montreal those two days, and he informs me that no snow fell in that city.

By the accounts published in the newspapers at various places, it appears that the storm was confined to a narrow path.

At Portland, Maine, which is in latitude 43 9, the rain fell abundantly on the 29th; and at Utica, N. Y., which is in lat. 43 10, snow fell nearly all day on the 29th.

At New-York, which is in lat, 40 42, and at Baltimore, Md., which is in lat. 39 17, rain fell abundantly on the 29th.

At Richmond, Va., which is in lat. 37 32, there was a severe frost on the 29th Sept.

At Cumberland, Md., in lat. 39 38, snow was visible upon the mountains.

At Boston, Mass., lat. 42 22, there was rain on the 28th and 29th, but at 4 o'clock P. M. of the 29th, it cleared up to beautiful fair weather.

At Mifflinton, Pa., lat. 40 45, and in Lycoming, lat. 41 20, snow fell abundantly on 29th.

On the hills of Berkshire County, Mass. and of Schoharie county, N. Y., snow fell on the 29th.

Capt. Sherman, of the Brig Emily, arrived at New-York on Monday morning the 30th of Sept. from Charleston, S. C., experienced nothing of the gale on the 28th or 29th.

Travellers from Portland to Quebec, met with snow on the highlands, as low down as Aubect Gallion, six inches deep, but no snow was visible on the mountains north of Quebec from that city. Rain fell at Quebec on the 29th.

I have an account of the fall of rain from Com. Crane, as per the register kept at the Hydrographical Office, Washington city, which gives a fall of one inch and 30-100, on the 28th, but no rain on the 29th or 30th. Washington is in lat. 38 52 and 45 seconds.

Thus we have a partial map of the storm. The snow extended south of lat. 40 in particular localities, but was absent in higher northern latitudes, and again made its appearance in lat. 47. Rain fell in the intermediate latitudes in the same localities, and in others snow; and south of lat. 37 was fair weather, but cool.

These facts are instructive and carry us back to the ancient Record which speaks of the wind as beyond the power of research, for 'none can tell whence it cometh or whither it goeth.'

E. MERIAM.

UNITED STATES SENATOR.

The city of New-York is by its commercial importance, certainly entitled to a representative in the Senate of the United States. Other portions of this State have furnished members from the State to that body for years, and the city should now have a voice by the selection of one of its prominent citizens to fill the office of Senator. Stephen Allen is the very person who ought to be selected. Mr. Allen has filled many public stations with advantage to the people and with credit to himself, and has in all been found faithful and capable. Mr. Allen was three years Mayor of the city of New-York, was four years a member of the Senate of this State, was a member of the Convention which framed the amended City Charter, has held the office of Croton Water Commissioner for several years and was President of the Board; was at one time the depository of all the funds of the government of the United States collected at this Port, and has been a member of the city Councils. Mr. Allen, although not bred to the legal profession, delivered some opinions in important causes in the Court for the Correction of Errors, which were profound and elaborate, and discover a mind of extraordinary powers. It is in accordance with the doctrines of the American Republicans, as we understand their doctrines, to support Mr. Allen, and we presume there are enough high-minded democrats and high-minded Whigs in the State Legislature to make up a majority for Mr. Allen in that body. Perhaps politicians may say that Mr. Allen has had his share of public office. To such we reply that offices were not made for men, but men were created of ability and worth to fill public office. John Quincy Adams has held office during the whole of the mature years of a long life with honor to himself, and credit and advantage to the Republic, and we could make the same remark in reference to Henry Clay, and many others.

CONDITION OF MAIDEN LANE.

The surface water from the waste of the Croton, is in Maiden Lane a great nuisance. We have been informed by Henry Andrew, Esq., that there is a sewer under Maiden Lane. It would seem to be only necessary to make receiving basins at Gold, Pearl, Water and Front Streets, with culverts and strainers to relieve the surface.

MASSACHUSETTS LEGISLATION.

The vote of the towns of Massachusetts determine how many Representatives each town will send to the Legislature each year, within certain limit, or whether it is necessary to send any representative. It is frequently the case that a town votes that it is not necessary to incur the expense, as that is paid out of the town Treasury. The principle will sometimes apply in this city, both as to the Legislature and Common Council, if we take what is done for particular wards in the Common Council, and what is done by the delegation in the legislation for the city. The mill tax is a *memento*.

COMMITTEES OF THE BOARD OF ASSISTANTS.

Special Committee on the Chapel Street Outrage.

Assistant Ald. Tucker of 15th Ward, Chairman.
" " Blackstone, of the 8th Ward.
" " Divver, of the 4th Ward.

Special Committe on the unauthorised application to the Supreme Court for the appointment of Commissioners of Estimate and Assessment iu the Streets and avenues up to and including 42d Street, laid down on the Commissioner's map, and not opened prior to February 16th, 1837.

Assistant Ald. Tucker Chairman.
" " Blackstone,
" " Divver.

BOARD OF SUPERVISORS.

Committee on Annual Taxes.

Alderman E. G. Drake, 5th Ward, Ch'n.
Alderman Mott. 9th Ward.

COMMON COUNCIL.

Committee on Streets.

Alderman Devoe,	Assistant Ald.	Ward,
" Cozzens,	"	" Taylor,
" Gale.	"	" Divver.

CLEANING STREETS.

Alderman Miller,	Asst. Ald.	Tucker,
" Bunting,	"	Charlick,
" D. T. Williams.	"	Smith.

FINANCE.

Alderman Drake,	Asst. Ald.	Tucker,
" Miller,	"	Taylor,
" Gale,	"	Horn.

The correcting of Erroneous Taxes belongs to the Board of Supervisors. The Chairman of the Tax Committee is at the office of the City Trust Company, 48 Wall Wall Street.

DIAGRAMS.

We shall present several new diagrams of splendid Assessments, that of John Duffie's estate, on 38th Street, between 2d and 3d Avenue—that upon John Schuyler's estate on the corner of 28th Street, and Seventh Avenue—that on land of Assistant Alderman Townsend, on Seventh Avenue, near 50th Street; also on that of the land of General Striker, and among the rest the Salt Meadow Assessment, and also of the Sewer built on piles in 122d Street and Chapel Street Sewer, &c. &c.

THE MUNICIPAL GAZETTE

Is forwarded to the Executive, Legislative and Judiciary Officers of the Government of the United States—to the Governors of States composing the Union—the Mayor of all the cities in the United States—to the Presidents of the several Banking Institutions in the several States composing the United States—to the members of the New-York State Legislature and heads of Departments—to the high Judiciary Officers of this State and distinguished citizens in this City, State, and United States.

NEW-YORK MUNICIPAL GAZETTE.

January 1st to February 20th, 1845...Inclusive.

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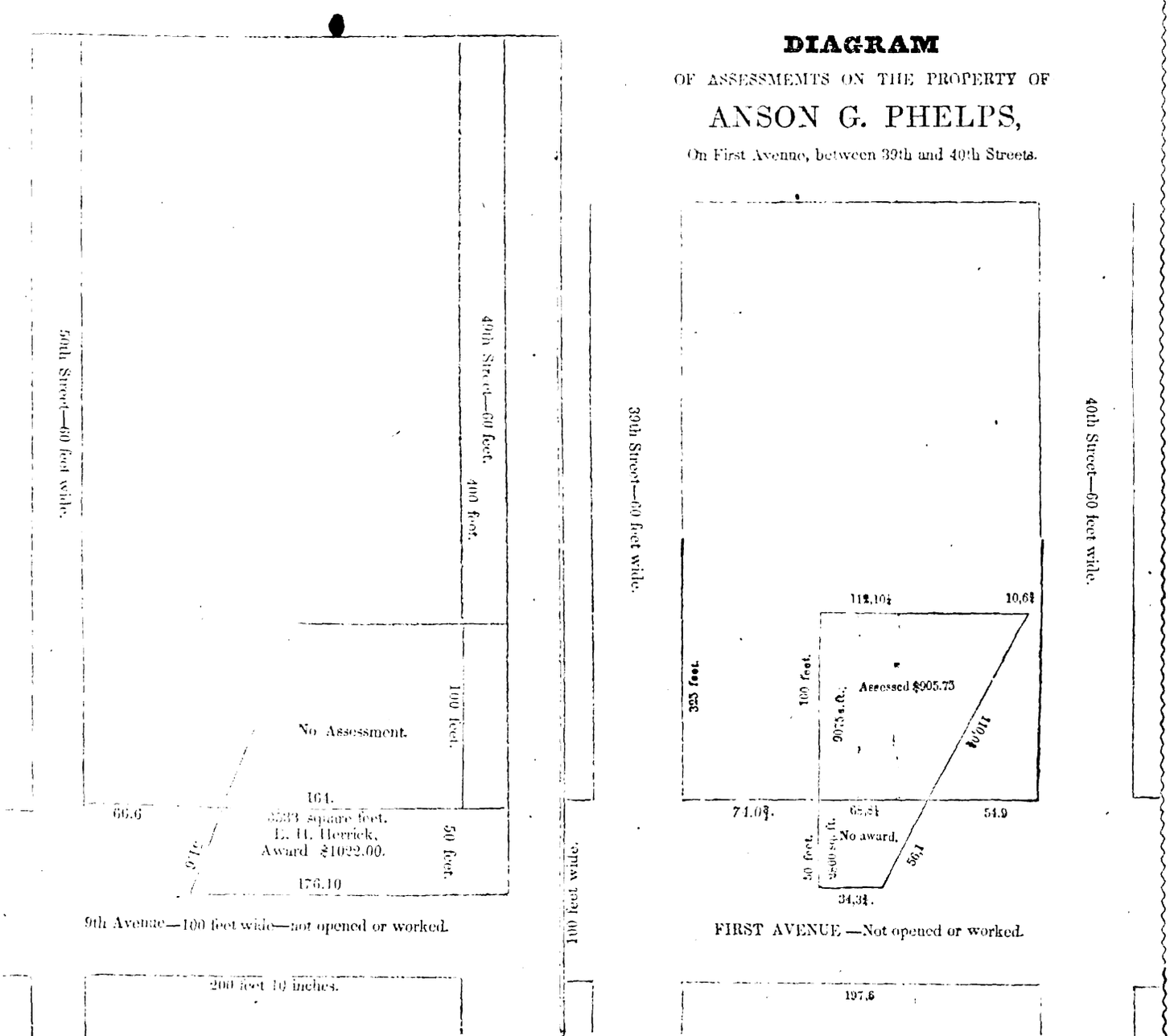
RUINOUS ASSESSMENTS ILLUSTRATED BY DIAGRAMS.

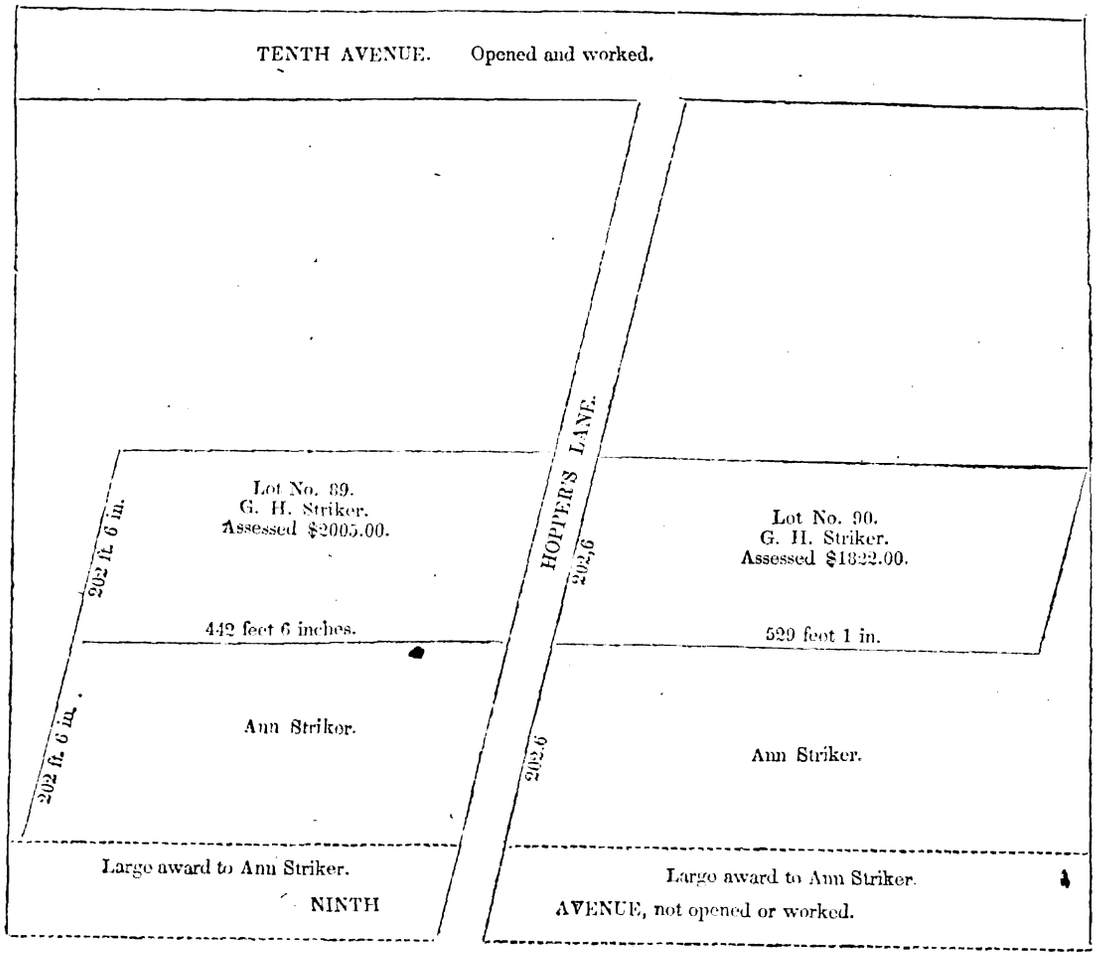


The award for the Land taken from Mr. E. H. Herrick in the Ninth Avenue, for that road, compared with the assessments upon the land of Anson G. Phelps, for his land in the First Avenue, taken for that road, presents an illustration which demonstrates abuses of a serious character. The land taken from Mr. Phelps for the First Avenue in proportion to what is left, is about in the same ratio as that taken from Herrick for the Ninth Avenue in comparison with what is left, and shows the total absence of all system, rule, equity or justice, in making assessments and awards. Mr. Herricks award, compared with the assessment on the land of Assistant Alderman Townsend, taken for the Seventh Avenue, presents another illustration. The land extending back to a line running half way between the Eight and Ninth Avenue should have been assessed a small sum for the land taken from Mr. Herrick, and Mr. Herrick should have been awarded say $50 or $100. Mr. Phelps whose land is situated precisely as that of Mr. Herrick, should have been awarded for what was taken, instead of being assessed on what was left, and the same as to Mr. Townsend's land. The difference between paying an assessment instead of receiving an award, is very great. Whether a person receives $1000. or has that sum to pay is a difference to such person of $2000. The land of Mr. Herrick was assessed for opening 50th Street $10. Mr. Phelp's land was assessed for opening 40th Street $575. That such proceedings as these should be corrected, is a matter of such common sense propriety, that we doubt if there could be found an intelligent man in the world who would oppose such a proceeding, and that Courts of Justice should have their legal vision so obscured as not to be able to see these matters in their proper light, is a sad commentary upon the Judiciary department of the State Government. The 9075 feet contained in Mr. Phelps's land is valued by the Ward Assessors at $150.00, which is not much more than the interest of the assessment, and but a trifle more than half the assessment imposed upon it, thus it is an absolute confiscation of the land, or taking private property without just compensation. A pretty proceeding—"*a judicial power exercised in a judicial way.*"

The fees of Counsel, Commissioners, and Surveyors, for street openings in the city of New-York, confirmed by a justice of the Supreme Court in 1839, amounted to the sum of $100,131.26, and these diagrams show how these fees were assessed, viz. Counsel $31,196.47; Commissioners $39,143.79; Surveyors $22.517.00; Collectors $7,274.00.

The two Diagrams on this page are copied from the Maps of the Commissioner's of Estimate and Assessment.

DIAGRAM NO. 1.



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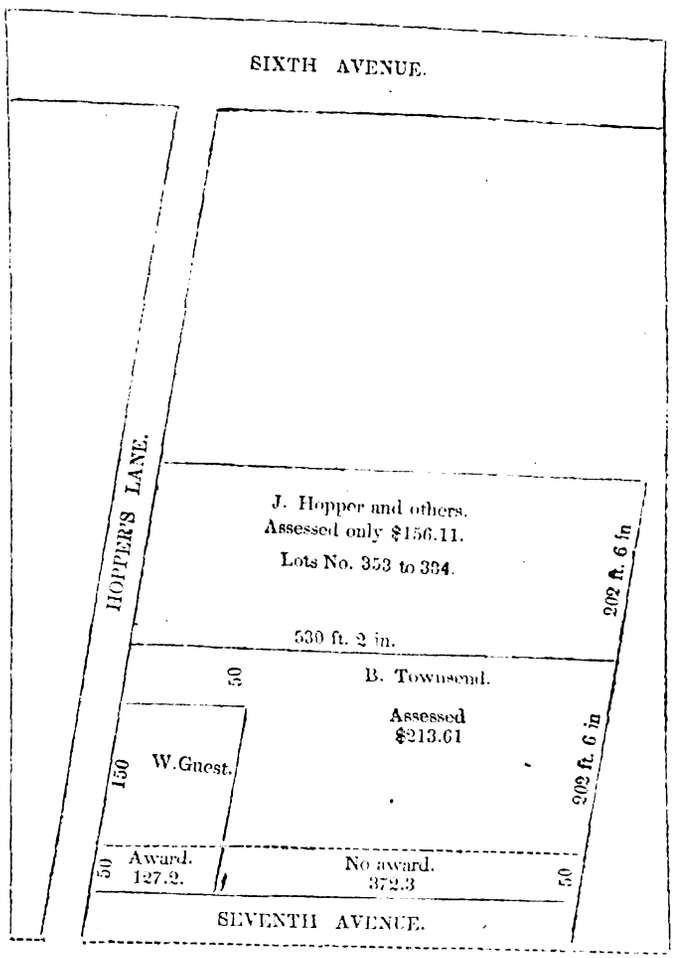
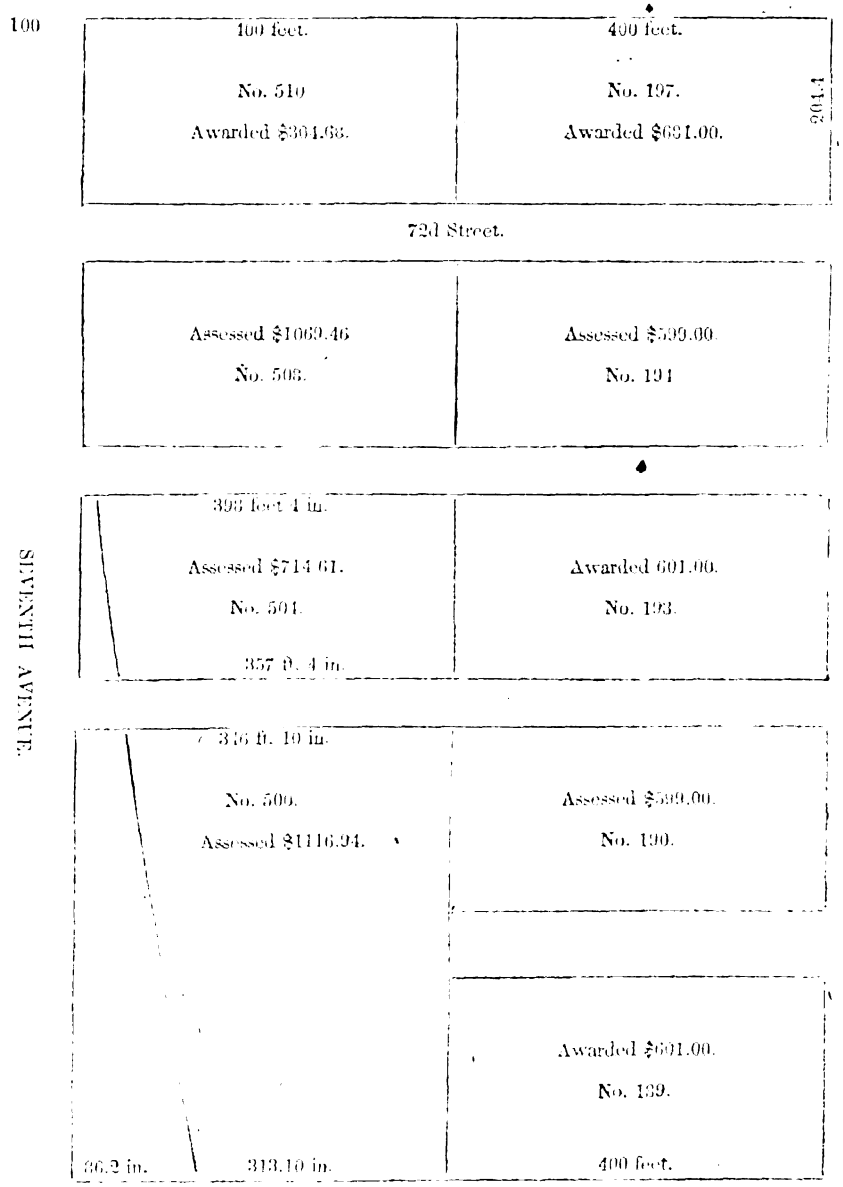


We present upon this page, two Diagrams, illustrating the inequality of Assessments, and the loose manner in which these extraordinary impositions have been made. The Land assessed as the property of Garret H. Striker, and designated as Lots No. 89 and 90, were assessed for benefit for the prospective opening of the Ninth Avenue, the large sum of $3,827.00. The Land assessed as the property of Jasper Hopper, T. J. Nelson and C. T. Newcomb, and designated as Lots Nos. 353 to 364, J. Hopper and others, and which are Nos. 353 to 356—360 to 363, and 361 to 364, on the Commissioners map, of the Seventh Avenue Assessment, are assessed in the whole for benefit, only $156,11. This piece of ground is the same distance from the line of the Seventh Avenue that General Striker's land is from the line of the Ninth Avenue. The Lot No. 90, for which G. H. Striker is assessed $1822.00, does not contain as many square feet as the piece of ground for which J. Hopper, Nelson and Newcomb are assessed only $156.11. General Striker's Assessment is more than eleven times as much as that of Hopper, Newcomb and Nelson. The two pieces of ground are bounded on Hopper's Lane, and are 2300 feet apart and are both of about equal value. General Striker's Lot, No. 90, should not have been assessed $100.

These Diagrams also present an illustration of the system of making awards for land required to be taken for public avenues. The land of Assistant Alderman Townsend, lying within the lines of the Seventh Avenue as laid out and opposite his other ground fronting on the same avenue was taken for the said avenue, to the extent of 18,683 square feet and instead of making an award therefor, the Commissioners assessed him $213,61. Mr. Guest whose land adjoins that of Assistant Alderman Townsend, and of the same quality was awarded $137.00 for 647+ square feet. In the Ninth Avenue assessment, Ann Striker's property, on the westerly side of the centre of the Avenue extended back from that line 250 feet, from which the Commissioners took a strip 50 feet in width, the entire length, and awarded here about four thousand dollars.



AMORY ESTATE ASSESSMENT ILLUSTRATED.

An opinion may be formed of the labor of Commissioners, Surveyors, and Counsel, in Street openings from the annexed Diagrams, of 6th and 7th Avenues, and the statement of fees, &c., which accompany the same. The Sixth Avenue proceeding includes 190 blocks like the block designated No. 192. The property of the Amory estate makes 11 of these blocks. The fees of the Commissioner's, Surveyor's, and Counsel are $10,563.77, which is $55.02½ for each block; therefore for 11 blocks it is $611.67½. A competent person could make the survey of these 11 blocks in one day, and the Commissioners could make the assessment of these 11 blocks in one hour, and the labor of the Counsel in the matter should be but a few shillings at most.

The Seventh Avenue proceeding embraces 216 blocks like that designated No. 503. The Commissioner's fees in this avenue are $1,920, which is pay at four dollars per day, for 416 working days for each Commissioner, which is equal to about fifteen months solid time. The Amory estate has 5 blocks of this 216. Of course the share of the expense of the Commissioners on these 5 blocks is $111.55 making 9 days that all these three Commissioners must have been engaged upon these 5 blocks to perform less than an hour's labor. The room hire of these three Commissioners is $240, which is equal to the rent of a splendid mansion in the country for one year. Their Clerk hire, $250; Carriage hire, $30; stationary $43. The Surveyor's fees are $2,301, which at $4.00 per day is pay for 700¾ working days, equal to 146 weeks and upwards, or two years and nearly three months, which for 216 Blocks is three days labor on each block, and fifteen days labor on the 5 blocks in the 7th Avenue. What would farmers in the country say to having their farms surveyed at this rate. The Counsel fees in this avenue are $3,376.77, which is equal to the pay of the High Chancellor of the state for one year, seven months and three days.

Here is an assessment upon the farming land belonging to a widow lady and her children amounting to $5525.33, and the interest upon it to the present time to about $23,300.00, making in all about $7,300.00, for that which is not a farthing of benefit, for they own the land in front of their lots and can open their own street. Such proceedings as these are of the most odious character, a disgrace to the City Government and a shame upon the public officers who have committed these glaring and most reprehensible abuses.

The Surveyor's fees in both these Avenues are $5,213.00, which is, at four dollars per day, pay for 1329¼ days, or 4 years, 3 months and a quarter of a day. The Counsel fees for the two avenues exceeds the salaries of the entire bench of the Supreme Court for one year.

DIAGRAM

OF SIXTEEN BLOCKS OF LAND,

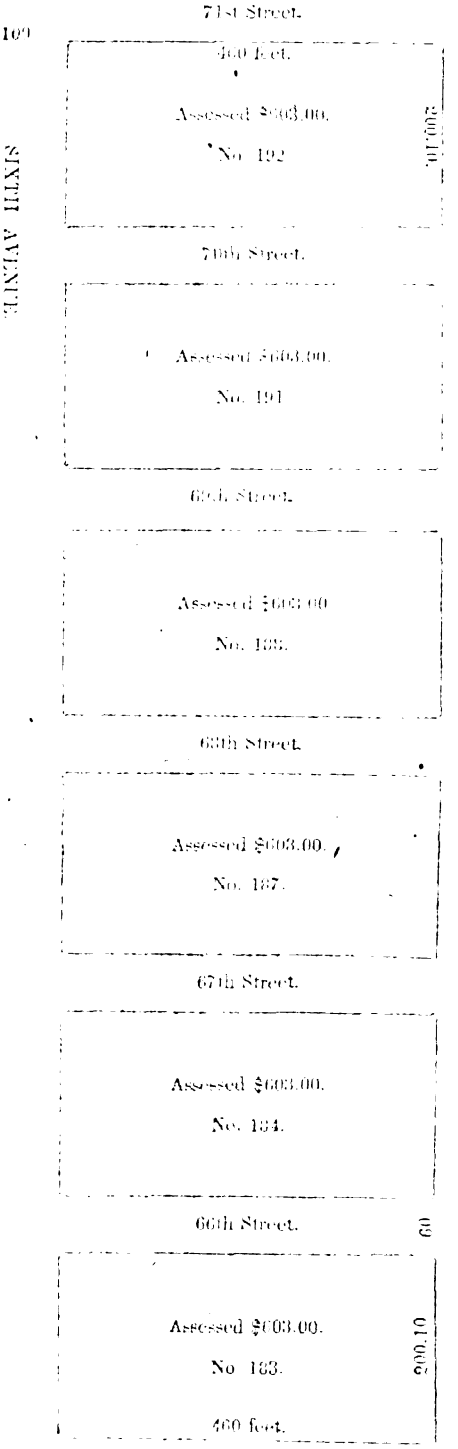
BEING A PART OF THE FARM AND ESTATE OF

JAMES AMORY,

ON THE ISLAND OF NEW YORK.

FEES IN 6th AND 7th AVENUE.

Counsel	$7,566.64
Surveyor	5,281.00
Commissioners	$ 2,917.00
Collector	2,533.00
Total	$24,197.54



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THE NEW YEAR.

The *primitive* year, which commenced the annals of time, was that in which the great ancestors of our race first became inhabitants of earth.

The infant year was cradled in the first solar day, which was the fourth in the series of the days of creation.

Vegetable *life* had existed a portion of an entire period prior to the day dawn of the solar orb, and came into being on the third day of creation.

The celestial luminaries shone first upon earth when animated life was yet uncreated.

The solar orb rose and set upon local surfaces, which were then an uninhabited world.

What a period to contemplate! The human mind becomes lost in amazement when passing on the wings of thought to that period which terminated with the commencement of time!

There is a veil which curtains the periods which preceded the beginning of time, behind which the human imagination cannot penetrate, for the curtain is as close as that which hides from human vision, that period, when time shall be no more.

The second solar day in the order of time, the Fish of the sea and the Fowls of the air, were introduced upon earth.

The third solar day was that on which the animals were introduced, followed by our great ancestors, and these two human beings were at that time the only intelligent beings upon the whole terrestrial surface.

The second day of the existence of our two primitive ancestors, *was a day of rest*, the holy Sabbath.

These facts are stated with great particularity by the inspired pen which was moved by a hand that was obedient to the source of all knowledge, and although the human mind is not endowed with the powers of understanding the means used by the CREATOR of the universe to put the earth in motion and to fill it with life and animation, yet notwithstanding the result is seen, confirming all that is declared in the volume of inspiration.

The power to create a world and fill it with myriads of living beings, is an INFINITE POWER, and the bounteous provision made for the support of living creatures, witnesses of the goodness of that Almighty Being, who both creates and sustains life.

The revolving year is a continuation of the same order of time which had its beginning with the first solar day, with the exception of two remarkable events, noted in Scripture, in the first of which the Sun and Moon stood still and hasted not to go down for nearly a whole day, and the second in which the Sun went back on the dial of Ahaz, 15 degrees.

There was a period which constituted the primitive day, which was cradled in eternity. At that period there was neither Sun or Moon, to be for signs, for seasons, for days and for years; but there was light, and there was darkness, which were separated by the CREATOR, and the one succeeded the other, until three days of unmeasured duration were completed and ended. The work of each distinct period is recorded with great minuteness, but the enquiring mind asks what were the means used to accomplish so great a work? The answer is beyond the powers of a pen moved by a hand of flesh, except to repeat the declaration of the inspired pen, which is: "And God said let there be light: and there was light. And God saw the light, that *it was* good: and God divided the light from the darkness," and this was, when "the spirit of GOD moved upon the face of the waters."

"In the beginning GOD created the Heaven and the earth."

This brief but comprehensive declaration of the inspired penman unfolds to man a page in history, long, long anterior to the existence of his race, and long anterior to that period when the first day of creation ended with the primitive morning.

The second day of creation, God said "let there be a firmament in the midst of the waters, and let it divide the waters from the waters. And God made the firmament and divided the waters which were under the firmanent from the waters which were above the firmanent: and it was so. And God called the firmament Heaven. And the evening and the morning were the second day."

The third day of creation the waters under Heaven were gathered unto one place and were called seas, and the dry was called earth, and the earth was made to bring forth grass and herbs, yielding seed and fruit trees yielding fruit, "and the evening and the morning were the third day." At the termination of this period—time—had its commencement.

THE HOUR GLASS.

By Ex-President JOHN Q. ADAMS.

Alas! how swift the moments fly!
How flash the years along!
Scarce here, yet gone already by!
The burden of a song.

See childhood, youth, and manhood pass;
And age with furrowed brow—
Time was—time shall be—drain the glass—
But where in time is *now?*

Time is the measure but of change!
No present hour is found,
The past, the future, fill the range
Of Time's unceasing round.

Where then is now? In realms above,
With GOD'S atoning LAMB,
In regions of eternal love,
Where sits enthroned I AM.

Then, Pilgrim, let thy joys and tears
On Time no longer lean;
But henceforth all thy hopes and fears
From earth's affections wean.

To GOD! let votive accents rise;
With truth—with virtue live;
So all the bliss that Time denies,
Eternity shall give.

—

The lines we have given above, were written by the venerable JOHN QUINCY ADAMS, Ex-President of the United States, and were sung by the Choir of the First Congregational Church in Quincy, Massachusetts, on the occasion of the celebration of the 200th anniversary of the settlement of the first congregational minister in that town, and for which occasion they were written. The first minister settled in Quincy was WILLIAM TOMSON, great ancestor of the venerable Jonathan, and A. G. Thompson, of New-York. The Rev. William Tomson, is highly spoken of by the historians of his time. He was much beloved while living and has been greatly honored in his posterity. The grave of the Rev. Wm. Tomson is in the Roxbury burying ground near Quincy. I was in Quincy, in November, 1844. Early in the morning after my arrival in that ancient town, I visited the grave yard which has been in use as a place of sepulture for more than two hundred years. It is enclosed by a durable and substantial stone wall, and the entrance to it is through a large iron gate. The first tomb that I saw after passing the gate, was a new tomb on the left, on the front of which is the name of "JOHN QUINCY ADAMS," chisseled upon the granite caption of the terrestrial chamber which is to become the narrow house in which are to repose the mortal remains of

the great statesman. It was a dark and gloomy morning and the sable drapery of the clouds reached to the ground, and curtained the monuments of the dead. I was enveloped in a cloud and breathed the vapour of the cloud—it was a fit morning to visit the terrestrial resting place of mortals. Within a few hundred feet of the untenanted tomb of John Quincy Adams, repose the remains of John, the father, and those of the mother of Ex-President Adams.

The Quincy burial ground is a monument of praise to its inhabitants. The care which here the living evince for the grave of those who repose in silence, is more impressive upon the mind of a visiter, than the most gigantic monument of architecture that could be reared by the art of man. I also visited the house in which the elder President Adams was born, and the room in which he first became an inhabitant of earth. The house is a frame building, and although old is in good repair. The room in which the second President of this Republic was born, is on the lower floor of the house and what in old times was called "the best room." It is lighted by three windows which are glazed with squares of glass measuring 6 by 8 inches. The house is so located that the cradle of the infant Patriot was lighted by the rays of the Sun on its first entrance from its eastern chambers, and thus the infant bosom was inflated with an atmosphere filled with the golden rays of celestial light. I felt when pressing my footsteps upon the floor of this room, and breathing its atmosphere, that there was a charm still pervading the apartment which is perceptible, to a contemplative mind. The child born in this plain room on the 30th of October, 1735, on the 4th of March, 1795, became the President of a great Republic, and the Chief of a Nation that, at the period of his birth was chronicled only in the unopened volume of future time. This new inhabitant of earth on the 4th of July, 1776, signed the Declaration of Independence of the United States, and in exactly half a century from that very day, he returned again to the world from which he came. At a few yards distant from the venerable mansion, I have mentioned, stands another venerable frame house. In this house, John Quincy Adams, the sixth President of these United States, was born in 1767.

This house I also visited, and was politely shown the room in which the sage of Quincy first saw the light of the solar day. This room is what was called the "best room," and is upon the lower or ground floor, and is lighted by three windows, glazed by glass the squares of the same size of the others I have described.

A circle containing 1 acre of ground, will enclose both the buildings in which the second and sixth Presidents of the United States were born, and a circle of nearly the same dimension will probably enclose their mortal remains.

Quincy has the honor of furnishing the cradle of one of the great Apostles of Freedom—here he was born—here he lived, and here he died.

QUINCY.

The town of Quincy is nine miles south by east of Boston. It is beautifully improved and contains a population of 3486, inhabitants, four Churches, and but one public house which is the hotel kept by Mr. French. The accommodations at this hotel are excellent, and the charges exceedingly moderate. The improvements in Quincy—the dwellings, gardens, &c., bear testimony of the industry, economy and prosperity of the inhabitants. I did not see in my extensive peregrinations, a broken window or a hingeless door in the town. Persons who make northern tours in the summer season will be richly repaid in a visit to Quincy (which can be reached every hour of the day by stage, from No. 9 Elm Street, Boston) for the labor of the journey.

Quincy contains extensive granite quaries, which in 1836 produced $248.000, and gave employment to about 600 men.—I visited these quaries and will notice them particularly, hereafter.

PERIODICAL RISE AND FALL OF THE GREAT LAKES.

The opinion is very extensively entertained on and near the shores of the great lakes, that "*the lakes rise and fall every seven years.*"

The waters of the great lakes have their extreme sources as high north as north latitude 50 degrees, and in their course to the Gulf of St. Lawrence, where they discharge in North latitude 50 degrees, describe a curve on the sphere of the earth. These waters rise from toward the North Pole, and run back again toward the artic circle.

The waters of the Mississippi, the king of rivers, rise in North latitude 50°, and within a few miles of the place from which the waters of the great lakes begin to flow. The Mississippi courses toward the equator, 21 deg. of latitude and runs up the swell of the earth and discharges into the Gulf of Mexico in North latitude 29 degrees. The Channel of the Mississippi, compared with the channel of the great lakes, is narrow; but the area of surface drained by the Mississippi is vastly larger than that drained by the great lakes. A body of water flowing into the Mississippi that would cause it to overflow its banks would have but little influence upon the great lakes if discharged into these inland seas, for the reason that the lakes have a vastly greater extent of surface. The continued rise of the waters of the great lakes for years together, followed by a continual receding of these waters for years together, is a phenomenon as yet unexplained, but my examinations have led me to the conclusion that the rise and fall is not periodical but occasional. That the crust of our earth expands and again contracts in high northern latitudes, I have no doubt, and the same fact has been noticed near the equator, for a great extent of sea coast. Such a cause would produce the effect apparent in the surface of the waters of the lakes. In my examination upon the shores of Lake Ontario, I commenced at Coburg. At this place I found the bituminious lime stone filled with fossils extending from a few feet below the surface of the ground into the lake. This lime stone is intersected by both horizontal and vertical seams. The water in winter freezes on and near the shores of this lake, and these stratas become imbedded in the ice. The heavy winds which frequently prevail upon the lake, produce a swell which raises both the ice and the rock imbeded in it, and the whole are floated away together, and when the ice becomes melted the rocks fall to the bottom. Gull Island is about three miles from Coburg. It is formed of the bituminous fossiliferous lime stone, and to the action of the frost and wind I attribute the depression of this island by the excavation of its surface at the highest stage of the water of the lake. Mr. Ousten, the keeper of the light house, had been instructed by the British Government to keep a record of the rise and fall of the waters of the lake and he was so polite and obliging as to allow me the use of his register. This light house is built upon the ledge about two miles from the shore. Mr. O. in going out to the light in his boat, runs the boat into an opening left in the building for that purpose, and then with ropes and blocks hoists the boat and himself up into the building. The level of the surface of the water of the lake is taken in this building. It is therefore an accurate Lakeometer. On the 26th day of September, 1842, and the following day, Lake Ontario fell one foot, and did not rise again. During this depression a very heavy gale was blowing. The lake continued to fall until April 12th, 1844, during which time (with the fall of the 26th and 27th Sept. 1842,) the depression was three feet and six inches. From April 12th 1844 to July 25th, which latter was the date of my examination, Lake Ontario had risen twenty inches. In the year 1800, and 1801, there was an intermission of the annual inundation of the Mississippi, and the same phenomenon has occurred with the river Nile, in Egypt, which for the year produced in Egypt a failure of the crops. It is true that the fall of water from the clouds varies greatly in different years in the same locality, but the lakes are depressed when there is abundance of water from the clouds. I will resume this subject in another number of this paper.

E. MERIAM.

LIGHTNING.

The advantage of polished or bright surfaces for lightning conductors over dark colored rods, I think, cannot be doubted. Electricians prefer bright points to lightning rods, and so far admit the superiority of the bright surfaces. Bright surfaces do not absorb heat, but reflect it. Dark bodies absorb heat, but do not reflect it. The lightning entered a house in North Moore St., N.Y. in the summer of 1842. A brass kettle which had been used and the outside crusted with soot, lay in the garret and was passed over by the lightning. The bright

surfaces were not affected, but the black surface absorbed the heat and fused the metal and soldered the bail to the kettle. Two shoe brushes which had been threaded with brass wire and the wire corroded and blackened, attracted the lightning. The bristles in the brushes were thrown out of the wooden handles and the wire melted into globules. From this the lightning proceeded to the tin leader of the house, which it descended without melting the solder, and from that passed to the iron hinges, hasp and nails of the outside cellar door, and then dispersed. A house struck in Pine-Apple Street, Brooklyn, the same summer, was protected by the tin spout, through which the lightning descended without melting the solder. This thunderbolt was a heavy one, for on its leaving the tin spout which terminated above the pavement, it forced in the basement hall door, by breaking in the casings, to reach a copper bell wire, which it followed and prostrated a lady passing thro' the basement hall with a tumbler of water in her hand which was thrown over her in falling. The water revived her. This is a two story frame house, standing in a block of houses. The next adjoining house is a three story brick house, which escaped .I examined the house a few minutes after the ligntning had struck it. I will in the next number of the Gazette or the next succeeding, detail an extraordinary case of damage by lightning, which I also examined very minutely.

E. MERIAM.

AMERICAN INDUSTY.

In the last number of our paper we noticed a tax law enacted by the colonial Legislature of Massachusetts Bay, in 1753, for the encouragement of industry. Theobject of the law was most meritorious and praiseworthy. Industry, in this Republic, is the fountain, under heaven, of wealth. An illustration demonstrating the fact is seen in the prosperity of the people of the New-England States. New-England with her sterile soil and industrions and enterprising population is the most prosperous Country on the globe, and there is no country where the inhabitants enjoy so many comforts and so many blessings as the people of the five New-England States. The wealth of New-England is the product of industry. Her commerce has enriched her citizens, and this commerce grew out of the enterprise of her population. Thirty years ago, New-England imported from the East Indies the White Cottons, which were the product of the India looms for nearly the whole population of the United States. The Emmerties, the Mammoodies, the Sannas, the Gurrahs and the Baftas were then goods of great consumption in the United States, and sold at high prices; but the enterprise of New-England has changed the course of trade, and she now manufactures white cottons of a far superior quality, at a less price. She now exports white cottons to the East Indies; and also to the southern sections of the United States in exchange for the raw material, the growth of the southern soil.

SENATE REPORT.

The following Report will come before the State Legislature which commences its session on Tuesday the 7th of January, 1845.

STATE OF NEW-YORK.

IN SENATE—April 9th, 1842.

REPORT

Of the SELECT COMMITTEE on the memorial of PETER A. JAY, and others, citizens of New-York, relative to Assessments.

The SELECT COMMITTEE of the SENATE, consisting of Gabriel Furman, Gulian C. Verplanck and John B. Scott, Senators attending the Senate, elected from the first Senate district, to whom was referred the memorial of Peter A. Jay, Robert C. Cornell, Peter Lorillard, and a great number of others, citizens of the city of New-York, complaining of various alledged abuses in relation to the assessment laws of the city of New-York, and among other things, "that it is the practise of Commissioners and Assessors to describe property by an arbitrary map number, instead of the known street number, by which the owners of property are misled in knowing that Assessments have been imposed; that it very often happens that property is assessed as that of unknown owners, and many times in a wrong name; and in consequence of this practise property is often sold, and the first information the owner has of the assessment is obtained from the purchaser of the property at a sale for unpaid assessments, when he comes to take possession; that "by the act of 1816, Commissioner's were authorized to extend their assessments for improving streets, &c. as far as they judge the property benefitted; but no provision was made by that act to give notice to the distant owners of the property thus affected; by which means such owners are deprived of the opportunity of making objections to the assessments in sufficient time to be available." "Another serious objection to the present system, in making Assessments for public improvements, is the extravagant charges made by Commissioners, Assessors, Surveyors and Corporation Counsel: it will be seen by the public documents herewith submitted that for one street less than 3000 feet in length, this class of charges amounted to near $12,000, and that when "property is sold at Public Auction for unpaid assessments the corporation sell the property for a term of years, which in many cases, is equivalent to selling the fee simple absolute. Very many of the lots so sold are purchased by corporation officers, who being employed by the corporation to make the surveys, collect the assessments, &c. &c., acquire information of the absence, &c. of the owners and by that means possess themselves of the estate; and the memorialists ask the Legistature to pass a law to remedy the evils complained of, and also to suspend the sale for unpaid assessments, until the termination of the next session of the Legislature, and to make such further and other enactments in relation thereto as the Legislature in their wisdom shall deem needful and right. And to whom was also referred sixteen other memorials, signed by a very large number of the most respectable inhabitants of the city of New-York, praying the Legislature to examine the whole question in relation to the assessment laws in operation in that city, and into the various abuses charged to have been committed in their execution; and asking that the same, with the various other memorials and documents presented, should be referred to a select committee to examine into the same, with power to send for persons and papers. There were also referred to this Committee the annual reports of the Comptroller of the city of New-York, exhibiting a view of the funds of that corporation for the years ending Dec. 31st, 1839, and Dec. 31st, 1840; including accounts of its revenues, and expenditures in detail, and of the receipts and investments of the Commissioners of the sinking fund during the same periods. Also the report of the Street Commissioner of that city, to whom was referred a resolution requiring him to report a list of public places and streets which have been opened in the several years from 1830 to March 1839, presented to the Board of Aldermen March 25th, 1839, and known as Document No. 45, of that Board. Also a list of property advertised for sale for the payment of Assessments, by the officers of the corporation, by which it appears that 1145 lots were assessed, for sums less than 5 dollars each, and by which list it appears that 7000 lots have been advertised at such sale.

"To the same committee were also committed the several remonstrances which had been heretofore presented in the Senate against the application of the Mayor and Common Council of that city, to be authorised to purchase lands sold for assessments after the same should have been offered at public auction, and no bidder found for the same; and also for funding certain debts of said city.

On the first reference of these several memorials and documents, this committee were not invested with the power of sending for persons and papers, as was desired by the petitioners; but subsequently, on the renewed application of the memorialists, the Senate, on the 22d day of May last, passed the following resolution.

"'Resolved, That the prayer of Robert Jones, John A. Underwood, Robert Smith and others, that the committee to whom was referred the several memorials, remonstrances and public documents in relation to the assessment laws in the city of New-York, may have power to send for persons and papers, and be authorised to sit after the termination of the present session, and report to the next Legislature, be granted."

Subsequently to the committee proceeding in the investigation thus committed to their charge, and during the present session of the Senate, six several memorials were presented and referred by the Senate to this

committee, within the last four weeks, signed by Stephen Allen, Hiram Walworth, James Boorman, Jonathan Thompson, Peter Schermerhorn, Stephen Whitney, and 300 others, inhabitants of the city of New-York, praying the Legislature to take the subject of assessments in that city into their serious consideration, and to make such provisions as will protect the owners of real estate from the disastrous consequences which they apprehend from the abuses of the system of assessments in that city.

In addition to these general memorials, several memorials have been presented by individuals, as Garret H. Stryker, Winifred Mott, Daniel Van Reed and Martha Amory, and detailing cases of hardship and loss of property, arising, as the petitioners charge, from abuses or defects in the mode of opening streets and avenues in that city, and making improvements in public avenues and squares, and in assessing the expense thereof; all of which have been submitted to the consideration of this committee since the first day of February last. And also several public documents connected with that matter, have been, since the opening of the present session, committed to this committee for examination.

Upon all which several memorials and remonstrances and documents, thus submitted to their charge and examination, this committee beg leave to submit the following

REPORT.

In the investigation of the matters thus committed to their charge, the committee were occupied during almost the whole of the last autumn, in the city of New-York, and also in the month of December, and to the period of meeting of the present Legislature. Previous to the first meeting of the committee, they directed the committee who appeared on behalf of the petitioners, to notify the Mayor of the city of New-York of the time and place of their first meeting, to the end that the corporation of that city might be apprised of the proceeding, and take such course therein as they might deem best calculated to conduce to the interest of those whom they represented. On the 18th of September last, the committee received a communication from the memorialists, on whose application the investigation was ordered, tendering to their use the commodious lecture room in Clinton Hall, New-York, free of expense or charge to the State, which was accepted.

In this investigation the committee were attended by the committee appointed on behalf of the memorialists, with their counsel, who conducted the examination on the part of the complainants; and by the counsel of the corporation and the street commissioner of the city, who conducted the examination on behalf the corporation. And during its progress, several of the most respectable inhabitants of that city, with the street commissioner, the comptroller, and the collector of assessments of that city; also city surveyors, with gentlemen who had formerly discharged the duties of commissioners of estimate and assessment in the opening and improving streets and avenues, and filled the office of assessors in apportioning the expense of regulating streets and constructing sewers in that city, and several other persons connected either remotely or directly with the subject matter of the assessments, were examined under oath before this committee; and their examination reduced to writing, and signed by the witnesses, are annexed to this report for the information of the Legislature.

In the course of their examination, the most prominent matters complained of appeared to be, *First*, In the manner of opening streets, avenues and public squares in that city; in the appointment of the commissioners of estimate and assessment; in the expenses of those commissioners, and the time spent in the discharge of their duties. *Secondly*, The imposition of heavy and oppressive assessments for improvements never actually made, except upon paper; and which assessments were frequently ruinous, being more than the value of the property assessed; and the great difficulty which owners of real estate in that city, and particularly in the upper and unimproved portions of it, experienced, from the fact of using arbitrary map numbers instead of street numbers and farm numbers. And, *Thirdly*, The great difficulty which the citizens had encountered in obtaining a review and correction of any errors committed by the commissioners and assessors in making any of such awards or assessments for the opening of said streets, avenues or public squares, from the fact that, although the Court of Chancery at first assumed jurisdiction of such cases on the ground that such assessments being made by a statute, a lien upon real estate was a cloud upon the title, and might, if unjust and inequitable, be removed in equity, it has since denied having cognizance of such matters; and the Supreme Court have in some instances denied a certiorari, to remove such proceedings, and others where the writ had been granted, had afterwards quashed the same and refused the parties any relief, referring them to an action at law for trespass against the individual members of the common council, or against the officers of the corporation personally, who should attempt the collection of such assessment.

The committee will examine these several propositions which contain the substance of the long and tedious investigation through which they have progressed, and will submit to the consideration of the Legislature the conclusions to which they have arrived upon these several heads.

First. The manner of opening streets, avenues and public squares, in that city, in the appointment of the commissioners of estimate and assessment, in the expenses of those commissioners, and the time spent in the discharge of their duties.

That there have been great and serious abuses in the mode of opening streets and avenues in the city of New-York, and in the expenses attending the same, cannot be doubted by any person who has examined the subject; and these evils have mainly arisen from the loose and unguarded manner in which that important branch of authority has been exercised. For while in England, in city of London, in Birmingham and other places, whose proper municipal regulations would seem to require as liberal extension of power to their local coporate governments as that of New-York, streets cannot be opened or widened without an act of Parliament specially passed for that purpose, upon a due examination of all the circumstances of the case; yet, in the city of New-York they are opened or widened, and that in large numbers together, by a single resolution adopted by the two boards of the common council, without any control, as was the case in opening all the streets and parts of streets not previously opened up to and including 42d street, by a resolution of April 6, 1835; and subsequently, September 12, 1836, another resolution was adopted to open all the streets from 42d street to 57th street. The reservoir on Murray's Hill in the city of New-York, is on 42d street. This loose practise has grown up in modern times, for the more guarded one of an application to the supreme legislative authority was in existence in that city, subsequent to 1792, when to authorize the first widening of John Street an application was made to the Legislature, then in session in that city, and before either house would act upon the petition, they sent a committee to examine the ground; upon the report of which committee, they enacted that the damages to the owners whose lands were taken, should be appraised by a jury who should be composed of merchants, showing how careful they were in former legislation on this important subject. This appraisement is now made by three commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the counsel of the Corporation, although there have been instances where one of those commissioners has been selected by the court from names proposed by the corporation counsel, and by the opponents to the application, and another has been named by those opponents. It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so great as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of the commissioners for the same exhibited before the committee. In the opening of the 7th avenue, from 21st to 129th st., which was confirmed in Feb. 1839, the amount awarded to the owners for land taken for the avenue, was $28,141.41, while the fees and expenses of that opening amounted to the large sum of $12,435.70, and if to that is added the collector's fees for collecting the assessments, $1,115.00, it will show a total of expenses paid by the owners of land on that portion of the seventh avenue for its formal opening, amounting to $13,550.70.

The amount paid to the commissioners on that avenue for their services, at the rate

of four dollars per day, which is the highest sum allowed by the statute, is pay for *sixteen month's* services for each commissioner, in making the estimate of the land [taken for opening that avenue, and assessing that value back again upon the land] on each side of the avenue; and in opening this one street, of one hundred and eight blocks of about 270 feet each, the commissioners were each engaged three times the whole period that the Legislature is employed in legislating for the State, and each of them received about three times the compensation that is paid to a legislator for passing the whole winter from his home in attneding to the public business. And in addition to that it was shown to the committee that commissioners were frequently engaged on several streets or avenues at the same time, taking their four dollars per day on each of those improvements; and that they received and were paid that compensation in some instances where they did not attend to the duties of their appointment, and in others where they attended but once or twice. If the case of the seventh avenue had been a solitary instance the committee might have supposed that it had taken place through some mistake; but they found the same principle of enormous expenses to extend throughout the whole system of street openings in that city, and that to such an amount that the surprise should be not that the inhabitants now complain of it, but that they had not done so at a much earlier period.—The evil has now spent itself; there are no more streets or avenues to be opened; the resolutions opening all the streets up to and including 42d Street, and from that to 57th Street, mainly disposed of the whole subject. The manner in which the opening of these streets was effected has been the subject matter of complaint to the committee. Assistant Alderman Townsend, who introduced the report in favor of opening all the streets up to and including 42d Street, testified that it was his intention to have all of them opened in one proceeding, and thus save to the citizens an enormouos expense; and for that reason his report did not conclude with the ordinary direction in such cases, that the corporation counsel should take the necessary legal measures to carry the same into effect. But through some misapprehension the ordinary proceedings were taken for opening each street separately by itself, and a set of commissioners appointed for each street instead of one set for the whole series; and by that means the expenses to be paid by the owners of real estate upon the same was increased at least $95,000.

Another and a most serious evil seems to have arisen from the circumstances of there being no fixed and settled principles used by those commissioners in making their awards and assessments. In some instances where individuals have furnished their full proportion of land for a street or avenue, and should in justice have been assessed only their proportion of the expenses attending the proceedings, and of any buildings which were to be removed from that street or avenue, they have been assessed some thousands of dollars beyond that amount.

The complaints which have arisen from this want of settled principle in the action of those commissioners have been very numerous, and have been urged upon the consideration of this committee with great earnestness. During the session of the committee in New-York, Peter Lorillard, Esq., submitted to them a communication on this subject, in which he stated that "in many cases the injustice was so great that he had firmly made up his mind to sell all his property in this State and remove where his property would be protected and placed on an equality with other citizens; and was only prevented from so doing by reason that it would not bring the prices of 1830, thereby was forced to stop the sale, having made some sacrifice."

If the citizens of New-York are laboring under an erroneous impression in believing that they have been greatly oppressed and injured by the course pursued by those commissioners, that belief is, in the judgment of the committee, very extensive.

These evils and abuses might have been obviated in a great degree, in the judgment of the committee, by having established a permanent board of commissioners, in place of appointing a set of commissioners for each improvement; which board would necessarily have an uniform principle in determining questions that arose before them; and from their knowledge of the subject, would be enabled to dispose of the same in half the time that ordinary commissioners would be necessarily engaged.

The *second* prominent objection made before this committee, was, as to the imposition of heavy and oppressive assessments for improvements never actually made, except upon paper; and which assessments were frequently ruinous, being more in amount than the value of the property assessed.

This point has been a very prolific subject of inquiry, and many witnesses were examined before the committee, detailing what they esteemed grievances arising from an abuse of the laws on this subject.

On that branch of the complaint as to the imposition of heavy and oppressive assessments never actually made, the committee ascertained that a very large portion of the streets and avenues formally opened from 1836 to 1839, were not actually opened; that nothing has been done beyond making awards and assessments by the commissioners and the confirmation of their reports by the Supreme Court; and that although the assessments have been collected for such improvements in many instances, and in others the lands charged are either sold or advertised to be sold for the payment of those assessments, yet the lands forming those streets and avenues remain in the same condition as they were before the taking of any proceedings for their opening: and in some cases such lands remain in the occupancy of their original owners notwithstanding they have been paid for the same. And in numerous other instances where the streets and avenues have been actually opened, nothing has been done towards their regulation, so as to make the same useful to the public, or available to the owners of real estate, who have paid for the same by assessments on their property.

Out of a list of eighty-one streets, and avenues, or parts of such highways, the reports for opening of which had been confirmed in 1837, 1838, and 1839, fifty-seven have not been in any way regulated or improved; and of the remainder, twenty-four in number, in some instances only portions thereof have been regulated a few blocks; and in others a road has been worked through the centre of the street or avenue; and in others again, it is not deemed necessary to work such road, as the natural grade of the ground is such as to make it passable without regulation. This attempt to collect assessments not only by voluntary payment but by enforced sales of the lands charged, without actually opening the streets or avenues for which such assessments have been imposed, has been a strong cause for the excitement in that city on subjects of street matters. The committee therefore submit this subject to the consideration of the legislature.

Several instances were shown to the committee where property had been offered for sale for the payment of assessments at two or three successive sales without being able to get a bid, the amount of the assessments being more than the estimated value of the property. These large assessments operate against the interests of the city, for the owner will not pay the assessment or improve the property, and no person will buy it, and the corporation cannot realize their money by a sale of the assessed premises, and the amount must be taxed upon the city; and thus the improvement of the upper part of the city which is covered with these great assessments must be stayed for many years, and now apparently for an indefinite period of time, unless the land should be in some manner relieved from the charge of those assessments. It did appear reasonable to the committee that in analogy with a judgment, the lien of which ceases on real estate after the termination of ten years, the lien of those assessments should be at an end after the lapse of some definite period; what that should be, the committee submit to the discretion of the Legislature. Now the mere fact of the confirmation of the report, makes it conclusive upon all the parties assessed; and the assessment becomes a lien on the lands assessed from the date of the confirmation. Such however was not always the practise; for the act of 1792, required an action of debt to be brought on the assessment, although it was declared a lien and prior encumbrance so that the party assessed could test the validity and legality of the assessment on the trial of this action of debt; and the land could not be sold until judgment was obtained in that action, and an execution issued on that judgment. Which course or something similar to it, would afford the most expeditious course of trying

the questions in relation to those assessments; and would be more equitable and just both to the corporation and the parties assessed than to leave each individual who considers himself aggrieved to bring an action of trespass against individual members of the corporation, or its officers or agents acting under its orders, as has been recently intimated by the Supreme Court.

On the third branch of this subject, the great difficulty which the citizens have encountered in obtaining a review and correction of alleged errors committed by commissioners and assessors in making awards and assessments, in opening streets, avenues, and public squares, and in making other improvements in that city; the committee have been compelled to the belief that some remedy should be proposed and adopted. When these questions first arose, the Court of Chancery affirmed its jurisdiction, entertained bills of complaint, and granted injunctions to stay proceedings in the sale for those assessments, until the alleged errors could be examined, on the same ground that it always asserted its jurisdiction in cases of fraudulent judgments, and that although the judgment was illegal, yet it being a lien upon real estate was a cloud upon the title, and should be removed by the intervention of a court of equity. So these assesments, although stated to be illegally imposed, were declared by statute to be a lien upon the lands assessed, and would appear to be equally a cloud upon the title, and for the same reason that a judgment is so regarded, they both being equally liens upon real estate. But that court has since denied, that it had jurisdiction in those matters, and referred the applicants to the courts of law.

The Supreme Court also, in the first instance, seemed to entertain these complaints, and allowed the writs of certiorari to issue for the purpose of bringing up the proceedings before them. But subsequently they intimated that such writ could only bring up the record of the commissioners' report, and not the proceedings before or connected with it; they again held that in analogy with a writ of error the certorari should be governed by the same limitation; although it has been previously held, by good authority, that a common law certiorari, (which was the nature of the writ in those cases,) was not subject to such limitation; and it was afterwards intimated by the same court, and with a precision which would seem to give it the authority of a decision that a certiorari could not be directed to the corporation. And again, the Chief Justice, in delivering an opinion, in a case of assesment, in the Court for the Correction of Errors, since the decisions above referred to, held that the remedy of the parties was in action of trespass against the individual members of the corporation who enforced the collection of those assessments, or against the officers or agents of such corporation who should, under their orders, attempt the collection of such assessment.

In view of all the embarrassments which now surround this subject, and the differences of opinion which have heretofore existed in the Court of Chancery and the Supreme Court on the question of jurisdiction in matters relating to the opening of streets and avenues or public squares, and the assessments consequent thereon, the committee think that the Legislature should interfere and by statute law settle that jurisdiction in the Supreme Court; which would be in accordance with the principles adopted by the Court for the Correction of Errors in the case of the Mayor and Common Council of the city of Brooklyn vs. Gertrude Meserole et. al. in December last. And to cover all the doubts heretofore expressed by the Supreme Court in their decision in several cases which have recently been decided by them on assessment cases from the city of New-York, the Legislature should give that court full power to examine into all the matters preceding that assessment, as well as the acts of the common council, as of the commissioners of estimate and assessments; and for that purpose the certorari should bring up all the matters connected with those proceedings as well as the report of the commissioners.

It is well known that the Judges of the Supreme Court in confirming those reports in street openings do not act as a court, but as commissioners under the statute; it may therefore be well to authorize the court to examine their proceedings as commissioners.

If it shall be thought best to extend the statutes of limitations to the common law certiorari, it should not be left to judicial decision or analogy for determination, but should be ascertained by legislation.

Under the act of 1839, the costs of the proceedings in opening streets, &c. are required to be taxed before payment. But the committee cannot discover any instance in which such costs have been taxed except in that of opening Cherry Street, which was discontinued. Those expenses have always been heretofore paid upon a mere abstract of the report of the commissioners, containing the sums total of the awards and assessments, and of the costs of the commissioner's counsel, &c. But the street commissioner avers that since he has become acquainted with the existence of that law, no bill of such expenses has been paid without such taxation; and that he had supposed that the Supreme Court in passing upon the confirmation of the commissioners report, taxed and confirmed all the expenses, statements of which were appended to such report.

To obviate all the difficulties which arise from this view of the case, or from a difference of construction which may be given to that law, it is suggested that the Supreme Court, either as a Court or as Commissioners, should not confirm any report until after the costs have been taxed and certified in the manner required by that law. And while on this branch of the subject, the committee would observe that many complaints were made, that those commissioners of estimate and assessment having several streets or avenues under their charge, at one and the same time, would merely meet for a few minutes and then adjourn, charging their four dollars for a day's service. This objection might be obviated by requiring the commissioners to sit at least three hours on such streets, before they should be enabled to charge for a day's service.

The committee are satisfied that nothing can be expected from legislation during the few days that remain of the present session they therefore commend this subject to the serious consideration of the next Legislature, as being well worthy their attention.

All which is submitted.

THE ASSESSMENT QUESTION.

We now proceed to discuss this question at length, and to review the opinion of Chief Justice Nelson, and Mr. Justice Beardsley, given in the Striker case, having premised our remarks by giving the Report of the Honorable the Select Committee of the Senate appointed by that body to examine into the assessment abuses committed in the city of New-York and show by this official document a state of things which are of a most alarming and dangerous character, not only in amount of property affected, but also in the great principles involved. The sacredness of private property, and also the distribution of powers in the different branches of Government are among the most important provisions which in part form the Constitutions of our National and State Governments.

The Constitution is the fundamental law, the paramount law, and such was the determination manifested in reference to its inviolability and that it should be properly regarded by all those who should thereafter be called upon in their official stations to enact laws, or administer those enacted, that an oath to conform to the provisions of the Constitution of both the National and State Governments is made a condition precedent to the assuming of the duties of office, by every person assuming a public trust, before he enters upon that trust.

The powers which have been exercised by the persons holding the office of Justices of the Supreme Court of this State, form one branch of this review and will have precedence in the examination and remarks we are now making.

The powers exercised are of an extraordinary character and can be best described by taking up this subject at the foundation and giving a history of their origin, pro-

gress and conclusion. We will therefore take a starting point so far back as to leave nothing behind it.

In 1606, the island of New-York was inhabited by the uncivilized sons of the forest. These people were the owners of the soil by right of possession, going back beyond the memory of man. These people had no law or practise which authorised the taking of private property for public use without making just compensation at the time of taking such property and before it was removed from the owner. The Dutch subsequently became possessed of the island of New-York and retained possession until 1664, when it was surrendered to the English by capitulation and was afterwards retaken by the Dutch and finally restored to the English in 1673. The laws by which New-York was governed, was a code known as the laws of the Duke of York. In 1683, Col. Dongan arrived at New-York, as governor of the colony of which the Duke of York was at that time Proprietor. The Common Council after his arrival, made to the Governor and Council a written petition, (see Ante p. 25) setting forth their ancient privileges and rights which the Governor and Council required to be explained in writing. In the following year the first Legislative Assembly ever convened in the colony assembled in N. York and passed several laws, none of which were printed, but the manuscript copies are still extant, and we have carefully examined these several acts. In 1686, Governor Dongan granted a written charter to the Mayor and Common Council of the City of New-York, which was forwarded to the Duke of York, for confirmation. The Duke of York having in the mean time ascended the throne of England, as James II, his proprietory right became merged in the crown. The charter granted by Dongan, the King refused to confirm. This charter prohibits the taking of private property for a public street against the consent of the owners, nor does it authorise the imposition of a local Assessment. (See Ante p. 35 §2.) King James was but a short time the incumbent of the throne, and was succeeded by WILLIAM and MARY. In 1692 the Mayor and Common Council passed a resolution (see Ante p. 38) for an application to the King and Queen for the confirmation of Dongan's charter, the application was made but was unsuccessful.

On the 22d Sept. 1691, a petition of the Mayor and Common Council of New-York, was presented to the Colonial Legislature then in session, in reference to Streets, &c. on the reading of which, it was ordered that a bill be brought in accordingly, and on the 24th of Sept. a bill entitled "A Bill for regulating the buildings, streets, lanes, wharfs docks and alleys of the city of New-York," was brought in, read a first and second time, and ordered to be engrossed, and on the 25th of Sept. was read a third time, and passed, and ordered to be sent to the Governor and Council for their assent and a committtee appointed to carry it to the Governor and Council. On the first of Oct. the bill was returned to the Assembly without the assent of the Governor and Council, but was accompanied by an amendment, called a '*proviso*,' which is in these words:

"Always provided and be it further enacted, &c. that nothing herein contained shall be construed to change, alter, shorten, lengthen, narrow or enlarge any of the streets, alleys and lanes within this city, as they are now laid out and remain at the publication thereof, nor to break through any persons grounds now in fence or enclosed, or to take away any persons house or habitations, any thing herein contained to the contrary hereof, in any wise notwithstanding."

This amendment was appended to the bill and was adopted by the Assembly and in that shape the bill was subsequently assented to by the Governor and Council, and was on the 11th of May, 1697, confirmed by King William. This was the first exercise of the veto power by any New-York governor, and is peculiar in its character and instructive to a remarkable degree.

This bill contained an authority for the Mayor and Common Council to treat and agree with the owners of grounds required for a public street, and when the grounds were unimproved and the owners refused to treat and agree, then and in such case the law provides as follows:

"And if there shall be any person that shall refuse to treat in manner aforesaid, that in such case the Mayor and Aldermen in their court are hereby authorized, by virtue of this act, to issue out a warrant or warrants to the sheriff of the said city, who is hereby required to empannel and return a jury before the said court of Mayor and Aldermen, which jury upon their oath, to be administered by the said court, are to inquire and assess such damages and recompense as they shall judge fit, to be awarded to the owners and others interested, according to their several and respective interests and estates in the same as shall be judged by the said Mayor, Aldermen, and Common Council shall be adjudged fit to be converted to the purposes aforesaid; and such verdict of the jury and judgment of the said court of Mayor and Aldermen thereupon, and the payment of the said sum, or sums of money so awarded and adjudged to the owners or others having estates, or interest, or tender or refusal thereof, shall be binding to all intents and purposes, against the said parties, their heirs, executors, administrators, and assigns, and all others claiming any interest or title to the said ground, and shall be a full authority to the said Mayor, Aldermen and Common Council to cause the said ground to be converted and used for the purposes aforesaid, anything contrary herein or any other law to contrary hereof, in any wise notwithstanding." (See Ante p. 4, and the Colonial laws of 1691, and 1697.

The above recited law continued in force during the remainder of the entire period of the duration of the colonial government, and was in force when the former constitution of this State was adopted in 1777, and continued in force until 1787.

The Constitution adopted by the People of the State of New-York in 1777, contains the following:

"XXXV. And this convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that such parts of the common law of England and of the statute law of England and Great Britain, and of the acts of the Legislature of the colony of New-York, as together did form the law of the said colony on the 19th day of April in the year of our Lord 1775, shall be and continue the law of this State, subject to such alterations and provisions as the Legislature of this State shall, from time to time, make concerning the same."

"XLI. And this convention doth further ORDAIN, DETERMINE and DECLARE in the name and by the authority of the good people of this State, that trial by jury, in all cases in which it hath heretofore been used in the colony of New-York, shall be established and remain inviolate forever. AND FURTHER, that the Legislature of this State shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law."

"XXV. That the Chancellor and Judges of the Supreme Court shall not, at the same time, hold any other office, excepting that of Delegate to the general Congress, upon special occasions; and that the first Judges of the County Courts, in the several counties shall not, at the same time hold any other office excepting that of Senator, or Delegate to the general Congress. But if the Chancellor, or either of the said Judges be elected or appointed to any other office, excepting as before excepted, it shall be at his option in which to serve."

"XXVII. And be it further ordained, that the Register and Clerks in Chancery be appointed by the Chancellor, the Clerks of the Supreme Court, by the Judges of said court, and all Attornies, Solicitors and Counsellors at law, hereafter to be appointed, be appointed by the Court," &c.

"XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: the Assembly shall, once in every year, openly nominate and appoint one of the Senators from each great district, which Senators shall form a Council, for the appointment of the said officers, of which the Governor for the time being or the Lieut. Governor, or the President of the Senate, (when they shall respectively administer the Government) shall be President, and have a casting voice, but no other vote; and, by and with the advice and consent of the said Council, shall appoint all the said officers; and that a majority of the said council be a quorum: And further, The said Senators shall not be elegible to said council for two years successively."

"XIII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of this State by this Constitution, unless by the law of the land or the judgment of his peers."

"XXXI. That the style of all laws shall be as follows, to wit: 'Be it enacted by the people of the State of New-York, represented in Senate and Assembly,' and that all writs *and other proceedings* shall run in the name of the People of the State of New-York, and be tested in the name of the Chancellor, or the Chief Judge of the Court from whence they shall issue."

We have thus given the provisions of the Constitution, of 1777, which are applicable to the present issue.

In 1787, the Legislature of the State of New-York repealed the act passed by the colonial Legislature in 1691, entitled "an act for regulating the buildings, streets, lanes, wharfs, docks and allies of the City of New-York," and on the 16th of April, 1787, enacted a law as a substitute containing in substance the same provisions for taking ground for a public street, as was contained in the act of 1691. (See Ante, p. 4.)

In 1792, the Legislature of the State of New-York passed an act for continuing Roosevelt and Frankfort Streets. (See Ante p. 5.) This act provides for the appointment of four persons to wit: Richard Furman, A. Rhinlander, Jos. Stringham, Geo. Stanton and John Stagg, Commissioners. The act authorises the Common Council to continue Roosevelt Street of such breadth as they shall think proper," *Provided always*, That before the laying out and continuing the said Street to the East River as aforesaid, the said Mayor, Aldermen, and Commonalty, shall, for that purpose, first have and obtain the consent of the proprietor or proprietors, his, her, or their legal representatives of such houses, and lot or lots of ground, through which the Street may pass.

"V. And be it further enacted, That it shall be the duty of the commissioners in this act above named, upon a full and equitable consideration and estimate of all the circumstances attending the same, to determine what part or proportion of all and every the sums of money which shall be expended by the common council of said city, for opening and continuing Roosevelt Street to the East River, as aforesaid, ought to be borne and paid by the said common council, in consideration of the general convenience to the citizens of the said city, occasioned by opening and continuing that street as aforesaid, and what part or proportion thereof, specifying the sum, ought to be borne and paid by individual citizens, in the tract of land called the Meadows, and in Roosevelt Street, continued as aforesaid, and in the vicinity thereof, whose estates have become advanced or increased in value by such improvements and that it shall also be the duty of the said commissioners, to make a just and equitable assessment of the last mentioned sum, among the owners of all the said houses and lots of ground, which shall appear to them to be benefitted as aforesaid, in proportion as nearly as may be to the advantage which each shall be deemed to have acquired respectively, and that they the said commissioners, or any three or more of them, shall make a certificate in writing of such assessment, under their hands and seals, and return the same to the common council of the said city, which assessment shall be binding and conclusive upon the owners of such houses and lots of ground so to be assessed respectively, and the sum or sums of money, at which each such house and lot of ground shall be so assessed, shall be deemed a debt due from the owner or owners thereof, his, her or their representatives, to the mayor, aldermen and commonalty of the said city, and shall be payable to them within three months from the date of such assessment, and shall moreover become and be a charge or lien, and prior incumbrance upon such respective house and lot of ground, into whose hands or possession soever the same shall then be, or at any time thereafter may come or descend; and the respective owners of such houses and lot or lots of ground respectively, at the time of such assessment, shall thereupon become and be liable and chargeable, and they are hereby required, to pay to the treasurer or chamberlain of the said city for the time being, who is hereby authorised to receive the same, to the use of the said corporation, the sum at which each such house and lot or lots of ground shall be so assessed as aforesaid, and in default of payment, the same shall and may be recovered at the suit of the said treasurer or chamberlain, in any court of record within this State, with interest at six per cent., to accrue after the said three months from the date of such assessment, with costs of suit. And no such action or suit shall be abated or discontinued by the death of the treasurer or chamberlain of the said city, or by his resignatiou or removal from office, but shall and may be continued and prosecuted to effect, by his successor in office.

"VI. And be it further enacted, That it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the city of New-York, in common council convened, to cause Frankfort Street to be continued to Queen Street, in the manner and under the restriction herein before provided respecting the continuance of Roosevelt Street; and the said Mayor, Aldermen and Commonalty and the commissioners herein before named, shall have the like powers and authority, for the purpose of continuing Frankfort Street as aforesaid, and paying the expenses thereof, as are herein before given to them respectively for continuing Roosevelt Street.

In 1793, an act was passed by the Legislature for widening John Street. This act is very special, and directs what ground is to be taken, and how much. Provides that the Mayor, Aldermen, &c., in Common Council, may treat and agree with the owners for the land, and if any refuse to treat and agree, then it shall be lawful for the Mayor, or Recorder, and any two or more Aldermen, to issue a precept under their hands and seals, to command the Sheriff to return a jury of *merchants*, being freeholders, to inquire and assess the damages, and fourteen days notice to be given the owners. The verdict of the jury and the judgment of the Mayor's Court thereupon is made conclusive upon the owners, on being paid, or tendered, the money awarded by the jury.

Commissioners are appointed by this act, to ascertain what proportion ought to be borne by the Common Council, in consequence of the general convenience derived by the citizens, and also to estimate what benefit is derived by the owners of houses and lots in that vicinity, and assess such benefit upon such owners; and such assessments when signed by such Commissioners, or a majority of them, shall be conclusive upon the owners of such houses and lots, and declared to be a debt due the Mayor, &c., for which they are authorised to levy a warrant of distress upon goods and chattels, in case of refusal to pay, and if no goods or chattels be found, then the assessment to be a debt due the Mayor, &c., for which a suit is authorised to be brought in any court in this State.

In this case the Common Council are authorised to ratify the assessment, and in doing so, perform precisely the same duties that the Supreme Court now perform, in confirming reports of Commissioners of estimate and assessment.

The next act in Chronological Order, is an act passed in 1795, for extending Banker Street, and widening Beaver Lane. The provisions of this act are substantially the same as that relating to John Street, except that the jury are only required to be freeholders, and the whole benefit is assessable upon the persons benefitted by the improvement, and nothing upon the Corporation.

The Act of April 3d, 1807, is the next in the order of time. This act appoints three Commissioners by name to lay out numer-

ous streets avenues, and public squares, in a farming district. Their duty was a mere plotting of the ground, with the extraordinary exception of a provision, which amounts to a sequestration of private property, for public use, without compensation, as the owner is prohibited from building on the ground included within any contemplated public square, street or avenue, or rather, if he does improve it, he shall not be allowed for his improvements.

The next provision of the act of 1807, which we shall notice, is that which provides, that in case the Mayor, &c., shall be desirous to open any of these streets, &c., so plotted out, they may agree with the owner for the land. In case of disagreement, or in case of the owner being under disability to treat, or absent, then and in such case it shall be lawful for the *Justices of the Supreme Court*, or any *one* of them, on the application of *either* party, to nominate and appoint three disinterested persons, Commissioners, to view the said land, &c., and estimate the damage which the owner will sustain in relinquishing the land so required, and in cases where the benefit exceeds the value of the land required, to estimate the benefit after deducting the value of the land, and to report thereupon to the *said Court*, and on the confirmation of the said report, the Mayor &c., shall proceed to assess the benefit by appointing five freeholders assessors, who shall make an estimate and assessment, and return the same to the Common Council, which shall be binding and conclusive, be a lien upon the land, and a warrant of distress may be issued under the hands and seals of the Mayor or Recorder, and two or more Aldermen, and levied upon the goods and chattels of the owners, &c. &c. A further provision is made in said act, which is, that in case the owners of the land fronting on any of the streets delineated on the map, shall apply to the Mayor, &c., to have the street opened, the Mayor, &c., shall take such proceedings as above. *Act of April 9th, 1813, as follows:*

"CLXXVII. And be it further enacted, That whenever and as often as the mayor, aldermen and commonalty of the city of New-York, shall be desirous to open any street, avenue, square or public place, or any particular part or section of any street or avenue laid out by the commissioners of streets and roads in the city of New-York, under and by virtue of the act, entitled 'an act relative to improvements touching the laying out of streets and roads in the city of New-York, and for other purposes,' passed April 3d, 1807, and also whenever and as often as so many proprietors of lands fronting on any such street, avenue, square or public place, or any particular part or section of any such street, avenue square or public place as shall together own three fourth parts of all the lands fronting on such street, avenue, square or public place, or on such part or section of any such street, avenue, square or public place, shall, by petition desire the said mayor, aldermen and commonalty to open any such street, avenue, square or public place, or any such particular part or section of any such street, avenue, square or public place, and the said mayor, aldermen and commonalty shall deem the opening thereof to be necessary or useful, it shall be lawful for the said mayor, aldermen and commonalty to cause the same to be opened, and the lands, tenements and hereditaments that may be required for the purpose of opening the same, may be taken for that purpose, and compensation and recompense made to the parties and persons, if any such there shall be, to whom the loss and damage thereby shall be deemed to exceed the benefit and advantage thereof, for the excess of the damage over and above the value of the said benefit, in the manner hereinafter for that purpose directed and prescribed. [2 R. L. 1813, p. 408.]

"CLXXVIII. And be it further enacted, That whenever and as often as any lands, tenements, hereditaments or premises whatsoever shall be required for the said purpose of opening any such public square, place, street or avenue, or part or section of a street or avenue, in the said city of New-York, laid out by the commissioners aforesaid, under and by virtue of the act aforesaid so to be opened, or for the said purposes of laying out and forming, or extending, enlarging, straightening, altering or otherwise improving any street or public place, so to be laid out and formed, or opened, or so to be extended, enlarged, straightened, altered or otherwise improved, in any part of the said city not laid out into streets, avenues, squares and public places, by the commissioners aforesaid, under the act aforesaid, or for any or either of the said purposes, it shall be lawful for the said mayor, aldermen and commonalty, to make application or to cause application to be made to the Supreme Court of judicature of this State for the appointment of Commissioners; and it shall be lawful for the said court to whom such application shall be made, on any such application to nominate and appoint three discreet and disinterested persons, being citizens of the United States, commissioners of estimate and assessment, for the purpose of performing the duties hereinafter in that behalf prescribed, which said commissioners before they enter upon the performance of the duties of their appointment shall severally take and subscribe an oath or affirmation, before some person authorised by law to administer oaths, 'faithfully to perform the trust and duties required of them by this act,' which oath or affirmation shall be filed in the clerks office of the city of New-York.

"And upon the coming in of the said report signed by the said commissioners or any two of them, the said court shall by rule or order, after hearing any matter which may be alleged against the same, either confirm the said report or refer the same to the same commissioners for revisal and correction or to new commissioners, to be appointed by the said court, to re-consider the subject matter thereof, and the said commissioners to whom the said report shall be so referred, shall return the same report corrected and revised, or a new report to be made by them in the premises, to the said court without any unnecessary delay; and the same, on being so returned, shall be confirmed or again referred by the said court in manner aforesaid, as right and justice shall require, and so from time to time, until a report shall be made or returned in the premises, which the said court shall confirm; and such report, when so confirmed by the said court, shall be final and conclusive, as well upon the said mayor, aldermen and commonalty of the city of New-York, as upon the owners, lessees, persons and parties interested in, and entitled unto the lands tenements, hereditaments and premises mentioned in the said report; and also upon all other persons whomsoever; and on such final confirmation of such report by the said court, the said mayor, aldermen and commonalty of the city of New-York, shall become and be seised in fee of all the said lands, tenements, hereditaments and premises in the said report mentioned, that shall or may be so required for the purpose of opening the said public square or place, street or avenue or part or section of a street or avenue so to be opened, or for the purpose of laying out and forming the said street or public place so to be laid out and formed, or for the purpose of extending, enlarging or otherwise improving the street or public place so to be extended, enlarged or otherwise improved, as the case may be, the same to be appropriated, converted and used to and for such said purpose accordingly; and thereupon the said mayor, aldermen and commonalty, or any person or persons acting under their authority, may immediately, or at any time or times thereafter, take possession of the same, or any part or parts thereof, without any suit or proceeding at law for that purpose: *In trust nevertheless*, That the same be appropriated and kept open for, or as part of a public street, avenue, square or place forever, in like manner as the other public streets, avenues, squares and places in the said city are and of right ought to be.

"*And provided also*, That it shall be lawful for the said mayor, aldermen and commonalty, at any time or times, either before or after the appointment of commissioners in the premises, for any of the purposes aforesaid to agree with the owners, lessees, parties and persons entitled unto or interested in the lands, tenements, hereditaments and premises, that either will be benefitted by or may be required, for the purpose of making the operation and improvement intended to be made, or with any or with either of such owners or other parties interested therein, for and about the cession of the lands, tenements, hereditaments and premises required of him, her or them respectively, for the purpose of making such said intended operation and improvement. (2 R. L. p. 409, 413, 414, 415, §188.

"CLXXXII. *And be it further enacted*, That the said commissioners of estimate and assessment to be appointed under and by virtue of this act, for any of the purposes aforesaid, after completing their said estimate and assessment, and at least fourteen days before they make their report to the said court, shall deposit a true copy or tran-

script of such estimate and assessment in the clerk's office of the city of New-York, for the inspection of whomsoever it may concern, and shall give notice by advertisement, to be published in at least two of the public newspapers printed in the city of New-York, of the said deposit thereof in the said office, and of the day on which their report will be presented to the said court; and any person or persons whose rights may be affected thereby, and who shall object to the same or any part thereof, may, within ten days after the first publication of the said notice, state his, her or their objections to the same, in writing, to the said commissioners; and the said commissioners or such of them as shall make such estimate and assessment, in case any objections shall be made to the same, and stated in writing as aforesaid, shall reconsider their said estimate and assessment, or the part or parts thereof so objected to, and in case the same shall appear to them to require correction, but not otherwise, they shall and may correct the same accordingly." Ib. p. 417.

"And the same or the excess and balance thereof, if any such excess and balance thereof there shall be, over and above the amount of the sums or assessments that may be assessed upon the parties and persons, lands and tenements, assessed by the commissioners in the premises for the benefit of such public square or place, street or avenue, or part or section of a street or streets so to be opened, or of such street or public place so to be laid out and formed, or of the extension, enlargement or other improvement of the street or public place so to be extended, enlarged or otherwise improved, as the case may be, together with the charges of the after-mentioned assessment and collection thereof, shall and may be estimated and assessed upon, and among all the owners, occupants and parties seised or possessed of, or interested in all the lands, tenements, hereditaments and premises not assessed by the said commissioners of estimate and assessment, nor included in their said report, that may be benefited by the said public square or place street or avenue, or part or section of a street or avenue, so to be opened or the said public square or place so to be laid out and formed, or the extension, enlargement or other improvement of the public street or place so to be extended, enlarged or otherwise improved, as the case may be in proportion, as nearly as may be, to the advantage which each shall be deemed to acquire thereby; and the said mayor, aldermen and commonalty, shall appoint three disinterested freeholders to make such estimate and assessment, who, before they enter upon the duties of their appointment, shall severally take an oath before the mayor, recorder, or one of the aldermen of the said city, to make the said estimate and assessment fairly and impartially according to the best of their skill and judgment; and the said freeholders or any two of them, after having made such estimate and assessment, shall certify the same and make a return thereof in writing to the said mayor, aldermen and commonalty, in common council convened, and the same when ratified and confirmed by the said common council, shall be binding and conclusive upon the parties and persons so to be assessed respectively, and upon all other persons whomsoever." (2 R. L. p. 419, 420, § 185.

"CLXXXVI. *And be it further enacted*, That as well the respective sums so to be assessed by the said assessors upon the owners, occupants and parties seised or possessed of or interested in the lands, tenements, hereditaments and premises mentioned in the said certificate and return of them the said ssessors, as also the respective sums or assessments so to be assessed and reported by the said commissioners of estimate and assessment as and for the allowance to be made by the parties and persons respectively in the said report mentioned and referred to and intended as owners and proprietors of, or parties interested in, lands and premises deemed to be benefitted for the benefit and advantage of the public square or place, street, avenue or part or section of a street or avenue, or of the extension, enlargement or other improvement of the street or public place mentioned in the said report, shall be a lien or charge on the lands, tenements, hereditaments and premises in the said certificate and return of the said assessors, or in the said report of the said commissioners mentioned, or upon the estate and interest of the respective owners, lessees, and parties interested in such said lands, tenements, hereditaments and premises for or on account of which the said respective sums shall be so assessed by the said commissioners or assessors, as the case may be, upon the said respective owners and proprietors thereof, or parties interested therein, and as well the said owners and proprietors thereof and parties interested therein, and also the occupants and every one of them shall moreover be respectively liable to pay on demand the respective sum or sums or assessments mentioned in the said certificate, and return of the assessors, or in the said report of the commissioners, as the case may be, at which the respective lands, tenements, hereditaments and premises so owned or occupied by him, her or them, or wherein he, she or they are so interested, or at which the owners and proprietors thereof shall be so assessed, to such person or persons as the said mayor, aldermen and commonalty shall appoint to receive the same; and in default of the payment thereof, it shall be lawful for the said mayor, aldermen and commonalty, or any five of them, of whom the mayor or recorder shall be one, by warrant under their hands and seals, to levy the same with lawful interest thereon from and after the expiration of thirty days from the time of the confirmation of the said report of the commissioners by the court, or of the said return of the assessors by the common council, as the case may be, and together, also with all the charges and expenses of the proceedings to be had for the collection thereof, by distress and sale of the goods and chattels of such owner or owners, occupant or occupants, or party or parties interested so refusing or neglecting to pay the same; rendering the overplus, (if any overplus there shall be) after deducting all just charges, to such owner or owners, occupant or occupants, or party or parties interested, or the said respective sums or assessments with such lawful interest as aforesaid, may be recovered with all costs and charges by the said mayor, aldermen and commonalty, from and against the parties assessed, or the owner or owners of the respective lands, tenements, hereditaments and premises whereon or in respect of which the same may be assessed, or set forth in the said report of the commissioners, or return of the assessment, as the case may be, or from or against any or either of the said parties or owners, without joining any other or others of them the said parties or owners therein, by action of debt or assumpsit, in which it shall be sufficient to declare generally, for so much money due by virtue of this act to the said mayor, aldermen and commonalty, and any matter may be given in evidence under such general declaration." (2 R. L. p. 420, 421.)

"CLXXXVII. *And be it further enacted*, That in case of the death, resignation or refusal to act of any such commissioner, of estimate and assessment, to be appointed under and by virtue of this act for any such aforesaid purpose, it shall and may be lawful for the court aforesaid, or any one of the justices thereof, on the application of the mayor, aldermen and commonalty of the city of New-York, as often as such event shall happen, to appoint a discreet and disinterested person, being a citizen of the United States, in the place and stead of such commissioner so dying, resigning or refusing to act, and that the surviving or acting commissioners, as the case may be, shall have full power to proceed in the execution of the duties of their appointment, until a successor of the commissioner so dying, resigning or refusing to act, shall be appointed." (2 R. L. p. 422.)

The next legislation which is pertinent to this issue is the act passed April 12th, 1816, and being an important law, and one which our readers will have need to refer to, we therefore give it entire.

"AN ACT *for the more effectual Collection of Taxes and Assessments in the City of New-York*—Passed April 12, 1816.

"§ 1. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That whenever any tax, of any description, on lands or tenements in the said city, shall remain unpaid on the day upon which the collectors are limited by law to account for the collection of the same, and the collector of the ward in which the same shall be charged, shall make such affidavit in relation to the said tax as is specified in the eleventh section of the act entitled 'an act for the assessment and collection of taxes,' passed April 5th, 1814, it shall be lawful for the mayor, recorder and aldermen of the said city, or any five of them, of whom the mayor or recorder shall be one, to issue a warrant under their hands and seals, directed to, and requiring some proper person to levy the said tax, by distress and sale of the goods and chattles of the owner or own-

ers of such lands or tenements respectively, wheresoever the said goods and chattels may be found in the said city, together with the costs and charges of such distress and sale, rendering the overplus, if any, to the person or persons whose goods and chattels shall be so distrained and sold.

"§ 2. *And be it further enacted*, That whenever any such tax shall remain unpaid as aforesaid, and the collector shall make such affidavit as is above; and also wherever and whenever any assessment upon any lands or tenements, in the said city, hath heretofore been or hereafter shall be made and confirmed according to law, and the amount of such assessment hath not been or shall not be collected: the collector shall make affidavit of his demanding the money two several times of such owner or owners of the said lands or tenements as may reside in the said city, and that they have neglected or refused to pay the same, or shall make affidavit that the owner or owners of any such lands or tenements cannot, upon diligent inquiry, be found in said city, then and in any such case it shall be and may be lawful for the mayor, aldermen and commonalty of the city of New-York, to take order for advertising the said lands and tenements, or any of them, for sale, in two or more of the public newspapers, printed in the said city, for three months, once in each week; and by such advertisements the owner or owners of such lands and tenements respectively, shall be required to pay the amount of such tax or assessment so remaining unpaid, together with interest thereon, at the rate of seven per cent. per annum (the interest on said tax to be calculated from the time of making the above mentioned affidavit, and the interest on such assessment to be calculated from the time of the confirmation of the said assessment) to the time of payment, with the charges of such notice and advertisement, to the treasurer or chamberlain of the said city; and notice shall be given by such advertisements, that if default shall be made in such payment, such lands and tenements will be sold at public auction, at a day and place therein to be specified, for the lowest term of years at which any person or persons shall offer to take the same, in consideration of advancing the said tax or assessment, and the interest thereon as aforesaid, to the time of sale, and together with the charges of the above mentioned notice and advertisement, and the hereinafter mentioned certificate, lease and advertisement, and all other costs and charges accrued thereon: And if, notwithstanding such notice, the owner or owners shall refuse or neglect to pay such tax or assessment, with interest as aforesaid, and the charges attending such notice and advertisement, then it shall and may be lawful to and for the said mayor, aldermen and commonalty, to cause such lands and tenements to be sold at public auction, for a term of years, for the purpose and in the manner expressed in the said advertisements; and such sales shall be made on the day for that purpose mentioned in the said advertisements, and shall be continued from day to day, if necessary, until all the lands and tenements, so advertised, shall be sold: And the said mayor, and commonalty shall give to the purchaser or purchasers of any such lands and tenements, a certificate, in writing, describing the lands and tenements so purchased, the term of years for which the same shall have been sold, the sum paid therefor, and the time when the purchaser will be entitled to a lease for the said lands and tenements: And the mayor, aldermen and commonalty of the city of New-York, shall at least six months before the expiration of two years after any such sale, cause an advertisement to be published, at least once in each week for four weeks successively, in the newspaper printed by the printer to this state, and in one of the public newspapers printed in the city of New-York, in such form as they shall deem best calculated to give notice of such sale; and that unless the lands sold be redeemed by a certain day they would be conveyed to the purchaser: And if the person claiming title to the said lands and tenements, or some one on his or her behalf, shall not within two years from the date of the above mentioned certificate, pay to the street commissioner of the city of New-York, for the use of the purchaser, his executors, administrators, or assigns, the sum mentioned in such certificate, together with the interest thereof, at the rate of twenty per centum per annum, from the date of such certificate, the mayor, aldermen and commonalty of said city, shall at the expiration of the said two years, execute to the purchaser, his executors, administrators or assigns, a lease, under the common seal of the said city, of the lands and tenements so sold, for such term of years as the same shall have been sold; and such lease shall be conclusive evidence that the sale was regular, according to the provisions of this act: And such purchaser or purchasers, his, her, or their executors, administrators and assigns, shall, by virtue thereof, and of this act, lawfully hold and enjoy the said lands and tenements, in the said lease mentioned, for his, her or their own proper use, against the owner or owners thereof, and all claiming under him, her or them, until such purchaser's term therein shall be fully complete and ended: And the said purchaser or purchasers, his, her or their executors, administrators and assigns, shall be at liberty to remove all the buildings and materials which he, she or they shall erect or place thereon, during the said term, within one month after the expiration of the said term, but leaving the lands and tenements, with the streets fronting the same, in the order required by the regulations of the common council: *Provided always*, That no such proceedings by advertisement and sale, as aforesaid, shall take place under any assessment heretofore made and confirmed, unless in cases where the same now is a lien or charge on the lots assessed.

"§ 3. *And be it further enacted*, That the above mentioned proceeding by advertisement and sale, may take place in any case of such unpaid tax, as is above mentioned, notwithstanding a warrant of distress may have been issued for the collection thereof, in the manner above mentioned, in case the whole or any part of such tax shall be uncollected thereupon.

"§ 4. *And be it further enacted*, That this act shall not be construed to prevent the collection of any assessment or assessments by distress and sale of the goods and chattels of the owner or owners, occupant or occupants of any lands or tenements therein or thereby assessed.

"§ 5. *And be it further enacted*, That all the provisions herein before made, relative to the sale of lands and tenements, within the city of New-York, for unpaid taxes, shall apply to all such taxes charged on lands and tenements, within the said city, as shall appear by the returns of the respective collectors, at any time heretofore to have been in arrear.

"§ 6. *And be it further enacted*, That whenever the arrearages of any tax shall be collected, in manner aforesaid, the same shall be carried to the credit of the ward in which it shall be charged.

"§ 7. *And be it further enacted*, That the one hundred and fifty-sixth, one hundred and fifty-seventh, one hundred and fifty-eighth, two hundred and fifty-ninth and two hundred and sixtieth sections of the act entitled 'An act to reduce several laws relating particularly to the city of New-York, into one act,' passed April 9th, 1813 be and the same hereby are repealed: *Provided however*, That such repeal shall not effect any act done, or proceedings had or commenced under the said sections hereby repealed; but every such act and proceeding shall remain as valid as if the said sections had remained in full force: *And provided particularly*, That the proceedings for the sale of certain lands and tenements, for certain unpaid assessments, which are now pending, shall and may proceed, be continued and completed in the same manner as if this act had not been passed, but the said two hundred and fifty-ninth section of the said act had remained in full force."

The next act of the Legislature which we shall notice, is that of April 5th, 1816.

"AN ACT *relative to the Duties and Powers of Commissioners of Estimate and Assessment on Opening Streets and Avenues*—Passed April 5, 1816.

"WHEREAS the mayor, aldermen and commonalty of the city of New-York, have by their memorial to the legislature, represented that so much of the existing law in relation to the opening and improving streets in the said city, as confines the commissioners' assessments for the benefits within certain limits, is inconvenient in its operation, and have prayed that the said law may be amended in that particular; *And whereas*, The said prayer appears proper to be granted: Therefore,

"§ 1. *Be it enacted by the People of the State of New-York, represented in Sen-*

ate and Assembly, That whenever commissioners of estimate and assessment may hereafter be appointed by the supreme court of judicature of this state, or by any one of the justices thereof, for the purpose of opening any street or avenue, or any part or section of any street or avenue."

We now come to the provisions of the Constitution of 1821, which are as follows:

ART. I.

"§ X. No member of the Legislature shall receive any civil appointment from the Governor or Senate, or from the Legislature during the term for which he shall have been elected.

ART. IV.

"§ VII. The Governor shall nominate by message, in writing and with the consent of the Senate, shall appoint all judicial officers except Justices of the Peace.

"§ IX. The Clerks of Courts, except those Clerks whose appointment is provided for in the next preceding sections, shall be appointed by the Courts of which they respectively are clerks;

ART. V.

"§ IV. The Supreme Court shall consist of a Chief Justice, and two Justices, any of whom may hold the Court.

"§ VII. Neither the Chancellor, nor Justices of the Supreme Court, nor any Circuit Judge, shall hold any other office or public trust."

ART. VI.

"§ I. Members of the Legislature, and all officers, executive and Judicial, except such inferior officers as may by law be exempted, shall before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of New-York, and I will faithfully discharge the duties of the office of ——— according to the best of my ability.

ART. VII.

"§ I. No member of this State shall be disfranchised, or deprived of any of the rights or privileges, secured to any citizen thereof unless by the law of the land or the judgment of his peers.

"§ II. The trial by Jury, in all cases in which it has been heretofore used shall remain inviolate for ever, and no new court shall be instituted, but such as shall proceed according to the course of the common law, except such courts of Equity as the Legislature is herein authorised to establish.

The last clause of Section VII is in these words, "No person shall be subject," &c., "nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

"§XIII. Such parts of the common law, and of the acts of the Legislature of the colony of New-York, as together did form the law of the said colony on the 19th day of April 1775, and the resolutions of the Congress of the said colony, and of the Convention of the State of New-York in force on the 20th day of April, 1777, which have not since expired, or been repealed or altered; and such acts of the legislature of this State, as are now in force shall be and continue the law of this State subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, *and such of the said acts, or parts thereof, as are repugnant to this Constitution are hereby abrogated.*"

The next legislative provision which we shall notice is the act of April 7th, 1830, from which we copy the following sections:

"§ 7. The boards shall meet in separate chambers, and a majority of each shall be a quorum to do business. Each board shall appoint a President from its own body, and shall also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board shall keep a journal of its proceedings, and the doors of each shall be kept open, except when the public welfare shall require secrecy: And all resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the common council, in all the newspapers employed by the corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.

"§ 12. Every act, ordinance, or resolution which shall have passed the two boards of the common council, before it shall take effect, shall be presented, duly certified to the mayor of the city, for his approbation: if he approve, he shall sign it; if not, he shall return it, with his objections, to the board in which it originated, within ten days thereafter; or if such board be not then in session, at its next stated meeting. The board to which it shall be returned, shall enter the objections at large on their journal, and cause the same to be published in one or more of the public newspapers of the city.

"§ 13. The board to which such act, ordinance, or resolution, shall have been so returned, shall after the expiration of not less than ten days thereafter, proceed to reconsider the same. If, after such reconsideration, a majority of the members elected to the board shall agree to pass the same, it shall be sent, together with the objections, to the other board, by which it shall be likewise reconsidered; and if approved by a majority of all the members elected to such board, it shall take effect as an act or law of the corporation. In all such cases, the votes of both boards shall be determined by yeas and nays; and the names of the persons voting for and against the passage of the measure reconsidered, shall be entered on the journal of each board respectively.

"§ 14. If the mayor shall not return any act, ordinance or resolution so presented to him, within the time above limited for that purpose, it shall take effect in the same manner as if he had signed it.

"§ 15. Neither the mayor nor recorder of the city of New-York shall be a member of the common council thereof, after the second Tuesday of *May*, one thousand eight hundred and thirty-one."

The next Legislative proceeding in chronological order is the act of April 20th, 1839.

The 9th, 10th, and 12th sections of that act are as follows:

"§ 9. All motions (except as hereinbefore provided) made under and by virtue of the act hereby amended, before the said court or any court to which an appeal may have been made, shall be upon giving previous notice of the time, place and object of such motion, to be published for at least fourteen days in four of the public newspapers, and by copies of said notice in handbills, to be posted up for the same space of time in the manner hereinbefore directed.

"§ 10. No real estate or other property shall be sold or advertised for sale, for the non-payment of any assessment or tax laid upon real estate, unless notice in writing shall have been left at the residence of the owner or owners, if residing in the city of New-York, or if upon diligent enquiry, such owner or owners cannot be found, then at the residence of the tenant or tenants upon the said premises, at least twenty days previous to such advertisement; and if such owner or owners do not reside in said city, or upon diligent inquiry cannot be found and the premises are without a tenant or tenants, then such notice in writing shall be put up for the same space of time, in some conspicuous place on the premises so assessed or taxed.

"§ 12. No cost or charges to the said commissioners, their attorney, counsel or others, shall be paid or allowed for any services performed under this act, or the act, hereby amended, unless the same shall be taxed by the said court, who are required to make rules to apply to the said bills of costs, the existing laws in relation to the taxation of costs and the nature and proof of the services rendered and disbursements charged, as far as the same can be made applicable; and no unnecessary cost or charges shall be allowed.—Public notice of the time and place of the taxation of costs shall be given, for the same time and in the same manner as notices are required to be given by the above ninth section; and a copy of the bill of costs, containing items and particular services performed, shall be deposited in the office of the street commissioner at the time of the first publication of such notice."

The next provision of the law, which we shall notice, is the act of May 14th, 1840, from which we copy the following section:

"§ 10. It shall not be necessary to give any further publicity of any intended sale of property for unpaid assessments and

taxes than is contemplated by the last preceding section; and in giving the further notice required by section second of the act entitled, "An act for the more effectual collection of taxes and assessments in the city of New-York, passed April 12, 1816, of the sale of property six months previous to the expiration of the time of redemption, it shall only be necessary to publish the same in one daily newspaper printed in the city and county of New-York, twice in each week for six weeks successively, and so much of the said section as is inconsistent with this section and the preceding sections, is hereby repealed." Session Laws of 1840.

The last statue provision which we shall state, is from the act of May 25th, 1841, from which we copy the following section:

"§ 3. Whenever any land or tenement sold for assessments or taxes in the city of New-York and conveyed in the manner provided by law, shall at the time of conveyance be in the actual occupancy of any person, the grantee, to whom the same shall have been conveyed, or the person claiming under him shall serve a written notice on the person occupying such land or tenements, and the person last assessed as owner stating in substance the sale and conveyance, the person to whom made, and the amount of consideration money mentioned in the conveyance, with the addition of forty-two per cent. on such amount as the said lands or tenements were struck off for at the time of the sale, and the further addition of the sum paid for the lease *and advertisements*, and stating also that unless such consideration money and the said forty-two per cent. together with the sum paid for the lease, shall be paid to the street commissioner for the benefit of the grantee, in case the said premises shall have been sold for assessments, or to the Comptroller if the same shall have been sold for taxes within six months after the service of such notice that the said conveyance will become absolute, and the occupant and all others interested in the land or tenements be barred from all right or title thereto during the term of years for which such lands or tenements shall have been conveyed." Session Laws of 1841.

Having gone through with a statement in which we have included copies of the law enacted by the Colonial Assembly, the provisions of the Constitution of 1777, the acts of the Legislature under that Constitution, the provisions of the Constitution of 1821, and the acts of the Legislature subsequent thereto; we come now to state the particular assessment proceeding which was the matter of adjudication by the Supreme Court in the case of Striker vs. Kelly. We will premise this by saying that our object in presenting these provisions of the Constitution of 1777, and of 1821, and those of the statutes, in so much detail, is to give our readers abroad who may not have the copies of the New-York Constitution of 1777 and 1821, and of the Statutes, to refer to.

This proceeding in the Supreme Court involved the question of the right of the Justices of the Supreme Court to act as Road Commissioners, in the appointment of Commissioners of estimate and assessment, and confirming their reports, and also other constitutional questions; and also the question whether the common council acquired jurisdiction in the premises in the commencement of the proceeding for opening the Ninth Avenue, and the legality of their proceedings subsequent to the assessment, and likewise of the *legality* of the sale, and of the proceedings subsequent to the sale.

A brief history of the proceedings which preceded the application to one of the justices of the Supreme Court for the appointment of Commissioners, the proceedings relating to the appointment of Commissioners, the confirmation of the assessment, and those subsequent thereto, accompanied by a diagram of the avenue and assessed premises, will give the reader a pretty full view of this *paper improvement* or assessment.

On the 20th of April, 1835, a petition for the opening of the 9th Avenue, was presented in the Board of Aldermen. The following is a copy:

"To the Hon. Mayor and Common Council of the city of New-York.

"The undersigned owners of Real Estate on the Ninth Avenue and its vicinity, respectfully pray your Honorable Body to cause the Ninth Avenue to be opened from 45th Street to its intersection with the Bloomingdale Road. They would respectfully represent to your Honorable Body the expediency of opening this Avenue, as the property thereon is now coming into market, and is not at present accessible; and that from the shape of the ground, it will with very little cost, be a good and easy road, which would be very necessary and convenient for the growing population along the lower part of this avenue, as well as those above.

New-York, April 15th, 1835.

F. B. Cutting, D. A. Cushman, James N. Wells, N. Martin, J. Bowman, Norman Peck, D. Wiry, George Rapilje, by his Att'y D. C. Colden. John Parr, W. Van Houton, H. Embiere, E. B. Glenn, C. Arras, Geo. Wheeler, James Gallon, P. Maguire, C. Wesley, James Otter, James Pollock."

The signers of this memorial were none of them owners of land upon that portion of the Avenue they desired to have opened, nor were they owners of any of the land which was assessed for the proceeding.

A Remonstrance was presented to the Board of Aldermen against the opening of the 9th Avenue, signed by persons who were the owners of the greater part of the land, through which this portion of the avenue was plotted out. The following is a copy of the remonstrance:

"To the Hon. Mayor and Common Council of the city of New-York.

"The undersigned, citizens and land-holders, residing on the Ninth Avenue and its vicinity, respectfully represent to your Honorable Body that they feel in duty bound to remonstrate against the opening, at present, of the Ninth Avenue, from 45th Street to the intersection of the Bloomingdale road, agreeable to a petition lately laid before your Honorable Body. They conceive that there is not at present any absolute necessity or public convenience in having said avenue opened; that the 8th and 10th being opened and in good condition for travelling, it is, in the opinion of your petitioners, inexpedient to open the 9th at present.

"They would further respectfully call the attention of your Honorable Body to the extreme difficulty and damages they would incur by its being thrown open at this time.

"The lands along the line of this avenue are now generally in productive use, which would be lost to the owners; and the necessity of fencing on both sides would be a heavy expense. Many other weighty arguments might be produced; but we trust your Honorable Body will take all into consideration and do us justice; and we most respectfully pray that you will not grant the prayer of the petitioners for opening said Avenue at present.

New-York, Dec. 19, 1834.

David Cargill, F. C. Havemeyer, Peter Fietner, Hannah Titus, Jacob Harsen, Charles Fietner, P. A. Hageman, P. A. Hageman, Agent for S. Stake, Henry Ulrick."

The petition and remonstrance were both referred to the Street Committee, which committee made the following Report:

"The Street Committee of the Board of Aldermen to whom was referred the annexed petition of sundry persons asking the Common Council to take the necessary measures to have the Ninth Avenue opened from 45th Street to the Bloomingdale Road, together with a remonstrance against the same,

"Beg Leave to Report, That the proposition above named has been published in the daily papers, and that a remonstrance against the measure was presented, signed by several of persons interested.

"The remonstrants state in their memorial, that they are the owners of property which would be affected by the opening of the Ninth Avenue; and give as a reason why

the same should not be done at this time, that at present the land is in productive use, which would be lost to them, and that they would be put to the expense of erecting fences on each side of the Avenue, if the same be opened.

"But your Committee can see no good reason why a measure of so much importance, not only to the petitioners (who are owners of the property on the line of the avenue), but in which the public are also interested, should be retarded for the reasons given in the remonstrance.

"Your Committee, therefore, viewing this subject as one of great importance, and believing that it is highly expedient to afford additional facilities of communication in that section of the city, recommend for adoption the following resolution:

"Resolved, That the 9th Avenue be opened from 45th Street to the Bloomingdale Road, and the Counsel of the Board is hereby directed to take the necessary legal measures to carry this resolution into effect.

FRAS. FICKET,
EDWARD TAYLOR,
SAML. PURDY,
} Street Committee."

"The Committee on Roads and Canals of the Board of Assistant Aldermen, to whom was referred the petition of sundry persons for the opening of the Ninth Avenue from 45th Street to the Bloomingdale Road, and a Remonstrance against the same,

"Respectfully Report, That the propriety of opening all avenues leading from the city has been repeatedly stated by the Committee in former reports, and they deem a repetition of the reasons in favor of such a course unnecessary, at the present time.

"In the remonstrance submitted to the Committee, there is no other reason given against the measure than that the land now employed in a productive manner would be taken away, and they would be put to heavy expense for fencing.

"This reason your Committee think should not prevent the opening of the Avenue, inasmuch as the land taken for this purpose will be fully paid for, and the interest of the owners of property on that avenue will be promoted by its being opened.

"Your Committee therefore recommend a concurrence with the Board of Aldermen in the Resolution adopted on this subject.

D. P. INGRAHAM,
JOHN V. GREENFIELD,
A. STEWART,
} Committee."

The Remonstrance is endorsed as follows:

"Remonstrance against opening 9th Avenue from 45th Street to the Bloomingdale Road, presented by I. L. VARIAN.

"Board of Aldermen, Dec. 22d, 1834.

"Referred to the Street Committee.

"J. MORTON, Clerk.

"Report of the Street Committee on the Petition of sundry persons to have the 9th Avenue opened from 45th Street to the Bloomingdale Road.

"Board of Aldermen, July 20, 1835.

"Adopted,

"J. MORTON, Clerk.

"Board of Assistants, July 22, 1835.

"Referred to Road Committee.

"WM. HAGADON, Clerk.

"Report of the Committee on petition for opening Ninth Avenue from 45th Street to the Bloomingdale Road, concurring with the Board of Aldermen, &c.

"Board of Assistants, July 27, 1835.

"Concurred and agreed to.

"WILLIAM. HAGADON, Clerk.

"Approved July 29, 1835.

"C. W. LAWRENCE,
"R. EMMETT."

By the testimony of D. T. Valentine, Assistant Clerk of the Board of Aldermen, before the Circuit Court:

"The approval of the Mayor appears to be written on the Remonstrance, and bears date July twenty-ninth, one thousand eight hundred and thirty-five."

The Mayor, on the 3d of August, 1835, sent a Message to the Board of Aldermen, of which the following is a copy:

"*Mayor's Office, Aug.* 3, 1835.

"Gentlemen of the Board of Aldermen of the city of New-York:—I have approved and signed the resolution for opening 9th Avenue from 45th Street to the Bloomingdale Road.

"C. W. LAWRENCE."

The next proceeding we shall notice, is the application to "the Justices of the Supreme Court," for the appointment of Commissioners of Estimate and Assessment, to make an estimate and assessment for opening the Ninth Avenue from 45th Street, to the Bloomingdale Road. The following is a copy of the Petition:

"To the Justices of People of the State of New-York, of the Supreme Court of Judicature of the same People.

"The Petition of the Mayor, Aldermen and Commonalty of the city of New-York, RESPECTFULLY SHEWETH,

"That your petitioners in Common Council convened, have deemed it desirable for the public convenience to open the Ninth Avenue between Forty-Fifth Street and the Bloomingdale Road, in the Twelfth Ward of the said city, the same being an Avenue in that part of the said city laid out into Streets, Avenues, Squares and public places, under and by virtue of the act entitled, "An Act relative to improvements touching the laying out of Streets and Roads in the city of New-York, and for other purposes," passed the third day of April, in the year of our Lord one thousand eight hundred and seven, by taking for that purpose the land and premises hereinafter mentioned and described, and removing therefrom the buildings situated and being thereupon, which said lands are situated, located and bounded as follows, to wit:

"All that certain lot, piece or parcel of land situate, lying and being in the said Twelfth Ward of the said city, and bounded and containing as follows, to wit: Beginning at a point on the northwesterly line or side of the Ninth Avenue, as the same is to be opened, distant eighty-three feet nine inches from the northwesterly corner of Forty-Fifth Street as established by law, and the Ninth Avenue as the same is to be opened, and running thence northeasterly along the northwesterly line or side of the Ninth Avenue, as the same is to be opened, four thousand nine hundred and ninety-one feet three inches, to the westerly line or side of the Bloomingdale Road, thence southwesterly along the same, four thousand eight hundred and sixty-four feet eleven inches, to a point on the southwesterly line or side of Ninth Avenue, as the same is to be opened, distant forty feet nine inches from the southeasterly corner of Forty-Fifth Street, as established by law, and Ninth Avenue, as the same is to be opened, and running thence northerly, one hundred and eight feet ten inches to the place of beginning.

"And your petitioners further represent, that they have accordingly ordered the said above mentioned Avenue to be opened as aforesaid, and they therefore pray this Honorable Court will, in pursuance of the Act of the Legislature of the People of the State New-York, entitled "An Act to reduce several laws relating particularly to the city of New-York, into one Act," passed the ninth day of April, in the year of our Lord one thousand eight hundred and thirteen, nominate and appoint three discreet and disinterested persons, being citizens of the United States, Commissioners of Estimate and Assessment, for the purpose of performing the duties relative to the premises prescribed in and by the Act last mentioned, and in and by the Act entitled, "An Act relative to the duties and powers of Commissioners of Estimate and Assessment on opening Streets and Avenues," passed the fifth day of April, in the year of our Lord one thousand eight hundred and sixteen, and also in and by the Act entitled, "An Act relative to opening and enlarging streets in the city of New-York," passed the twelfth day of April, in the year of our Lord one thousand eight hundred and eighteen.

"And your Petitioners, &c.

"By the Common Council.

[L. S.] J. MORTON, Clerk."

[Endorsed.]

"SUPREME COURT.

"In the matter of opening the Ninth Avenue, between 45th street and the Bloomingdale Road, in the Twelfth Ward of the city of New-York.
} PETITION.
R. EMMETT, Attorney.

"Filed 18th Dec. 1835."

The petition it will be seen is without date, and is also without the signature of the Mayor of the City of New-York. There were no buildings in the line of the avenue.

The Clerk of the Supreme Court entered an order under the direction of one of the Judges of that Court, of which the following is a copy:

"IN SUPREME COURT.

"In the matter of the application of the Mayor, Aldermen and Commonalty of the city of New-York, relative to the opening of 9th Avenue, between forty-fifty street and the Bloomingdale Road, in the 12th Ward of said city. } 18th December, 1835. Rule for the appointment of Commissioners R. EMMETT, Attorney.

"The Mayor, Aldermen and Commonalty of the city of New-York, in pursuance of the act of the Legislature of the people of the State of New-York, entitled "An Act to reduce several laws relating particularly to the city of New-York into one Act," passed the ninth day of April in the year of our Lord one thousand eight hundred and thirteen, by Robert Emmet their Attorney, presented to the Supreme Court of the Judicature of the people of the State of New-York, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and thirty-five, their certain petition, under the common seal of the said city, setting forth that they have deemed it desirable for the public convenience to open Ninth Avenue, between Forty-Fifth Street and the Bloomingdale Road, in the Twelfth Ward of the said city, the same being an avenue in that part of the said city laid out into streets, avenues, squares and public places, under and by virtue of the act entitled "An Act relative to improvements tonching the laying out of streets and roads in the city of New-York, and for other purpose," passed the third day of April one thousand eight hundred and seven, by taking for that purpose the lands and premises hereinafter mentioned and described, and removing therefrom the buildings situated and being thereupon, which lands and premises are situated and bounded as follows, that is to say—"All that certain lot, piece or parcel of land lving and being in the said Twelfth Ward of the said city, and bounded and containing as follows, to wit: Beginning at a point on the northwesterly line or side of Ninth Avenue as the same is to be opened, distant eighty-three feet nine inches from the northwesterly corner of Forty-Fifth Street, as established by law, and ninth avenue, as the same is to be opened, and running thence northwesterly along the northwesterly line or side of the ninth avenue, as the same is to be opened, four thousand nine hundred and ninety-one feet three inches, to the westerly line or side of the Bloomingdale Road, thence southerly along the same, one hundred and ninety-six feet eight inches to the southeasterly line or side, to the ninth avenue as the same is to be opened, thence southwesterly along the same, four thousand eight hundred and sixty-four feet eleven inches to a point on the southeasterly line or side of ninth avenue, as the same is to be opened, distant forty-feet nine inches from the southeasterly cor-Forty-Fifth Street, as established by law, and ninth avenue, as the same is to be opened, and running thence northerly one hundred and eight feet ten inches to the place of beginning.

"And your petitioners, in their said petition, further set forth that they have accordingly ordered the aforementioned ninth avenue to be opened in manner aforesaid, and they therefore pray that this Honorable Court will be pleased in pursuance of the above mentioned act of the Legislature of the people of the State of New-York, to nominate and appoint three discreet and disinterested persons, being citizens of the United States, Commissioners for the purpose of performing the duties relative to the above mentioned premises prescribed to Commissioners of estimate and assessment in and by the last mentioned act, and also in and by the act entitled "An Act relative to the duties and powers of Commissioners of estimate and assessment on opening streets and avenues," passed the fifth day of April, in the year of our Lord one thousand eight hundred and sixteen, and also in and by the act entitled "An Act relative to the opening and enlargening streets in the city of New-York," passed the twentieth day of April, in the year of our Lord one thousand eight hundred and eighteen, which said petition is filed. Now, on reading and filing the said petition, and on motion of Robert Emmet of Counsel for the said petitioners, it is ordered that Robert Ainslie, William W. Holly and Lovell Purdy, being three discreet and disinterested persons, and citizens of the United States, be and they hereby are nominated and appointed by the said Court Commissioners of estimate and assessment for the purposes and matters aforesaid, and that they make a report without unnecessary delay, &c."

One of the Commissioners appointed is a son of one of the street committee of the Board of Aldermen, which made the report in favor of opening the avenue.

In the appendix to the report of the select committee of the Senate appointed by that body to examine into the assessment abuses in the city of New-York, is the following stated testimony, on p. 80, of printed Senate Document No. 100, of 1842:

"There is a book permanently kept in the Street Commissioners office, and witness recognizes the book upon its being shown to him, which contains a list of the names of the persons for commissioners of estimate and assessment in opening Streets, &c. They are placed on that list in the following manner: pretty soon after the annual election, the Aldermen call and enquire for that book, and each Alderman inserts three names for commissioners for the ensuing year." *Testimony* of P. Perrine, a clerk in the street commissioner's office, before the Senate Committee."

The following is from Senate Doc. No. 100, pg. 278 and 279.

"New-York, Nov. 12th, 1840.

"To WILLIAM ADAMS, ESQ.
Asst. of the 5th Ward.

"SIR—I have received a copy of a resolution offered by you and passed by the board of assistants on the 9th inst., requiring me to furnish that board with the items of the bill for counsel fees and court charges, in the matter of opening the Seventh avenue, also a bill of the charges of the commissioners of estimate and assessment and the surveyor's bill in the same matter. I had determined to send back the copy of the resolution, enclosed in a short communication, to the president of the board of assistants, respectfully denying the right of that board, or of the common council, to require any such information from me; but being informed that the resolution was not drawn by you, and believing that you might not have well considered its fitness or propriety, when you introduced it, I have thought it due to you, to make this personal communication to yourself on the subject.

"A very brief statement will, I think, satisfy you that as a matter of *strict right* the common council are not entitled to make any such demand; and I can hardly suppose that any member of that body could desire that its aid should, *without right*, be made subservient to the investigating spirit, however laudable it may be deemed, which may have suggested this resolution in any other quarter.

"The proceedings for opening the Seventh avenue, were conducted and concluded under the act of April 9th, 1813, the 189th section of which provides that the commissioners of estimate and assessment (who are appointed by, and are the officers of the Supreme Court,) shall be entitled to receive the sum of not more than four dollars for each day actually employed by them in their duties, besides all reasonable expenses for maps, surveys and plans, clerk hire and other necessary expenses and disbursements.—The law directs that these expenses shall be paid by the corporation, and included in the assessment, by the subsequent collection of which, it was intended that the corporation should be reimbursed. There is no provision in this act for the taxation of these expenses, or for regulating them by any other rule than the discretion and good faith of the commissioners who are authorized to incur them. But even admitting them to have been extravagant in any case, they could not affect the corporation, who were the mere agents, required by law to pay the money and refund themselves by the collection of the assessments; and whatever right the parties assessed may have had to inquire into the necessity or reasonableness of those expenses, or to object to them, should have been exercised while the matter was before the commissioners or the Supreme Court.

"If the law was defective in this respect, the Legislature have endeavored to remedy it by an act passed April 20th, 1839, which, among other alterations, requires a rigid taxation of all costs, charges and expenses in cases of this kind before they can be paid; but I know of no law which made it my duty to preserve and exhibit to the common council, or to any other party, or even to make out a bill with items of the costs, fees and court charges in the matter of opening the Seventh avenue, or in any other of the

numerous street cases which I had charge of, and which were terminated before the act of 1839 was passed; and I might with just as much propriety be now called upon to furnish the items of the expenses of any estimate and assessment confirmed ten years ago, or of all which have been confirmed since that time.

"If the inquiry contained in this resolution is to be viewed as a mandate of the board of assistants, I must be permitted to say that it is inquisitorial. If it was made *through that body*, to gratify curiosity in any other quarter, I pronounce it impertinent in those with whom it originated.

"I shall at times cheerfully give any information in my power, upon this or any other subject, to any one authorized to require it; but I shall disregard any attempt, made under cover of the common council, or otherwise, to obtain it, by those whose right to call for it, or whose motives in so doing I may not be aware of.

"I have only to add, that no disrespect is intended towards you, or any member of the board of assistants, by this communication, and that you are at liberty to make such use of it as you may think fit.

"I am, sir, very respectfully,

"Your obdt. servt.

"R. EMMET."

"October 14, 1841.

"At the request of the committee of citizens on the assessment laws of the city of New-York, this committee met this day at the call of the chairman, in the committee room of the Senate chamber in the city of Albany, having previously, (October 10th inst.,) written to said committee of citizens, and directed them to notify the mayor of the city of New-York and the counsel for the corporation of said city of this meeting.

"*Present*—Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

"*John Keyes Paige* being called and duly sworn on the part of the memorialists, says, he is clerk of the Supreme Court in the city of Albany. Witness produced the report and additional report of the commissioners of estimate and assessment in the matter of opening Sixth avenue in the city of New-York, which was filed in his office June 6, 1839, and appears by endorsement to have been confirmed on that day. It appears by affidavits annexed to said report, that notice of presenting said report for confirmation was published daily in the New-York Evening Star and Evening Post, respectively, commencing on the 18th day of May, and continuing to the 3d day of June, 1839, inclusive, Sundays excepted; and in the New-York Times and Commercial Intelligencer daily, from the 20th day of May to the 3d day of June, 1839, inclusive, Sundays excepted. There does not appear to be any evidence that said notice of presenting such report for confirmation was published in handbills, annexed to said report, or additional report. Witness never knew any bill of items of the expenses in opening streets or avenues, or public squares in the city of New-York, presented to the Supreme Court for taxation when the reports of the Commissioners of estimate and assessment were presented to that court for confirmation, though it is possible when such confirmation was opposed, such bills of items may have been presented to the court with the report and other papers, and the judge may have passed upon them: but the witness never saw any such bills, and none have fallen under his observation in his office. There is an endorsement on this report to the following effect: 'Deposited in county clerk's office 18th May, 1839.'

"There is a charge upon each opening, street, avenue or square, for the extended rule, including the whole report of the commissioners of estimate and assessment, with a certified copy thereof, which extended rules have not yet been entered in many cases, and in making witness' return to the Comptroller he would not include the fees for the prospective services in making out such extended rule and the certified copy thereof.

"Witness produced the reports of the Commissioners of estimate and assessment in the opening of the Seventh Avenue from Twenty First to One Hundred and Twenty-ninth Street, which is on file in his office, filed and confirmed February 9, 1839. There does not seem to be any endorsement upon it of having been filed in the county clerk's office in New-York. Witness never knew a case of opening a street or avenue where the proof of publication did not accompany the presentation of the report; such proof is not attached to this report; but witness has no doubt it is upon some other paper in his office. There is no abstract or summary accompanying said reports so far as the witness has examined the same. The report of estimate and assessment in the Seventh Avenue contains, as numbered, eleven hundred and ninety-six pages. Sixth Avenue about nine hundred pages.

JOHN KEYES PAIGE.

"Upon closing the examination of the preceding witness, John Keyes Paige, the committee adjourned to meet at Clinton Hall, in the city of New-York, on such day as shall be fixed by the Chairman thereof in his notice to the members of said committee.—[Senate Report, Doc. No. 100, of 1842, p. 85.]

We copy from the report of the Senate Document No. 100, of 1842, and from p. 43 and 44, of the appendix of that report the testimony of John Ewen, [who held the office of Street Commissioner, from May 4th, 1836, to May 1844,] the following:

"The commissioners' fees, counsel fees, and other expenses on said avenue, were principally paid by Richard I. Smith, the assistant street commissioner, whose duty it is by an ordinance of the common council to apply for the warrants for these moneys, and to pay over all moneys on assessments. That ordinance is an old one of fifteen years standing. The witness paid some of the items in those during the absence of the assistant street commissioner; he paid the commissioner Robertson's fees to Mr. Fickett, who had an assignment of the same, and the expenses of the surveyor to Mr. Sage.—The witness produced a copy of the original receipts for the expenses on Second avenue, on file in his, witness's, office, which are marked A, and signed G. F. The present counsel of the corporation was appointed two years last May. The notice which that counsel gave to witness's office, not to pay such bills unless taxed, was after the payment of the above bills. The bills which the witness so paid were not taxed to his knowledge. The abstract of the report signed by the commissioner, containing the aggregate amount of the expenses, awards and assessments, is the only voucher on which such payments were made; the claimants for such expenses were never in the habit of presenting any bills. Taxed bills for such proceedings have been paid in witness's office, but he cannot say that he has been paid them, because it is not his duty to do so. The witness thinks such taxed bills in the case of Cherry Street, Anthony Street, William Street and the Bloomingdale Road. Witness is not certain as to Anthony or William Street, or the Bloomingdale Road. Such, however, is his impression. They were all cases in which the proceeding were discontinued and the report not confirmed. The witness has no knowledge of taxed bills in case where report was confirmed; his assistant has charge of that branch of the business; they might have been paid and the witness not know it. These expenses are paid upon the abstract of the commissioners' report; no bills of particulars are required further than is stated in that abstract. The witness does not know whether any bill for taxation in the matter of the second avenue was filed; it might be filed in his office without his knowing it; there are three or four rooms in his office.

"The witness supposed that upon presenting the abstract of the report of the commissioner the expenses therein mentioned had been taxed by the Supreme Court as required by law, and that the officers of the corporation had no power to withold their payment. The first knowledge witness had such bills had not been taxed and the legal requirements complied with, he had from the present counsel of the corporation, [the witness does not recollect the time when he received such information, he recollects the circumstance,] since which the witness does not believe that any such charges have been paid without taxation."

We next introduce, from the testimony of John Leonard, a commissioner of estimate and assesment, as taken before the Senate committee, and contained in pages 32, 33, 38, and 40, of Senate Doc. 100, of 1842, the following:

"John Leonard being duly sworn, says—

he was one of the commissioners of estimate and assessment, in opening second avenue from 28th to 86th streets; was associated with Henry P. Robertson and Andrew Mills. Mr. Robertson and the witness were the only two who did any work on such estimate and assessments. Mr. Mills was there once or twice. Mr. Mills may have been there oftener than that, but he never did any thing, except to sign the report. Mr. Mills may have been there three or four times, but witness does not recollect distinctly of his being there more than twice; there was work enough for him to do, if he had attended to it, and had been capable of doing it. Mr. Mills signed the report. He made the same charge for his services that was made by the other commissioners; he received the amount of his charge from the comptroller of the city, through the witness. The witness was the chairman of the commissioners, and it was usual for the chairman to receive the whole of the compensation.

"The witness thinks the amount charged by each commissioner to be paid to the purchase was over seven hundred—took for four w about seven hundred and fifty dollars. The charge for room hire was a separate charge. The allowance to the commissioners is four dollars per day. None of the fees of the commissioners or surveyors were taxed previous to being paid to the witness's knowledge.—Those fees were assessed upon the property supposed to be benefitted by the improvement.

"The witness ascertained the fees of the corporation counsel, included in the assessment from his suggestion; the counsel furnished merely the sum total of the amount of his services; the witness does not recollect any instance where he furnished items of such charge; he was merely asked how much his bill would be; it was towards the last of the commissioners' calculations, and before preparing the report, that the corporation counsel was asked such question; the witness did not see any bill of such counsel for his services in such matter taxed or certified by any officer.

"The witness arrived at the amount of surveyor's fees by the surveyor's bill, which was generally handed to the commissioners and carried back when the report was done. That bill was generally an aggregate amount. The commissioners knew the extent of the work, but they were no judges of the value of services. They received the surveyor's bill from the corporation counsel, and when they did not receive it that way they would ask the corporation counsel whether it was correct. This surveyor's bill was not audited or certified by any officer to witness's knowledge. The witness does not know who selected the surveyor. The commissioners did not select the surveyor.

"For each day the commissioners charged four dollars; and although but one commissioner met, and no business could be done, yet the commissioners each charged four dollars, as for a days' service.

[From Senate Doc. No. 100, of 1842.]

"Anthony L. Robertson, having been called on the part of the memorialists, and duly sworn, says—He is a counsellor at law and resides in the city of New-York; he was one of the commissioners of estimate and assessment in the opening of the Seventh avenue from Twenty-first to One hundred and twenty-ninth streets.

"When witness applied for his fees as commissioner he got a warrant from the street commissioner's office, from Mr. Gaines he thinks, or the comptroller; at the time of getting that warrant he deposited in the street commissioner's office an abstract of the estimate and assessments, with the expenses in gross amounts as commissioners' fees, $4,920, surveyors, $2,801, &c., the Supreme Court having passed upon the accuracy of the items contained in their report, he did not consider the corporation or any of its officers authorized to question their right to the amount charged by them, they being the mere depository of moneys paid by persons assessed, to be paid to those to whom it was awarded by their report. Witness believes the expenses are stated in a paper annexed to the report, and the Supreme Court *passed upon that report* He has been a commissioner on other streets; he believes the amount of their charges are such as commissioners have stated in their report; they are stated in gross. The persons interested in that avenue could have ascertained the amount of expenses by deducting the amount of awards from assessments; the balance would show the amount of those expenses. To ascertain that, they must add up the items on each page, which are probably not more than three in number on each page, and are carried out on the margin for facility of reference. Thinks the report must have contained two hundred leaves, but that is a guess; it was very thick, and asked if it might not contain one thousand pages, witness says he can't tell; at a mere guess he should say there was about one thousand persons assessed.

"The witness being asked if he viewed the ground when he made the assessment, answers, he went over the ground and took a view of it in the eye of the law, but did not go over the hedges and ditches and ponds which lay in the way.

"The witness being asked what services Mr. Emmet rendered for that amount, ($3,977.76,) he answers, preparing the petition for the appointment of commissioners, (witness thinks he has seen petitions like those shown him;) going to Albany, making the motion for appointment of commissioners, advising with the commissioners upon legal questions as the ownership of lands, and as their duties in assessing; the drafting and preparing copies of the report to be filed in the county clerk's office, and to be presented to the court; drafting and copies of advertisement of notice of presenting report for confirmation; advising with the commissioners in relation to objections, if any are presented; preparing affidavits to oppose objectors; preparing drafts and copies of final rule for confirmation of report, which included the whole report, counsel fee upon moving report for confirmation; being prepared to meet objectors, and printer's bills, with clerk's fees for filing report and entering long rule including substance of report, and which is longer than the report itself.

"*Cross-examined by the street commissioner on the part of the corporation.*—After the commissioners were appointed on the Seventh avenue, the services rendered by Mr. Emmet, he rendered as counsel of the commissioners. The commissioners are not under the control of the corporation in any way. The commissioners audit the surveyor's bill for making maps. Witness took charge of Mr. Emmet's general unfinished legal business when he was appointed counsel of the corporation, but had no connection with him in his corporation business or as connected with said reports of commissioners."—[pg. 110, 120, 122, and 125.

REMARKS.

The Commissioners appointed by the Supreme Court proceeded to make their Estimate and Assessment, and on the 18th of May, 1836, gave notice that they had completed the same, and that they had filed a copy of their Report in the Clerk's Office of the city of New-York, for the examination of the parties interested, and that objections in writing would be received by the Commissioners during ten days, and that on the 9th of June, 1836, the Report would be presented to the Supreme Court of Judicature of the State of New-York, for confirmation.—The Report was presented to the Court of the *Special* Term held by one of the Judges, and was opposed by Marcus T. Reynolds, Esq., counsel for General Striker, on the ground that he had no actual notice of the filing of the Report in the Clerk's Office.—The Court sent the Report back again to the same Commissioners, and General Striker made objections in writing to the Assessment of $3900 upon his property, but the Commissioners refused to alter their former report, and Mr. Emmet again presented the Report for confirmatian, and at the August Special Term of the Court, and the Court confirmed the same, notwithstanding the objections. We copy the written objections of General Striker, as follows:

"To Messrs. Ainslee, Holly and Purdy, Commissioners, Ninth Avenue.

"Gentlemen,—In your assessment for the 9th Avenue, you have allowed by far too much for the ground taken for that street.—You have allowed $900 per house lot taken for the street, although the lots that were sold by Messrs. Franklin and Jenkins (being part of the Webbers' estate) on the 19th of November last, fronting on the 9th Avenue, for $830 (the highest). The lots were 25 feet front by 100 deep, which would make the lots that were not in the corner 150 feet deep, and those on the corner 55 feet front by 150 feet deep. By paying the owners for the ground in front of their lots, they will, according to your assessment, pocket 450 dollars by the operation. The piece of ground

paid for, that is in the 9th Avenue, opposite to their respective lots, reduces the price of the lot very considerably (say one-half). To the Fietner estate you ought not to have allowed more than one-half what you did.—Instead of 10,000 dollars * * * * * and to Ann Striker, you ought, I think, not to have allowed any thing, as she owns on both sides of the avenue (through the Hoppers' farm), two hundred feet deep on each side, which makes her lots valuable, yet you give her 7,000 dollars. Had I been so fortunate as to have owned her ground, I would have been willing to have given the street, if no assessment would have been put upon the lots adjoining the avenue owned by her.

"The difference of the amount given to the Feitners and Ann Striker, would have obviated such a very heavy assessment upon me of 3900 dollars. You know, gentlemen, that my ground lays completely shut up from the Ninth Avenue, there being no cross street open; and if there was, I am 200 feet from the said avenue, and further, if either of the cross streets should be opened; but they are not, and not the least prospect of their being opened, and probably will not be for some years. If I were to sell eight lots of ground, which is half of the number I should have by the opening of a cross street, the prices that I should get for them would barely pay my assessment.

"I should therefore be under the necessity of sacrificing half of my ground to pay my assessments. I cannot see the benefit accruing to me from opening the Ninth Avenue, being completely blocked in on all sides, and no passage way out; and if I were to sell lots on the cross streets, which I most assuredly must do to pay my assessment, I shall be under the necessity of giving half the street; therefore I cannot be so fortunate as the owners of the property on the Ninth Avenue. As I shall have to pass the title to those that I shall sell to—and, gentlemen, you do know that, if I wish the street opened, I must cede it or give half the street to those I sell to; and further, if I should cede it to the corporation, Ann Striker, who owns the ground on the Ninth Avenue, in front of my ground, will be opposed to it, as she will not sell; and Jordan Mott, who owns ground between me and the Tenth Avenue, will probably oppose its opening. You see, then, that my ground is completely blocked up between the Ninth and Tenth Avenues; yet I must sell to pay the assessment. I wish I could say that I could be so fortunate as those that own ground fronting on the Ninth Avenue, to receive pay for it; yet I do think that if I could keep it until it is forced open, I should be paid for the street. The Commissioners I think told me that they were guided by the sales at auction of the Webbers' estate, which consisted of 188 lots, part lying on the Ninth Avenue (say twelve lots). They were sold by Messrs. Franklin and Jenkins on the 19th of November, just four weeks previous to the great fire, when property was higher than it has been since.

"I subjoin a statement of the 12 lots sold, fronting on the Ninth Avenue, at the above mentioned line, and the Commissioners entered upon their duties in January following.

(Two lots were sold together.)

Lot No.	89 corner lot	55	feet by	150	sold for	$820
" "	90	25	"	150	"	820 Robinson.
" "	87	25	"	150	"	790
" "	88	25	"	150	"	790 Robinson.
" "	115 corner lot	55	"	150	"	830
" "	116	25	"	150	"	830 Herrick.
" "	117	25	"	150	"	810
" "	118	25	"	150	"	810 Herrick.
" "	134 corner lot	55	"	150	"	790
" "	135	25	"	150	"	790 Hevermire.
" "	149	25	"	150	"	780
" "	150	25	"	150	"	780 Robinson.
						9640

390 by 150
150
19500
390

25||00)585||00(23
50
85
75
10

23)9640(419 dollars per lot.
92
44
23
210
207
3

Which makes $419 per lot 25 feet by 100.

"The Commissioners have allowed $900 for 25 feet by 100 feet that they have taken for the Ninth Avenue.

"I am, gentlemen, with respect
"Your obed't servant,
"G. H. STRIKER."

The Diagram which we shall present at the close of this review, will illustrate the principle upon which this assessment was made.

We next proceed to the testimony given before the Circuit Judge, and copy from the case, as made by the counsel for plaintiff, and defendant, and certified by the Judge, and from page 40, of that case, as follows:

"Robert Emmett was then called and sworn as a witness on the part of the defendant, and said that he held the office of Counsel for the Corporation of the city of New-York from the year 1829 to 1837, that he acted in all the proceedings in the opening of Ninth Avenue, as Counsel for the Corporation, First I prepared a petition.—This testimony was objected to by the plaintiff's Counsel, on the ground that defendant had not shown any authority authorizing witness to prepare the petition. Objection overruled by the Court, and the witness allowed to proceed; he presented the petition to the Supreme Court, and made a motion as Counsel for the Corporation for the appointment of Commissioners; he presented the Report of the Commissioners of Estimate and Assessment as Counsel for the Mayor, Aldermen, and Commonalty of the city of New-York. Mr. Marcus T. Reynolds of Albany objected to the confirmation of the Report as the Attorney and Counsel for the plaintiff in this suit, in June, 1836—that was on the first application. General Striker complained that he had not notice. It was put off for him to make his objections, and the final application was made by me in August, 1836, and opposed by M. T. Reynolds, Esq., in like manner for General Striker, when the Report was confirmed, notwithstanding such objection."

David T. Valentine, Assistant Clerk of the Board of Aldermen, and Assistant Clerk of the Common Council, was examined as a witness, his testimony. on page 60, of the printed case, is as follows:

"Direct examination.—The message is in Mr. Williamson's handwriting; he has an Assistant Clerk of the Common Council; the resolution is the same referred to in my previous examination. The resolution does not appear to have been ordered to be published from any entry in the minutes. If it had been usual to call the ayes and noes, it would so have appeared on the minutes.—When the ayes and noes are called, it is so entered on the minutes; and when all the members present vote in the affirmative it is usually entered on the minutes as unanimous. When the ayes and noes are called, it would so appear on the minutes, although the vote was unanimous."

REMARKS.

The lands [redacted]ging to General Striker, were [redacted]nted to be sold on the 24th of December, 1838, and were bid off by one George Lovett, for the term of 1000 years. One gore was bid off by Daniel Ewen, a City Surveyor, and brother of the Street Commissioner. A certificate of the sale was given to these bidders of the sale, to the effect that unless the lots were redeemed within two years from the date of the sale, a lease would be executed to the purchasers. Previous to the expiration of the two years, General Striker applied to the Hon. Murray Hoffman, Assistant Vice Chancellor, for an injunction to restrain the Corporation from executing or delivering the said leases, and that Eminent Equity Judge, one of the most enlighted and independent minded Jurists of our State, granted the injunction. We have not the opinion which he gave in this case on granting the injunction before us, but we have the opinion of the same Equity Judge in a similar proceeding, in which he says: "The Bill is brought before me as an Injunction Master. I have been obliged from my sense of duty, to grant an injunction in this and several other cases on the eve of the sale advertised to take place on the 27th inst. I am sensible of the inconvenience to the city, from an interference at this time, and do it with unfeigned reluctance. But I am thoroughly satisfied that a more *palpable* and *pernicious disobedience of the law*, has never marked the course of any corporate body."

The Complainants in some of these cases were James G. King, Peter G. Stuyvesant, John Haggerty, Anson G. Phelps, Wm. W. Chester, Henry Andrew, James Fellows, Samuel Marsh, and numerous other gen-

tlemen of high standing in this community.

Subsequently, the Chancellor, or Vice Chancellor, dissolved the injunction for alledged want of Jurisdiction, although the Chancellor had previously entertained Jurisdiction in similar cases.

The case of Oakley vs. The Trustees of Williamsburg, reported in 6 Paige's Ch. Reports, p. 262, and printed in this volume on p. 164, was one of this character, in which he entertained jurisdiction, as did also the Vice Chancellor of the first Circuit.

The lease was finally delivered to the bidder, and the copy thereof is set forth in the printed case on pages 48, 49, 50, 51 and 52 of that document, states it was executed on the 14th day of Feb. 1842. This lease recites as follows: "And whereas the Mayor, Aldermen and Commonalty of the city of New-York, did, at least six months before the expiration of two years after such sale, cause an advertisement to be published at least once in each week for four weeks successively in the newspaper printed by the printer of this State." This recital is not true; no such notice was published in the newspaper printed by the printer of the State, nor was any notice in the premises published by such printer. We add,

This cause was tried in the Circuit Court before Judge KENT. The Judge charged the Jury in favor of the validity of the assessment, but six of the Jury were not willing to be instructed in the law of the case, and refused to find such a verdict, and the Jury were therefore discharged. The Jury stood 6 to 6—therefore, a case was made, and argued before the Supreme Court, at the May Term of that Court, 1844. The names of the Jurors are as follows:

Washington Wheelwright, 42 Third st., Robert H. Ludlow, 171 Tenth st., A. W. Anderson, Franklin House, John Jackson, 8th Avenue between 31st and 32d st., Smith Keeler, 133 Anthony st., John Valentine, 54 2d Avenue, James H. Wilgus, 27 Coentes Slip, John Harris, 7th st., between 1st and 2d Avenue, Warren S. Doty, 58 John st., Peter Amerman, 381 Greenwich st., William Hollingsworth, 238 Bowery.

REMARKS.—We have made quotations from the constitution of 1777, and 1821, and from the statutes, &c. &c., and also from the testimony taken before the HON. the SENATE COMMITTEE, and now proceed to take up the opinion of the Supreme Court as delivered by Justice Beardsley, and concurred in by Mr. Chief Justice NELSON, and DISSENTED FROM by Mr. Justice BRONSON, in the assessment case involving the validity of a ruinous assessment upon the farm of General STRIKER, a grey-headed citizen, his patrimonial estate, which estate has not changed hands since the title was in the red men of the forest by right of possession. It is a case of most extraordioary character, and occurring so early in the history of a free government, is alarming to those who have looked with confidence to the stability and sacredness of free institutions. The wresting from a citizen, his house, his habitation, the home of his anccstors, and the land which grows the bread to feed his little family,—their home—their all—in his declining years—is a spectacle too powerful to contemplate when viewed in connection with the proceedings which we have recited. That eminent Statesman, ALEXANDER HAMILTON, in one of the productions of his pen on the pages of the "Federalist," under the signaturs of a "Constitutionalist," said:

"Do we imagine, that our assessments operate equally? Nothing can be more contrary to the fact. Whenever a discretionary power is lodged in any set of men over the property of their neighbours, they will abuse it. Their passions prejudices, partialities, and dislikes will have the principal lead immeasuring the abilities over those over whom their power extends; and assessors will ever be a set of petty tyrants—too unskillful, if honest, to be possessed of so delicate a trust,—and too seldom honest to give them the excuse of a want of skill.—The genius of liberty reprobates every thing arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands. Whatever liberty we may boast of in theory, it cannot exist in fact, while assessments continue. The admission of them among us, is a new proof how often *human conduct reconciles the most glaring opposites;* in the present case, the most vicious practice of despotic governments with the freest institutions and the greatest love of liberty."

That eminent jurist, Mr. Justice STORY, who now honors the bench of the Supreme Court of the United States by holding a seat in that Court, in his admirable Commentaries upon the Constitution, in speaking of the sacredness of private property says:

"The concluding clause, is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of Justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature andthe rulers."

With these remarks we proceed with the opinion of the Court, which is as follows:

"OPINION OF THE COURT.

"STRYKER, } *vs.* KELLY. }

"Beardsley J. This is an action of covenant, to recover one quarter's rent of a piece of land in the Twelfth Ward of the City of New-York, demised by the plaintiff to the defendant, and which rent, according to the terms of the defendant's covenant, was payable on the first day of April, 1842. The lease is in the usual form; bears date on the tenth of July, 1839, and demised the premises for five years from the first day of April then next, the rent to be paid quarterly. It contains a covenant on the part of the lessor, for the quiet enjoyment of the demised premises, and on the part of the lessee that he would pay the rent.

"The defence interposed is that a part of the land demised had, before the lease was given, been charged by an assessment to pay the expense of opening a section of the Ninth Avenue in the Twelfth Ward of the City of New-York, between Forty-Fifth Street and the Bloomingdale Road, and which assessment not having been paid, the premises so charged were sold according to law, and thus the lessee having lost all right to the land sold, was no longer bound to pay rent.

"This charge upon the land sold, is said to have been created in 1836, and the sale to satisfy it was made in December 1838. A conveyance, or lease, as it is called in the statute, to the purchaser at the sale was executed in February, 1842, and suit was brought after the rent payable on the first day of April in that year had fallen due.

"It does not appear that the tenant has been at all disturbed in the possession and enjoyment of the demised premises. No actual eviction is set up or pretended. But it was not objected on the argument, nor do I see that the point was distinctly taken on the trial of the cause at the circuit, that the matters set up in bar of the recovery were, even if true in fact and valid in law, insufficient to constitute such bar.

"As the point has been raised by the counsel, I shall not start it, but shall assume that the facts relied upon, if proved, and in their nature free from any constitutional objection to their validity, constitute an effective bar to the action.

"It appears by evidence offered and received on the trial. that in December, 1835, the Mayor, Aldermen, and Commonalty of the City of New-York presented their petition to the Supreme Court, in which they state that they had deemed it desirable for the public convenience, to open that part of the Ninth Avenue referred to, by taking for that purpose the land and premises mentioned and described in said petition, and they had accordingly ordered the same to be opened; wherefore the petitioners prayed the Court

to appoint three Commissioners of Estimate and Assessment, to perform the duties prescribed by the several acts of the Legislature on the subject."

[NOTE.—BY THE EDITOR—The petition referred to by the Court is set forth in full on p. 390 of this review, the original of which is on file in the office of the Clerk of the Supreme Court at Albany. This petition is not signed by the mayor of New-York, and is therefore invalid, and although a most important document, has no date, of either year, month, or day affixed to it. The petition is addressed to the *Justices* of the court, and recites the dates of the acts of 1807, 1813, 1816, and 1818, in pursuance of the provisions of which the application is made. The act of 1813, authorised the appointment of Commissioners by the Supreme Court of Judicature of this State, (see sec. 188, Ante, p. 385.) and §187 of the same act (see Ante, p. 386,) provides for the appointment of Commissioners in certain cases to fill vacancies by "the court aforesaid or any one of the Justices thereof," and the act of 1816 makes provision for both cases, viz. as to the proceedings of those Commissioners "appointed by the Supreme Court of Judicature of this State, or by any one of the Justices thereof." It is clear that a distinction is here made. Vacancies may be filled by one Judge, but the three Commissioners in the first place must be "appointed by the Supreme Court of Judicature of this State." This petition signed by the Clerk of the Common Council states that "your petitioners in Common Council convened have deemed it desirable for the public convenience to open the ninth avenue from 45th Street to the Bloomingdale road."

The petition of the clerk of the Common Council does not set forth the proceedings of the Common Council as a foundation of that petition which proceedings were upon the petition of 19 persons, who state in their petition to the Common Council, thus:

"The undersigned owners of real estate on the ninth avenue and its vicinity, respectfully pray your Honorable Body to cause the ninth avenue to be opened from 45th Street to the Bloomingdale Road," and they add, "as the property thereon is now coming into market."

This petition was opposed in the Com. Council by a remonstrance signed by persons who were actual owners of large farming tracts on both sides of the ninth avenue, between 45th St. and the Bloomingdale road. It will be seen by a careful reading of the 177th section of the act of April 9th, 1813, which is set forth on page 385 of this review—that the law contemplates two modes of proceeding by the mayor, &c. One is where the mayor, &c., "shall be desirous to open" any street or part of Street, &c.; and the other, when the owners of *three fourths* of the lands fronting on any street, or part of a street, shall by petition desire the opening thereof, &c. The Court, most certainly, should see that a petition of the important character of the one in question, was properly signed, that it was of that class provided for by Statute, and if the Statute made provision for more than one class, to which class the particular application belonged. Something was necessary to give the Court jurisdiction of this particular proceeding.—the reports of the Street Committee of the Board of Aldermen in this case recite that the proceeding was on petition and closes with these words: "Your Committee," &c. "recommend for adoption the following resolution: *Resolved*, That the ninth avenue be opened from 45th Street to the Bloomingdale road, and the counsel of the Board is hereby directed to take the necessary legal measures to carry this resolution into effect." This petition of the clerk, is not 'the necessary legal measures.' There is no ordinance or resolution of the Common Council to authorise him to sign such a paper, or to affix the seal of the Corporation, thereto. *That the opening of this Avenue from 45th Street to the Bloomingdale Road, was not necessary is evident from the following message of the* HON. ROBERT H. MORRIS, *to the Board of Assistant Aldermen, transmitted to that body on the 19th of July*, 1841, *which is as follows*:

"To the Board of Assistant Aldermen of the city of New-York:

"GENTLEMEN—I have had transmitted to me, for my approval, from the Board of Aldermen, a Report and Resolution which was originated in your Board.

"The resolution is as follows:

"*Resolved*, That a road twenty-five feet in width be worked through the Ninth Avenue, from Forty-second Street to its intersection with the Bloomingdale Road, under the direction of the Street Commissioner at an expense not exceeding Two Thousand Dollars to be defrayed from the fund appropriated for roads for the current year."

"There are two petitions accompanying the papers transmitted to me, one of which bears date the 26th July, 1839, signed by six persons asking to have the Ninth Avenue opened and regulated from Forty-Second Street to the Bloomingdale Road, so that it may be convenient and passable for carriages. The other petition is dated 1st November, 1839, and signed by four persons, three of whom are the same persons who signed the first petition; this petition also asks that 'the Ninth Avenue be opened and regulated from Forty-second street to the Bloomingdale Road,' and also states 'a petition for the same has been laid before your Honorable Board, and your petitioners have been informed that it was passed, but by some means or other had been mislaid.' This last statement fully accounts for the same names appearing on both petitions.

"The resolution passed by your Honorable Body does not in accordance with the prayer of the petitioners, direct the avenue to be opened and regulated, but merely provides for the construction of a road twenty-five feet wide. The Report of your Honorable Board states that 'the Committee have carefully considered the proposition and are satisfied from the improvements and population in that vicinity, south of Forty-second street, of the propriety of granting the owners and inhabitants further facility in their intercourse with the outer part of the Island. They believe that such facilities can be accomplished at small expense by simply working a road through the avenue about twenty-five feet in width, conforming pretty much to the present surface of ground, which would admit of all the necessary travel on that part of the avenue, for many years to come, at an expense not exceeding two thousand dollars.'

"It is perfectly apparent that the Report of the Committee of your Honorable Body is founded upon the desire to give to the individuals living below Forty second street 'facilities in their intercourse with the outer part of the island.' The contemplated road cannot give the inhabitants any greater facility than they now possess. The Eighth and Tenth Avenues are open, and so is Forty-second Street. The distance between the Eighth and Tenth is a quarter of a mile—persons on the Ninth Avenue, below Forty-second Street, if desirous to go to Bloomingdale have then but an eighth of a mile to travel along Forty-second Street to the Tenth Avenue, which is the same distance they would have to travel along the Bloomingdale Road to arrive at the same point, if the Ninth Avenue was opened.—The distance to travel is therefore precisely the same; and the contemplated road will afford no facility to the inhabitants.

"I have received a remonstrance against *the resolution* from eleven estates on and near the Ninth Avenue, through which lands the contemplated road will run. This remonstrance states that the lands through which said road will pass, are now cultivated as farms, and for those purposes the road would be an injury.

"These statements show me that the road will not only be of no benefit to the public generally, but will be injurious to the interest of individuals through whose lands it will be constructed.

"The public has and should have the right to take private property (giving full compensation for it) when the public interest requires it.

"The examination I have given to the matter under consideration shows me there is no public interest requiring either the expenditure of the money from the Treasury, or the injury to the interests of individuals, which the opening of the road will cause.

"For these reasons I return the Report and Resolution to your Honorable Body, together with the Remonstrance I have received.

"Very respectfully,
"ROBERT H. MORRIS."

The remonstrance referred to in this message is in the words following:

"To the Hon. Robert H. Morris, Mayor of the city of New-York.

"The undersigned, owners &c. of land between 45th Street and the Bloomingdale Road, on and near the Ninth Avenue, most respectfully ask your Honor to examine the proceedings of the Common Council in passing a resolution on the 28th inst. by the Board of Aldermen, to open a road through the Ninth Avenue, from 42d Street to the Bloomingdale Road.

"The undersigned represent that neither public necessity nor public convenience require such road to be opened; and the owners of the land affected by it are opposed to the proceeding. Bloomingdale road and the 8th and 10th Avenues are open, and afford all facilities for travelling which are needed. The lands on the 9th Avenue, from 48th Street to the Bloomingdale Road, are farming lands, and cultivated as such; and it would be an injury and expense to the owners to have a road opened, and also a needless burden to the tax-paying citizens, to have the city expenses by this proceeding greatly increased.

"The undersigned ask that the petition on which the proceedings are founded may be *scrutinized*, and all proceedings subsequent thereto may be *investigated*, and that if you find that the persons owning the lands through which it is to pass have not asked for it, that you will exercise the powers vested in you in the premises, and return the papers to the Board in which the same originated. The undersigned were not aware that any proceedings were being had in this matter by the present Common Council, and are therefore taken by surprise: and it may be proper for them to state that legal proceedings are pending in two of the Courts in reference to the Assessments for opening the 9th Avenue.

"And in duty bound &c., your petitioners will ever pray.

"John O. Fay and Catharine his wife, heirs at law of the estate of Jacob Harsen and Catharine Harsen, per E. Meriam, Att'y in fact.

"Garret H. Striker,	S. C. Mott,
John Low,	States Wilkins,
George Park,	John Park,
W. Mott,	John H. Tallman,

"Jemima Dikeman, widow of Matthew Dikeman, by R. Mott her Att'y.

"H. A. Ten Broeck, executor of David Cargill deceased."

The opinion here expressed by Mayor Morris. was acquiesced in by the Common Council.

On the 3d of September, 1844, the Hon. James Harper sent a message to the Board of Aldermen of which the following is a copy:

"Mayor's Office,
New-York, Sept. 3, 1844.

"To the Honorable the Board of Aldermen of the City of New-York:

"Gentlemen—I return herewith for your re-consideration a resolution adopted by the Board of Aldermen, and concurred in by the Board of Assistant Aldermen, appropriating the sum of fifteen hundred dollars for working a road twenty-five feet wide through the Ninth Avenue, from Forty-Second Street to the Bloomingdale Road.

"My objections to this resolution are set forth below.

"A resolution for the same object passed both Boards in 1841, but was returned to the Board in which it originated by the then Mayor, with his objections, which were acquiesced in by the Common Council. His message, with a remonstrance against the proposed work, from owners of property to be affected by it, is on file. The reasons therein assigned still exist, and nothing has occurred to remove them, or weaken their force.

"The legality of the proceedings had, in reference to the opening that portion of the Ninth Avenue, has been contested before the Supreme Court, which has the subject still under advisement. Until its decision is given and in favor of the proceedings, it would be obviously improper to go on with the work, unless there were pressing reasons of necessity for the immediate prosecution, which does not appear to be the case; the Eighth and Tenth Avenues being open to the Bloomingdale Road, and affording means of access to it from the Ninth, through Forty-Second Street, by a short communication.

"The expenditure of the fifteen hundred dollars now asked for, would be far from adequate to the cost of the undertaking, and would only furnish an argument for new appropriations, probably to four or five times that amount. Burdened as the city now is with expenses, of which the citizens complain loudly, and with reason, especially of those occasioned by improvements, it is the part, both of wisdom and of duty, to avoid the imposition of additional burdens, unless for the most cogent and satisfactory reasons.

"I am decidedly of opinion that the completion of the Ninth Avenue, to the Bloomingdale Road, may, without impropriety or inconvenience, be deferred until the city finances are in better condition to meet the cost, and other circumstances render it more expedient. "JAMES HARPER."

The opinion expressed by Mayor Harper *in this message was acquiesced in by the Common Council. The Anti-Assessment Committee printed six copies of this message upon white satin, which they presented to the* Lady Mayoress *of the city of New-York*, Mrs. James Harper.]

We again copy from the opinion of the Court. Mr. Justice Beardsley says:

"This Avenue, as is stated in the petition, was laid out under and by virtue of an Act passed the third day of April, 1807, (5, laws of N. Y., W. & S. Ed. p. 125,) and the authority of the Mayor, Aldermen, and Commonalty, to open streets and avenues thus laid out, if any such authority exists, is derived from the "Act to reduce several laws, relating particularly to the City of New-York, into one Act," and amendments thereof which have since been made.

(2 R. L. of 1813, p. 344. Laws 1816, p. 77, 113, 1818, p. 96.—1839, p. 182.)"

[Note.—By the Editor.—The act of April 3d, 1807, provides that whenever the owners of land fronting on any street or part of a Street shall apply to the Mayor, Aldermen and Commonalty to have the same opened, they, the Mayor, Aldermen and Commonalty, shall cause the same to be done, but the act of April 9th, 1813, makes a change in this particular, and provides that if the mayor, &c. deem the opening thereof to be necessary or useful it shall be lawful for the said Mayor, &c. to cause the same to be done, &c.

The court say:

"These statutes (there may be some in addition to those referred to) were intended to form a complete system of law on this subject. I shall not state in detail the various provisions of this system, nor the changes made in it, from time to time, but shall merely glance at its outline.

"By the Act of 1813, whenever, and as often as the Mayor, Aldermen and Commonalty of the city of New-York shall be desirous to open the whole or any particular section or part of an avenue laid out under the act of 1807, "it shall be lawful for the said Mayor, Aldermen and Commonalty, to cause the same to be opened, and the land, tenements, and hereditaments that may be be required for the purpose of opening the same, may be taken for that purpose, and compensation and recompense made" therefor, as is provided (§ 177.)"

[Note.—By the Editor.—Our remarks at the close of the seventh paragraph of this opinion are applicable to this last preceding paragraph.]

Again the court say:

"By section 178, whenever lands are so required to be opened, the Mayor, Aldermen, and Commonalty, are authorised to make application, or to cause application to be made to the Supreme Court of Judicature of this State, for the appointment of Commissioners, and it shall be lawful for the said court to whom such application shall be made to nominate and appoint three discreet and disinterested persons, being citizens of the United States, commissioners of Estimate and Assessment, for the purpose of performing the duties hereinafter in that behalf prescribed, and who are to report to the court without any unnecessary delay."

[Note.—By the Editor.—The application to be made to the Court for the appointment of Commissioners as referred to by the learned Judge, is an application altogether *exparte.*

This application to the Court is the commencement of the proceeding in that tribunal and the proceeding by which the Court acquire jurisdiction, and their first act is to appoint three important officers. The Supreme Court are precluded by sections 23, and 27, of the Constitution of 1777, from appointing any officers, other than their clerks, attorneys, and counsellors at law. The provisions of section 27, direct what officers they may appoint, and section 23, prohibits the court from appointing any other, and vest the power of appointment solely in the council of appointment, of which the Justices of the Supreme Court, form no part.—There is no obscurity in the language of these two sections of the Constitution and when taken in connection with section 25 and 41 of the same constitution leave no room for construction, for the construction is declared by the plain language of the fundamental law itself. These sections of the constitution are to be found on page 383 and 384, of this review. The court say:

"These Commissioners are to take an oath faithfully to perform their duty. They are to view the premises, cause all necessary maps and surveys to be made, and make their estimate and assessment. This is to be an estimate of the loss and damage to the owners of the land so required to be taken for such avenue, and an estimate and assessment of benefit and advantage, which the opening of such avenue will be to certain lands not required to be taken for such avenue, but contiguous or adjacent thereto. A copy of their estimate and assessment is to be deposited by the Commissioners in the office of the Clerk of the City and County of New-York for examination, at least fourteen days before making their report, and of which due notice is to be given. The Commissioners are also to give notice in two public newspapers of the city, of the day on which their report will be presented to the court. Any person whose rights may be affected, may state to the Commissioners his objections. and they are required to reconsider their said estimate and assessment, and correct the same if they shall deem it proper so to do. (§178, 182.)"

[Note.—By the Editor.—The court have, we believe, made an error in reference to the "due notice," "and also to give notice in two newspapers" as above. We have carefully examined the sections noted by the court and have been unable to find but one provision, which is the last. It is not surprising that the Court should have made this error for one of the sections referred to contains seven pages, and but two periods in the whole seven pages, and one of these is at the end of the section. With regard to what the court say in the above paragraph we must with all due respect for the opinion of the learned judge, call his attention to some of the testimony taken before the committee appointed by the Honorable the Senate of the State of New-York, to examine into assessment abuses in the city of New-York. With regard to the opportunities of the parties interested to examine the report and make objections thereto, &c. We will reserve our remarks until we have given the whole of the opinion of the court and will then in making those remarks accompany them with some extracts from the testimony of some of the commissioners of estimate and assessment as taken by the Senate committee, and reported to the Legislature pertinent to this question. Again the court say.

"The duty may be performed by the three Commissioners, or any two of them. (§188.) They are finally to report to the Court, in which is to be stated the names of the respective owners of the lands mentioned therein, where the same can be ascertained. The land to be taken and those deemed to be benefited are to be aptly and sufficiently described; and the amount of compensation to be allowed for the lands taken, and of benefit and advantage to be paid by the owners of the lands, as estimated, are also to be specified in the report. (§ 178.)

"On the coming in of the report, the court is to hear any matter which may be alleged against it, and may by rule or order confirm the same, or refer it back to the Commissioners who made it, or appoint new ones, and send it to them for re-examination; and so from time to time, as right and justice may require, 'until a report shall be made or returned in the premises, which the said court shall confirm; and such report, when so confirmed by the said court, shall be final and conclusive' upon all persons and parties whatsoever. (178-)

"The amount thus required to be paid by land adjudged to be benefitted, becomes a lien or charge thereon, and may be collected by a summary execution or by action, and ultimately by a sale of the land thus charged. (§ 186, Laws 1816, p. 113.)"

[Note.—By the Editor.—By section 186 of the act of 1813, referred to, the assessment is made a lien upon the land, but not in the nature of a judgment, for without this special provision, the assessment would not be a lien under the general provision of the the statutes, which make all judgments of the Supreme Court, liens, &c. The section, quoted by the Court they will find on a careful reading, does not give the Court the right to issue an execution, nor to enforce the collection of the assessment, but the power is given in loose language (see Ante p. 386,) to the Mayor, Aldermen, and *Commonalty*, or any five of them, to issue a warrant and to destrain goods and chattels, and in case of non-payment, to bring an action of debt, or assumpsit, in a court, and in the Supreme Court. A singular species of *Judicial* proceeding, this, to have to be finally enforced by suit before a valid *judgment* can be obtained. Mr. Chief Justice Nelson gave a written opinion in the John Street assessment case, which is to be found on page 179, of this volume, in which he says: "I do not see how a party could be permitted to question collaterally the conclusiveness of the Judgment of confirmation by going behind it. While that stands he is *estopped* upon the act, and if so, were the resolutions of the Board annulled directing the institution of these proceedings, they would still be left in full force, as much as a *judgment* rendered in a suit commenced by attachment or writ, when the latter only are set aside." This opinion of the Chief Justice, accords but poorly with the provisions of section 168 of the act of 1813. The court say:

"The defence set up in this case is, that a part of the demised premises were sold and conveyed under an order of confirmation duly made by this court, in proceedings instituted and carried on under the authority of these statutes, and the defendant was then deprived of all his interest in a part of the demised premises.

"But we are met, *in limine*, by the objection that these statutes, in some of their vital provisions, are in direct violation of the Constitution, and therefore invalid; and consequently, the system provided by them, being incomplete, is incapable of being carried into execution.

"The main objection of this character is, that whatever the Supreme Court may do under these statutes, must necessarily be void. This is argued on the ground that the statutes, if effective, would confer upon the Justices of this court a distinct office, which under the Constitution, they cannot hold, and therefore it is argued whatever the court may do under these statutes, must be without authority and void."

[Note.—By the Editor.—We deem it proper to here introduce that part of the argument of that eminent statesman, Daniel Webster, one of the counsel of Mr. Striker, in the argument of this cause before the Court, which goes to this branch of this case, which the learned Judge has referred to:

Mr. WEBSTER said:—"May it please your honors, I suppose this cause may be regarded as a cause between the plaintiff in his hereditary right, and corporation of New-York, as to his right in that estate, of which he has been divested by proceedings relating to assessments. It may be of importance in the argument, to consider that this case arises not between third parties, but between the two parties concerned in the whole transaction.

"The plaintiff's rights are clear. It is his property by title from his ancestors. Therefore the burden to maintain those proceedings by which it is attempted to take that title away, is on the side of the corporation. Any doubt in law or in fact, would ensue to the benefit of the party having title. They say that the plaintiff's title has been taken by proceedings authorized by the government of New-York for the application of private property to public uses.

"It has been observed by this court, that the facility with which corporations obtain ownership of property, has become somewhat remarkable. The same observation has occurred to every man, and attracted the opinion of jurists in this and other countries. Since I have been in the city, I have read a discussion in the house of parliament in England, where a judicial character complained of the facility brought about by this age of zealous energy, distinguished, as it is, by a rage for improvements. It is known that the corporations in England

have not the authority which is possessed by ours, and I doubt if there is any power vested in the corporation of the city of London to take down any house whatever, —it can only be done by the house of parliament. The facility spoken of in the discussion, was the manner in which property is taken for railroads, and other improvements of the kind, and which is against the rights and security of property; and the ex-chancellor, on that occasion, said that private rights must go against public; that persons, in speaking of such affairs, say that where the public requires it, the individual must make the sacrifice: and yet, if the same individual making such a remark asks to be graciously heard when his own rights are spoken of, and prays that he may be permitted to enjoy those rights, and that his property may not be taken till it has been fairly and legally assessed, his request is not granted.

"May it please your honors, apart from what is due to my own professional character, I need not undertake to discuss the system which has existed here; and still less am I disposed to bring into question any thing relating to the tribunals of this city, except as to measures of this court on one of the cases which has been decided before it; but I may be permitted to remind the court, that in a proceeding where a man's inheritance is to be taken away without process of law, by a stern proceeding,—that in drawing the attention of the court, to the construction of those statutes, and the proceedings under them, it is a fair line of argument that every security for the protection of private right, should be rigidly maintained, and that their general or occasional effect under the name of benefit, confers loss and brings on private ruin; that this system in New-York is peculiar to New-York, and exists no where else. The idea of incorporating public use with private benefit, to take land for a supposed public advantage, to say that public use confers remotely benefit on other land, and then to tax that land for the benefit, is a New-York idea. But I will not argue that question, as it is not before the court. The court is to decide the law as it is, not as in my opinion or in that of others, would be right. I may have occasion, however, to refer again to this part of the case.

"This land, it is said, is taken for the public use. I may confess, may it please your honors, that in this sense, I know no term more difficult to be defined, than the word public! What public? What portion of the community? A public road is spoken of, a road taken for public use, that is the exigency. Was the road wanted? That was the allegation ten years ago, and still no road is there yet. There is not a track of man or quadruped along the whole line of the 9th avenue even to this day, and yet Mr. Striker has been deprived of his property to pay for that avenue. There are nineteen gentlemen applying to have the road laid out, and they say for the public use. If so, it is for that part of the public who had land on the north or south side of the avenue. Is that the public? I suppose in all countries there may be cases where it may be proper to open roads, where every individual in the country is not interested, and there can be no objection to its being done. I only say there is great danger every where, where such authority exists, and that private property is taken for public use by persons representing the public, who have in fact no interest with the public.

The first position of law is, that this proceeding being derogatory to common right, anything neglected to be done which is prescribed by the statute must be satisfactorily proved, step by step, and not one single thing must be taken for granted, without proof.—This doctrine is certainly supported by reason, as it is by the decisions of this court, and by the authority of the books. Every power granted by particular statutes, by the exercise of which a man's property is taken away without his consent or default, is a power to be construed strictly, and severely and rigidly. That is the rule of law, and if the legislature has declared that certain regulations shall be observed, every single step, from first to last, must be proved. I need hardly say that nearly the very words in which I address the court, are used in the judgment of this court, in the case of Sharp against Spear, in 4th Hill, 76, a unanimous judgment of this very court. Various cases relative to this matter, will be found by the court in that decision. The statute under which this case comes, goes upon the ground that the proceeding is in the character of a benefit to the individual whose property is taken. If so, it forces a benefit, and then judges against his opinion or will. It begins in grace but ends in infliction, for he disclaims the benefit and denies it. Yet he has, under the provisions of this statute, no right to be heard on the question, whether the proceeding is benficial to him or not. A most extraordinary decision, I must think—and in a decision where there is no property, it is right to call upon the court. It is said he is benefitted. He does not agree to it. No person to whom he refers does so, for he refers to no one. There is no person before whom he has an opportunity to be heard.—He is not allowed to make a brief, and there is no choice to those who are said to have this benefit. They are not to be heard on the subject at all, but when the thing is done, and the report of the commissioners made, when it lies before your honors for confirmation and he complains, what is he to do? He is sent to those very commissioners to ask for a re-hearing of the case. If they do rehear it they decide in the same way again, and if you send the report back, it goes to the same hands, and is returned and confirmed. And for this benefit a debt is forced upon the individual which becomes a lien.

"Now, if it please your honors, this is the general proceeding out of which this question arises. I have always said, I propose to argue only as to what the authorities have settled. I will say, however, that the law of 1813, so far it allows private property to be taken without the intervention of a jury, or without notice, or trial, or hearing, is irreconcilable to the constitution, and I shall say somewhat further. I shall be prepared to maintain, that the proceedings in this case so far as concerns Mr. Striker, is no such thing as taking private property for public use. He was not the owner of the land which was wanted for a road. That land was taken from his neighbor, and the road does not go through his land, yet his land is assessed. For what! for what!—Our learned opponents have told us, that by the laying out of that road, by awards to the persons through whose property the road passes, the city contracted a debt of $20,000! and for what? for the use of the public! for public use! It incurs a debt for the public use, and proposes to assess Mr. Striker's property, who they say, it benefits, to pay a public debt on the imaginary idea that he is somehow or other interested in the improvement more than others. I shall submit that the whole proceeding is erroneous. Suppose a man owns an estate through which a public road goes, and it is thereby enhanced in value, does that go to his own advantage? Is it not to be considered his good fortune that a road should be run there? Is he not, as owner, entitled to the benefit, if it accrues, just as much as he is obliged to submit to loss if the road is made another way, and injures his property by taking the travel from it? If he complains, he is told that it is his misfortune in having that locality. It is just as proper that he should enjoy the enhanced value of the property, if public improvement turns business in another direction, and he is injured. I think I have understood that formerly such cases here were tried by a jury. I am sorry that the principle does not prevail. It is so in the part of the country where I have resided. It is the great magna charta principle, that a man should not be deprived of his property without process of law. An eminent judge of Massachusetts, Chief Justice Parsons, has said, that experience shows that these kind of prerogatives in popular governments, are quite as dangerous as prerogatives in monarchial goverments. In monarchial governments it is the cause of one against the many, and the many are always ready to unite against it—they have a common sympathy—but in free governments the prerogative right is the many against the one, and the sympathy of the many does not long uphold the individual strength of the one.

Again. Mr. Webster, in another part of his argument, says:

"I now consider a high question—the constitutional character of the law of 1813, which confers the power in question upon this court. It has been my fortune in the course of a professional life, not a very short one to have had on frequent occasions to discuss the legality or illegality of the law on constitutions of the states or the United States, and I always regret to see them arise;

but where there are written constitutions—where there are written restrainst on legislatures and as legislators are liable to err like other human beings, they should be observed. The law of 1813 conferring this power, is older than the present constitution of the state. It was passed under the constitution of 1777. That constitution declares that the Chancellor and the Judges of the Supreme Court shall not hold any other office. The words in the constitution of 1821, are, that neither the Chancellor nor the Judges shall hold any other office or public trust. I suppose it is very reasonable to entertain the opinion that public trusts, is rather a more comprehensive form of phraseology than office. Suppose the law of 1813, was repugnant to the constitution of 1777, it never had existence. Suppose it might have stood under the constitution, but not under that of 1821, the consequence will be that when the constitution of 1821 was established, this law ceased to be of effect. The constitution speaks of office and public trust. I propose particularly to have reference to the existing constitution, with the words office and public trust.

"In the first place, what is an office? I think it is plain that it has two meanings.—In the first place an office means a station, a situation of dignity, of power, and emoluments. It is in this sense we use this term when we say that certain duties may be performed by persons in certain offices of official duty. Such as powers given to judges in England to act also as justices of the peace. But in another sense an office is nothing but an authority to exercise some authority or power. A public office is nothing but an authority to exercise a public duty or trust. That is the essence of the whole matter, and you will find that Justice Blackstone so defines it. In this sense it is nearly synonymous with trust. The words in the second section of the present constitution are clearer and more comprehensive than the first constitution, if the words office or trust be confined to station. My learned brother who addressed the court last, referred to the particular words of the constitution, that the judges should hold no other office. That, he says, is appeal tenure. Applied to office in the first sense, his observation is correct, but when you apply the same words to a mere authority, a mere function, it is evident that you must use it synonymous with possession or exercise; and when we say, a judge shall not hold any public trust, we do not mean that he shall not exercise any other than his judicial functions. In an authority where there is tenure, that is another sense of office—offices of friendship and good neighborhood. By it we mean merely the obligations ordinarily imposed on men. —But the office meant in the first constitution is merely the exercise of a public function. Now, then, in the first place, I remark that in my construction the words mean that no judge shall hold any other public trust.—It is quite unimportant what name is given to that trust, or whether it has any name at all. There are many functions existing without a name, and in order to decide what they are you must refer to the statute. Secondly, a judge shall hold or exercise no other trust. A question arises, and that is the gist of the case. Other than what? Other than those which appropriately belong to him, and which in their nature are judicial. That is the meaning of the words. In this part of the case I wish your honors to consider this point. I say, therefore, that it is no matter whether there be a new style, title, or name of office or not, or whether the trust is to be under the old name—no matter whether a new appointment to an election, or whether the trust be performed, under an existing appointment. If the trust be other than judicial, the judge cannot exercise it under the old or new constitution. If it be in its nature not judicial, it is that other public trust which the constitution prohibits. I think, sir, very strongly, that it is not easy to discover or draw the line between the powers and duties of one department and another. It has been a source of argument ever since Montesquieu. The distinction has prevailed better in this country than elsewhere, and yet the experience of every day shows that it is not easy to decide whether a power is executive, administrative, or judicial. If black and white mingle and unite, is there not black and white still. Although they are shaded into one another, there are judicial powers, and there are powers clearly not judicial, as clearly as there are animals and fishes and birds of different descriptions, though approximating so near to each other as to make it not very easy to draw the line. Some think certain powers judicial, and others not. But when we can clearly see what they are, it is for us to say what are well fixed distinctions. To ascertain whether the judges of the court, in performing the duties of this statute, are acting a judicial part, the first thing which occurs is, that the same duty may evidently be performed by any body not judicial, and it is not in its nature or of a character necessarily judicial. The legislature may employ any other persons, may distinguish the judge from these commissioners, and the commissioners do the whole that your honors do, yet they would not be conferring a judicial power. It may be remarked that this very act of 1813, is applicable to another suit of cases, done exactly as this thing is. It confers precisely the same power on the citizens. When assessments are to be made for paving, grading, and such, the commissioners are to be appointed by the corporation. How commissioners are to make their report to the corporation. and the corporation has the same authority that your honors have in the other case. It is not, therefore, necessarily judicial, and if it were so the legislature could not confer it on the corporation. Let us go somewhat further. Let us see if the employments possess any thing in the nature of judicial. They do not make the least approach to any judicial purview ever heard of in any court of law. It is said to be the duty of a judge to adjudge disputed questions of law. In other cases it is the duty of a judge to apply the principles of law, to ascertain facts, and in some cases the courts proceed according to common law, as this court does, and proceed, by judicial acts, to ascertain those facts. There is not in the whole of this proceeding one particle that applies, or ascertains a state of facts in relation to law.

"What is there in the world that is judicial in this? Your honors are applied to appoint a commissioner of assessment. You appoint him. Is the power of such employment in its nature judicial? Far from it.—Appointment of an officer connected with the administration of justice is common.—You appoint your clerk, and criers, and others to take part in the judicial duties of the court. It may be made so by statute; but the appointment to an office not connected with the administration of justice in the least degree—to be performed for pay out of court for a distinct body, with which your honors have no connection, and no concern at all, the employment is not judicial in its nature or character. The legislature retains the power to appoint in such cases. These commissioners, thus appointed, perform no judicial business. What do they do?—When it is seen what they do, it will be seen what your honors do. They do nothing but express an opinion of the value of certain lands, and the supposed amount of benefit which the construction of such a road will bring to the neighborhood. There is nothing but opinion and judgment as to the value of property, and when it comes to your honors you adjudge in the same way. If they under-value it, or over-value it, you send it back; and is there any thing under heaven done but to form a valuation of land. It is as indefenssible as to say the valuing of ships or stocks are appropriate judicial duties to be performed in this court. The two things which your honors are called on to do is to make an appointment of persons to give an opinion, and when they make a report, for your honors to judge whether they have estimated too high or too low, and I say this with the utmost respect and submission to the remark of Chief Justice Savage. He says that these commissioners are officers of the court, subject to the orders of the court, and subject, if disobedient, to removal. I am not disputing that view. I agree if this law be constitutional, and the proceeding is a judicial proceeding, and your honors are acting as a court, and these persons are appointed under law, and to assist your honors, they may be regarded as officers of the court. The Chief Justice, in speaking of the officers, supposes the law to be constitutional, and I am speaking of it according to the nature of their functions. What I complain of is, the law making persons in this way makes them appendages to a court of justice. There are other things in relation to the duties imposed. There are certain criters by which we judge of judicial duties of a court—a court of law. The general power which one has issues process original or appellative to bring persons before it.—Your honors have issued no process whatever. A court, in the common understand-

ing of the term, is where pleas are heard, criminal or civil, and I was struck, in hearing ancient provisions of law, at the statute conferring on this court the power of hearing pleas. In these, were the whole power conferred on the court. They are to decide on any points in controversy in courts of law. There is another power in courts of law to call all persons before them to assist the jury in its decisions. There is no jury and no witnesses in this case. I am not about to say that the court holds this as a judicial proceeding, but they have power to do what they think right, but I do say that these things do not call upon your honors to do what is ordinarily done in courts of justice. The oath of the appraisers is taken just as well elsewhere as here. There is nothing approaching judicial in it. If it declares no law, and ascertains no fact, applies no principle of law, summons no jury, issues no process, keeps no regular record, what features of a common law court is there?—Our learned friend has referred to other cases in which the court holds jurisdiction, which are said to resemble what is done in this particular duty. Partition is made!—What authority has the chancellor for making partition? The origin of partition lay at common law. Before the statute of Edward I., it was by suit bronght in the common pleas at Westminster. Afterwards the process of partition went into the court of chancery. Authorized by statute of Henry VIII., the court of chancery now makes it, and has done so for 200 years. There is not a state in the Union where such might not be made. The writ of mandamus was also very early allowed, being in the 43d Elizabeth. All these are regular judicial proceedings, and have been so for two or three centuries. In the case of the acknowledgment of a deed and the taking of proof of an instrument, are also judicial. In taking the acknowledgment of a deed it is taking proof of execution; and where the signer refuses to acknowledge a deed in the part of the country where I am better acquainted, application is made to a court to take testimony, which is recorded as proof of the fact. The practice of requiring married women to sign is to ascertain whether it is her voluntary act or not. There are other clear, well known principles of judicial usage. But there are cases similar to this existing which it would be unbecoming in me to name as you are better acquainted with them than I am—which are spread on the history of the court for 30 years, beginning with the case which my learned friend thinks was the first and fatal error, that of Stafford vs. the Mayor of Albany in 1811. An opinion was given by Chief Justice Spencer in 1811. The sentiments expressed, are that the duties now called upon your honors to perform were not judicial. My learned friend agrees that the justices in that case were not the court. But I believe the case did not turn on that point. I will not suggest that in regard to the remarks of my learned friend on which your honors have expressed an opinion. He insists that your honors always sit as a court, and says he will take you at your words.—This was in 1811. In 1820 came on the case ef Beekman street—then there are nine or ten cases in which every judge on the bench has expressed an opinion by his own mouth that these proceedings were not judicial, or contended for such when the cases were brought before the court of Errors.—Names are not important in cases of this sort. It appears to have been the practice of the court to say that in these street matters the court has acted as commissioners. Commissioner is a very general term of office.—There are commissioners judicial,—there are commissioners of all kinds and sorts. The question is not that your honors have been called commissioners—it is not what names should best describe persons who act in that capacity—the question is whether they are judicial acts. I think the term supervisors would apply better than commissioners, or the term referees might apply—but I say the business done by them is not judicial.

"It is said this question is raised late. I wish it had been raised earlier. If it had been raised in 1821, there would have been no dispute. I wish it had been raised at that time, and yet I neither make no remark in this respect. Nothing has happened to give a new aspect to it, except this, that the more it has been considered, the more strong professional opinion seems to be going on and gathering strength, that it is unconstitutional. Every time that your honors have occasion to speak, you say that the court are not acting as a court, but as commissioners; and an idea has been suggested that even such act is unconstitutional. There is one case only to which I will call the attention of the court. [The reporter could not hear the authority.] The strength of the case is, that this court has acted as if it had its original character before 1813. and was a court, and as if in its supplementary character after 1813, it was not a court. When it has occasion, in these cases, to revise its acts, it addresses itself as if it had been no court at all. The Justices of the people of the Supreme Court address their decisions to the Justices of the Supreme Court. Is not that proof that your honors, in acting in these street cases, were not acting as a court? If you had been, the records would have been before you, and. as a court, you would have revised yourselves. The two duties are distinct. The street business is not the judicial function of the Judges. If the decision is right, in my humble judgment, there is an end of the case; because if your honors have adjudged that these were not official duties, and your honors have performed them not as a court, then I say under the law of 1813 the Judges have been performing another public trust. If the Judges perform these, the legislature may give them other high duties at their discretion, as it chooses. The other public trusts mean public trusts of another character, those not appropriate to a Judge. If your honors have decided that you were not acting as a court, the constitution seems to be clear that you were acting as as a trust, then the law imposed that upon you in violation of the constitution."

The Court say:

"I must admit that I am unable to perceive the truth of the premises or the justness of the conclusion in this argument, for I cannot admit that these statutes assume to confer any office, new or old, upon the members of this court individually. In terms the statutes are that *the court*, not the persons who hold it, shall posses and exercise certain powers; and to me it seems the inquiry should be, are these powers, in their nature, such as the Legislature might devolve upon the court rather than whether another office is thus assumed to be conferred on the Justices of that court.

"By the present Constitution of this State, neither the Chancellor, nor Justices of the Supreme Court, nor any Circuit Judge, shall hold any other office or public trust.—(Art. 5, § 7.)

"The former Constitution contained a similar clause, for it declared "that the Chancellor and Judges of the Supreme Court shall not, at the same time, hold any other office, excepting that of delegate to the general Congress, upon special occasions." (Art. 25.)

"These inhibitions were aimed at the individuals who, for the time being, might fill the offices referred to, and not at the courts which they were authorized to hold. The person who is Chancellor can hold no other office or trust, and so of Justices of the Supreme Court and Circuit Judges. But this, I believe, has never been supposed to restrain the legislative power so that it could not enlarge and extend the powers of the Court of Chancery or of the Supreme Court, nor impair the capacity of those courts to take and exercise new and enlarged powers.—Certainly, in practise such has not been the effect of this constitutional provision, for these courts have undergone frequent changes and modifications, by which their powers have in many respects, been greatly amplified and extended."

Note.—By the Editor.

The inhibitions of the Constitution which the learned judge says were aimed at the individvals who might fill the offices referred to, and not at the courts which they were authorised to hold, is a very plain and common sense restriction. The Supreme Court is composed of individuals and the individual, who hold the office of Judge of the Supreme Court, is the Court. Section 29 of the Constitution of 1777, provides that the "Lieut. Governor shall by virtue of his office be president of the Senate," and section 21 provides that in certain cases the Senate shall have power to fill "the office of President." The performance of the duties of President of the Senate by the Lieut. Governor, is another office, it is another and distinct duty, and that constitutes it another office, and one which the constitution authorized him to hold, and the same Lt. Governor, is by the same constitution authorized to perform the duties of the office of Governor, duties which in certain cases, are executive and being incompatible with

his holding a seat in the Senate, he ceases to be President when he acts as Governor, by the provisions of the Constitution. Another office is the performance of another duty, and the Constitution has so defined it, in its various provisions.

It is a matter of no kind of importance in construing an express provision of the constitution, whether the Legislature have passed other unconstitutional laws, nor how many, nor whether "to an almost unlimited extent."

In the former constitution of the State of New-York a preamble to section III, says: "And whereas laws inconsistent with the spirit of this Constitution, or with the public good may be hastily and unadvisedly passed," &c., and Mr. Justice Cowen in the opinion he delivered in the 37th Street case, in July 1843, in reference to these Street powers conferred upon the court says that 'had the question been made as I admit it should have been, a reconsideration by the Legislature would have probably ensued, and the evil of the interruption of the regular business of the Court been prevented." The Legislature have in some cases made the judges of the Supreme Court, Trustees of Colleges. This duty, of course, according to the doctrine of the court, as laid down in this opinion, "*is strictly judicial.*"

The act of 1813, section 178, authorises the Supreme Court of Judicature of this State to appoint Commissioners of estimate and assessment, on the application of the Mayor, Aldermen and Commonalty of the city of New-York, and section 186, of the same act authorises any one of the Justices of the Supreme Court to fill any vacancy which may occur by death, resignation, or refusal. Section 193 of the same act provides as follows: "That the mayor, aldermen and *commonalty* of the city of New-in Common Council convened, and their successors, shall continue to be commissioners to keep in repair such other public roads or highways as shall hereafter be laid out or opened in the said city or county." By the Revised Statutes of 1830, it is provided, that each town shall annually elect three commissioners of highways. See vol. I, R. S. new ed. p. 333, §4.

This power given to the Supreme Court to appoint commissioners for the city of New-York, is the same power that is given by the Statute to the electors in the various towns of this State.

It is evident that the framers of the Constitution of 1777, never intended giving any power of appointment to the Supreme Court but that of appointing their clerks, attornies and counsellors, for by section 27 of that constitution, it is provided that "the clerks of the Supreme Court shall be appointed by the judges of said court, and all attornies, solicitors and counsellors at law hereafter to be appointed by the court, &c. Section 23, of the same constitution, provides as follows: "That *all officers*, other than those who, by this constitution are directed to be otherwise appointed, *shall be appointed in the manner following to wit:* The Assembly shall once in every year openly nominate one of the Senators from each great district, which Senators shall form a council for the appointment of *the said officers.*" *Again* the same section provides as follows: "The said Senators shall not be eligible to the said council two years in succession." Mr. Justice Story, in his commentaries on the Constitution, says:

"One of the most common maxims of interpretation is (as has been already stated) that as an exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases enumerated."

The section of the constitution of 1777, quoted by Mr. Justice Beardsley, declares the holding of a seat of a delegate in the general congress, to be another office. Suppose the Legislature had said, that the delegates to the general Congress shall be nominated and appointed by the Supreme Court of Judicature of this State, or by any one of the Justices thereof" it would be doing precisely the same thing as is attempted in section 178 and 186, of the act of 1813, in giving the appointing of Commissioners for a local district which were before elected by the people to the same court or one of its members. By section 13, of art. 7, of the Constitution of 1821, the street act of 1813, is, we say, repealed. The following is the provision referred to, and contains these words: "and such acts of the legislature of this state as are now in force shall be and continue the law of this State subject to such alterations as the legislature shall make concerning the same. *But all such parts of the common law, and such of the said acts or parts thereof, as are repugnant to this constitution are hereby abrogated.*"

We shall here, with a brief premise, introduce a letter from the illustrious GEORGE WASHINGTON, President of the United States, to the Chief Justice, and Associate Justices, of the Supreme Court of the United States, and their reply thereto. These documents are from the pens of men who are no longer inhabitants of earth—they have left us—they have departed, but the opinion of each as written down during their respective administration of public affairs, for our instruction, for our guidance, are left to us. Opinions that are the emanation of mind which has been transferred to another world, are clothed with a solemnity in the remembrance of the declaration of the inspired pen, "*that although in dust he speaketh.*" The decision of the lamented COWAN, in this very question on which the court have pronounced this opinion, which we are now reviewing, was, as we before observed, about the last act of his useful and virtuous life—and ere the grass had grown upon the sods which covered his ashes—the cause in which that decision was pronounced, is by this court ordered for reargument. The court in ordinary cases, under such circumstances have a clear right to order a reargument and they might believe it a matter of duty and it truly might be so—but the closing paragraph in the opinion of the court in this case then pronounced was: "It follows from what we have said, that we can make no order, either one way or the other, on the motions for the confirmation of these reports." The court preceded this closing paragraph with this remark, among others: "Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office and execute the Statute. The farther enquiry is now presented, whether we have any power to act in the matter. Upon that question I cannot entertain a doubt." The court refused to act, and it was right, most clearly so, as we think it will be ultimately held—there was a responsibility in acting.

This opinion of the court which we are now reviewing was delivered at the October term which was a delay of one term from the argument, the cause of the delay was unavoidable but admonitory.

Mr. Justice Story, in his commentaries on the Constitution says: "If the oppression be in the exercise of unconstitutional powers, that the functionaries who wield them, are amenable for their improper acts to the judicial tribunals of the country, at the suit of the oppressed."

The letters we have referred to above are as follows:

"*United States, April 3d*, 1790.

"Gentlemen: I have always been persuaded, that the stability and success of the national government, and consequently the happiness of the people of the United States, would depend, in a considerable degree, on the interpretation of its laws. In my opinion, therefore, it is important, that the judiciary system should not only be independent in its operations, but as perfect as possible, in its formation.

"As you are about to commence your first circuit, and many things may occur in such an unexplored field, which it would be useful should be known, I think it proper to acquaint you, that it will be agreeable to me to receive such information and remarks on this subject as you shall from time to time judge it expedient to make.

GEO. WASHINGTON.

"*The Chief Justice and Associate Justices of the Supreme Court of the United States.*"

"Sir:—We, the Chief Justice and Associate Justices of the Supreme Court of the United States, in pursuance of the letter, which you did us the honour to write, on the third of April last, take the liberty of submitting to your consideration the following remarks on the "Act to establish the Judicial Courts of the United States."

"It would doubtless have been singular, if a system so new and untried, and which was necessarily formed more on principles of theory, and probable expediency, than former experience, had, in practice, been found entirely free from defects.

"The particular and continued attention, which our official duties called upon us to pay to this act, has produced reflections, which at the time it was made and passed,

did not, probably occur in their full extent either to us or others.

"On comparing this act with the constitution, we perceive deviations, which, in our opinions, are important.

"The first section of the third article of the constitution declares, that "the judicial power of the United States shall be vested in one *Supreme* Court, and in such inferior courts, as the congress may, from time to time ordain and establish."

"The second section enumerates the cases, to which the judicial power shall extend. It gives to the Supreme Court original jurisdiction in *two* cases, but in all the others, vests it with *appellate* jurisdiction; and that with such exceptions, and under such regulations, as the congress shall make.

"It has long and very universally been deemed essential to the due administration of Justice, that some national court, or council should be instituted, or authorized to examine the acts of the ordinary tribunals, and ultimately, to affirm or reverse the judgments and decrees; it being important, that these tribunals should be confined to the limits of their respective jurisdiction, and that they should uniformly interpret and apply the law in the same sense and manner.

"The appellate jurisdiction of the Supreme Court enables it to confine inferior courts to their proper limits, to correct their involuntary errors, and, in general, to provide, that justice be administered accurately, impartially, and uniformly. These controlling powers were unavoidably great and extensive; and of such a nature, as to render their being combined with other judicial powers, in the same persons, unadvisable.

"To the natural, as well as legal incompatibility of *ultimate* appellate jurisdiction, with orginal jurisdiction, we ascribe the exclusion of the Supreme Court from the latter, except in two cases. Had it not been for this exclusion, the unalterable, ever-binding decisions of this important court, would not have been secured against the influences of those predilections for individual opinions, and of those reluctances to relinquish sentiments publicly, though perhaps, too hastily given, which insensibly and not unfrequently infuse into the minds of the most upright men, some degree of partiality for their official and public acts.

"Without such exclusion, no court possessing the last resort of justice, would have acquired and preserved that public confidence, which is really necessary to render the wisest institutions useful. A celebrated writer justly observes, that "next to doing right, the great object in the administration of public justice should be to give public satisfaction."

"Had the constitution permitted the Supreme Court to sit in judgment, and finally to decide on the acts and errors, done and committed by its own members, as judges of inferior and subordinate courts, much room would have been left for men, on certain occasions, to suspect, that an unwillingness to be thought and found in the wrong, had produced an improper adherence to it; or that mutual interest had generated mutual civilities and tendernesses injurious to right.

"If room had been left for such supicions, there would have been reason to apprehend, that the public confidence would diminish almost in proportion to the number of cases, in which the Supreme Court might *affirm* the acts of any of its members.

"Appeals are seldom made, but in doubtful cases, and in which there is, at least, much appearance of reason on both sides; in such cases, therefore, not only the losing party, but others, not immediately interested, would sometimes be led to doubt, whether the affirmance was entirely owing to the mere preponderance of right.

"These, we presume, were among the reasons, which induced the convention to confine the Supreme Court, and consequently its judges, to appellate jurisdiction. We say "consequently its judges," because the reasons for the one apply also to the other.

"We are aware of the distinction between a court and its judges; and are far from thinking it illegal or unconstitutional, however it may be expedient, to employ them for other purposes, provided the latter purposes be consistent and compatible with the former. But from this distinction it cannot in our opinions, be inferred, that the judges of the Supreme Court may also be judges of inferior and *subordinate* courts, and be at the same time both the *controllers and the controlled.*

"The application of these remarks is obvious. The Circuit Courts established by the act are courts inferior and subordinate to the Supreme Court. They are vested with original jurisdiction in the cases, from which the Supreme Court is excluded; and to us it would appear very singular, if the constitution was capable of being so construed, as to exclude the court, but yet admit the judges of the court. We, for our parts, consider the constitution, as plainly opposed to the appointment of the same persons to both offices; nor have we any doubts of their legal incompatibility.

"Bacon, in his Abridgment, says, that "offices are said to be incompatible and inconsistent, so as to be executed by one person, when from the multiplicity of business in them, they cannot be executed with care and ability; or when their being subordinate, and interfering with each other, it induces a presumption they cannot be executed with impartiality and honesty; and this, my Lord Coke says, is of that importance, that if all offices, civil and ecclesiastical, &c. were only executed, each by different persons, it would be for the good of the commonwealth and advancement of justice, and preferment of derserving men. If a forester, by a patent for his *life*, is made justice in Eyre of the same forest, *hac vice*, the forestership is become *void;* for these offices are incompatible, because the forester is *under the correction* of the justice in Eyre, and he cannot *judge himself.* Upon a mandamus to restore one to the place of town-clerk, it was returned, that he was elected mayor and sworn, and, therefore, they chose another town-clerk; and the court were strong of opinion, that the offices were incompatible, because of the *subordination.*— A coroner, made a sheriff, ceases to be a coroner; so a parson, made a bishop, and a judge of the Common Pleas, made a judge of the King's Bench," &c.

"Other authorities on this point might be added; but the reasons, on which they rest, seem to us to require little elucidation, or support.

"There is in the act another deviation from the constitution, which we think it incumbent on us to mention.

"The second section of the second article of the constitution declares, that the president shall nominate, and by and with the advice and consent of the senate, "shall appoint judges of the Supreme Court, and *all* other officers of the United States, whose appointments are not *therein* otherwise provided for."

"The constitution not having otherwise provided for the appointment of the judges of the inferior courts, we conceive, that the appointment of some of them, viz. of the Circuit Courts, by an act of the legislature, is a departure from the constitution, and an exercise of powers, which constitutionally and exclusively belong to the president and senate.

"We should proceed, sir, to take notice of certain defects in the act relative to expediency, which we think merit the consideration of congress. But, as these are doubtless among the objects of the late reference, made by the house of representatives to the attorney-general, we think it most proper to forbear making any remarks on this subject at present.

"We have the honour to be most respectfully,

"Sir your obedient and humble servants.
"The President of the United States."

The court say:

"By the act to incorporate the Utica and Schenectady Railroad Company, the Chancellor was authorized to appoint Commissioners to appraise lands which might be needed in the construction of that road, and who were required to report to the Court of Chancery. It was made the duty of the Chancellor to examine their report, hear the parties interested, and increase or diminish the amount awarded as might be deemed just. (Laws 1833, p. 465, § 7.) Similar powers have repeatedly been thrown upon the Circuit Judges. (L. 1832, p. 417, 502, 517. Laws 1833, p. 439.) Writs of *ad quod damnum* may be issued by the Court of Chancery, under the Revised Statutes, a power not before possessed by that Court. (2 R. S. 588.) Appeals may be taken to Circuit Judges from certain decisions of the Surrogates. (2 R. S. 66, § 55.) The Supreme Court has summary jurisdiction over the election of Corporation officers in many cases; (2 R. S. 603, §5, ib. 598, §47 to 50,) and may compel the production and discovery of books, papers and documents, in cases to which its power did not formerly extend. (2 R. S. 199, §21.) And this court

may also, on petition, discharge certain persons from imprisonment. (2 R. S. 31, §1.)

"These are instances in which new powers have been conferred upon the Court of Chancery and the Supreme Court, and upon Circuit Judges. They might be multiplied by references to an almost unlimited extent; and yet I am not aware that it has been held or supposed that the statutes conferring these powers devolved new offices upon the Chancellor, Justices, or Judges named, or were in any respect incompatible with the Constitution.

NOTE.—BY THE EDITOR.—See remarks on p. 402, second paragraph of the first column.

"I know it has been said that the powers exercised by this court under the New-York statutes relative to opening streets, avenues, &c., are not exercised as a court, but as commissioners. This form of expression is found in several cases.

"By an Act passed the 4th of April, 1801, (2 Kent and Rad. ed. Laws N. Y., 153, §13) when the ground of any person was required by the Corporation of the city of Albany, in laying out any street, the damages and recompense sustained by and due to the owner of the ground were to be inquired of and assessed by a jury summoned to appear before the Mayor's Court of the city; and the Act declares that "the verdict of such jury and the judgment of said Mayor's Court thereon, and the payment of the sum of money so awarded and adjudged to the owner or owners thereof, or the tender and refusal thereof, shall be conclusive and binding."

"A case arose under this provision, in which the damages were assessed, and judgment of confirmation was given by the Mayor's Court; but subsequently the proceedings were set aside by that court for irregularity, before any formal record thereof had been made. The effect of this *vacatur* came before the Supreme Court, (7 John. 451, Stafford vs. Mayor of Albany,) and it was held to be unauthorized. *Spencer*, J., who gave the opinion of the court, observed, "The authority under which the Mayor's court acted was specifically derived from the Legislature, and must be strictly pursued; when, therefore, the assesment was confirmed, the court had no further powers: they were *functus officio*. (11 East. 200, 201, 202.) There is no analogy between this proceeding and the judicial proceedings of a Court of Record in the progress of a cause. The power grantedby the Legislatureto the Mayor's Court in the present instance, may not inaptly be compared to the power given to a Court of Common Pleas to discharge an insolvent from his debts.—In both cases the court act *quasi* Commissioners.'"

'In the matter of *Beekman Street*, in the City of New-York, which arose under the act of 1813 already referred to, *Spencer*, Chief Justice, said, 'The powers possessed by this court, in appointing Commissioners, in reviewing their report, in referring it back to the same Commissioners, or substituting new ones, and in finally confirming their report, are derived wholly from the statute. None of these powers exist independently of the legislative authority; and they are not incident to our judicial duties. It might be a question how far the Legislature can impose such duties upon the judges; but it does not admit of a doubt, that if we do consent to act, we act under a limited and circumscribed authority; and our only power to act being derived from the statute, we possess no powers but such as are expressly given; and those powers must be exercised in the manner designated by the act. It is true we act collectively, and in term time, and a majority present control the proceedings; but we act as Commissioners, and in the same way and manner as we used individually to do under the insolvent act.'

"The statute is our guide, and we must proceed by the rules and in the manner it prescribes. The general powers and jurisdiction of this court as regards the application now before us, cannot be brought into exercise. (20 John. 271.)'

"In the matter of *Third Street*, in the City of New-York, (6 Cow. 571, *Savage*, Chief Justice observed, "We do not act as a court in these matters, but as commissioners appointed by the legislature, and such proceedings have been very aptly compared by the cases, to those of a Commissioner or Court of Common Pleas under the insolvent act.'"

"Remarks to the like effect, and in much the same terms, have been made in other cases."

"And proceeding upon the idea that what we do in street cases, is done in a limited and subordinate capacity *as Commissioners*, writs of certiorari have been allowed by this court as the Supreme Court of the State, directed to the Justices thereof as *Commissioners*, in order to bring the proceedings before the court as a court, and thus obtain its judgment in that capacity, to the end that such judgment may be carried to the Court of Errors for revision. (13 Wend. 661.—Patchin vs. The Mayor of Brooklyn. 8 Wend. 85. Livingston vs. The Mayor of New-York. 7 Cow. 158. Bogart vs. The Mayor of New-York.)"

"I do not understand any thing said or done in the cases on the subject, as intended to deny that the power of appointing Commissioners of Estimate and Assessment, and revising and confirming their proceedings, is strictly judicial in its nature. The cases proceed on the broad distinction between the exercise of general and special judicial powers, between what this court may do in the exercise of its general common law jurisdiction, as the Supreme Court of the State, and what it may do under a special and limited authority conferred upon it by the statute."

"The power exercised in these street cases, is compared to that of Commissioners under the insolvent laws. But such Commissioners, although not clothed with any general judicial authority, are still judges, and within the limits of their jurisdiction act judicially. (8 Cow. 178 Cunningham vs. Bucklin.) They act as an inferior court of special and limited authority, and their acts may be pleaded as such. (1 John. 91. Service vs. Heermance. 7 John. 75. Tracy vs. Dakin. 19 John. 34. Mills vs. Martin.)"

"Proceedings in street cases are removable by cetiorari. (2 Wend. 377. Patchin vs. The Trustees of Brooklyn. 8 Wend. 47. Same case in error, 7 Cow. 158. 8 Wend. 85. 13 Wend. 664, cited before.) But a certiorari lies only to bring up judicial proceedings. (2 Hill. 9. The People vs. The Mayor of New-York.)"

"But these powers are in their nature strictly judicial."

"The Corporation of New-York having determined to open a street or avenue, apply for the appointment of Commissioners of Estimate and Assessment. These Commismissioners are but *aids to the court*, whose judgment at last is to settle the rights and fix the liability of the parties. The Commissioners are to ascertain the value of the land which may be taken for or affected by the improvement to be made, and determine the amount of damage and benefit which the respective parties will sustain. These are to be reported to the court with all needful explanations, and any person conceiving himself aggrieved, may appear and urge his objections to what has been done. If the court is dissatisfied with the report, it may be sent back for revision, and this is to be repeated until the court shall be satisfied that it is according to the justice of the case, when judgment of confirmation is to be given. Thus the report becomes in effect the act of the tribunal by which it is confirmed, and the judgment rendered is declared to be an effective lien upon the land thus adjudged to be benefitted. Upon this a summary execution may be issued to collect the amount of the judgment, *or an action may be brought upon it*, and finally it may be enforced by a sale of the land thus charged."

NOTE.—BY THE EDITOR.—*The Supreme Court cannot issue a summary execution until a suit has been brought and judgment recovered in the Supreme Court upon the assessment in an action of debt or assumpsit.—(See Ante, p. 385, and sec. 186, of the act of April 9, 1813,) It therefore lacks the very essence of a judicial proceeding, and the confirmation is not a judgment, for the statutes authorize the Supreme Court to issue execution upon its judgments.*

The court say:

"If such powers and proceedings are not in the strictest sense judicial, it would be difficult to conceive what authority or acts can be of that character.

NOTE.—BY THE EDITOR.—Mr. Justice Story quotes Sargent on the Constitution thus "that the Constitution in speaking of courts and judges means those who exercise all the regular and permanent duties, which belong to a court in the ordinary popular signification of the terms."

The court say:

"These powers then are judicial, whether exercised by the court as a court, or 'quasi Commissioners.' Undoubtedly they are not

exerted by the court as a court of general jurisdiction; it acts in some other capacity, if at all as a court. "The general powers and jurisdiction of this court," says Chief Justice Spencer, "as regards the application now before us, cannot apply to such a subject."

"The case of Patchin vs. The Trustees of Brooklyn, came up by certiorari from the Common Pleas of Kings County, which court was authorized by statute, to exercise powers similar to those thrown upon this court in the New-York street cases."

NOTE.—BY THE EDITOR.—*The judges of the court of Kings County are not precluded by the present Constitution of this State from holding any other office.*

The Court say:

"In giving the opinion of the Supreme Court, Chief Justice Savage said, 'It has also frequently been held that the Judges *act as Commissioners*, but they, in some respects at least, act as a court during the pendency of the proceedings." (2 Wend. 384.) This case went to the Court of Errors, when the Chancellor thus expressed himself:—'This is a specially delegated power to the *Court of Common Pleas as such court*, and not to the judges as an *ex officio* duty; and when such power is committed to a *court*, all the ordinary powers of such court, as far as they are applicable to the discharge of the particular duty, may be exercised as in ordinary cases. The court may compel the sheriff to return the precept; may impose fines upon the jurors for not attending; may issue process to compel the attendance of witnesses; may award a tales, swear witnesses, and compel them to testify; may appoint triers on a challenge of a juror; and may adjourn the hearing of the cause upon sufficient cause shown. Thus in England, the jurisdiction of the Lord Chancellor in bankruptcy is a specially delegated jurisdiction committed to him as the keeper of the great seal, but in the particular cases in which this jurisdiction is exercised, all the powers of his court become applicable to the discharge of his duty; he issues injunction and attachment to compel the performance of his orders; makes references to masters to inquire as to facts, awards, issues, &c. See *ex parte* Cowan, 3 B. and Ald. 123. But no appeal lies from his decisions in bankruptcy, because no law has been passed authorizing an appeal in such cases. So in the street cases in the City of New-York, a specially delegated jurisdiction is committed to the Supreme Court, but I believe it never has been contended that the court was bound to determine cases of this kind at the first term, and it had not the power of deciding them at any subsequent term of the court."

"This case was decided in the Court of Errors in 1831; and in 1834, in the *matter of Canal Street*, Chief Justice Savage thus expressed himself: "But though the court, in these proceedings, act *quasi* Commissioners in reviewing and confirming the proceedings below, yet we act also *as a court*, in *many respects*, and I think in all respects except in reviewing our own decisions. We act as a court in the appointment of the Commissioners. If they misbehave, we may punish them by attachment, as we might referees, in a cause committed to them.—If, for any cause, persons appointed as Commissioners are shown to be improper, we may by virtue of the power of appointment, remove them and appoint others; we are not the mere conduits of conveying authority to the Commissioners. They become officers of this court; the proceeding is a proceeding in our court, the effect of which is the transfer of the title to real estate to an immense amount; and it would be extraordinary, in such a case, that this court should be mere automata. It has been decided that we cannot reconsider our own decisions; but beyond that our power as a court has not been questioned."

"Our decisions are judgments, which are subject to review in the Court of Errors, (11 Wend. 156,) and in a late case, (4 Hill. 19,) in the matter of Mount Morris Square, Cowen, J., said, 'Our award is like that of any inferior magistrate having a limited jurisdiction.'"

"I fully concur in these views, understanding them, as I do, to mark the distinction between courts of general and special authority. It is readily seen that one and the same person can at the same time hold two offices, as Lord Hardwicke did for a short period those of Chancellor and Chief Justice of England."

[NOTE.—BY THE EDITOR.—The court will find a case nearer home than that of Lord Hardwick. Mr. Hallet, of New-York, held nine offices, and very many of these at one and the same time, viz: The office of Clerk of the Supreme Court which he held by appointment of the Supreme Court of Judicature of this State, also the office of commissioner of estimate and assessment on the proceeding for widening Beaver Street, Wooster Street, William Street, Anthony Street, extending William Street, opening 10th Avenue, 32d Street, and Mount Morris Square, which eight offices he held under the appointment of one of the Justices of the Supreme Court. The Commissioner's fees in these eight streets were $11,678.66, as appears by the receipts of Commissioners and by the public documents of the Corporation. [See Comptroller's Report of 1840, p. 108.] The room hire, &c. &c. is stated at more than $1500.00. Mr. Hallet's share of the fees is $3892.00. This sum at a compensation of four dollars per day, which is the highest sum allowed by law, for *a full day's service*, is pay for 973 days, which, counting 26 working days to the month is pay for 37 months, and 11 days, equal to three years, one month and eleven days.

These eight separate and distinct appointments were made by a single judge. The 27th section of the Constitution of 1777, gives to the court the appointment of their clerks. By section 9 of article 4, of the Constitution of 1821, it is provided, that "The clerks of Courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks," and by section 4 of article 5, "The Supreme Court shall consist of a Chief Justice and two Justices, any of whom *may hold* a court." The clerks are appointed by three Judges, and not by one Judge. In the July term of 1839, the Supreme Court made a rule under the 12th section of the act of April 20th, 1839, [see Ante, p. 388, sec. 12,] in which it is provided that the Commissioners fees, Counsel and Attorney's fees, Surveyor's fees, &c., shall be taxed by the Circuit Judge, Recorder or Clerk of the Supreme Court. Mr. Hallet consequently was the person who taxed what few bills there were taxed, but most of the commissioners reports were "confirmed by one of the Justices of the Court without any taxation of the costs and to the extent of a great number of Streets. These offices are incompatible. To appoint Mr. Hallett a commissioner on a street, and then to authorise him by virtue of his office of clerk, to tax the fees of the commissioners on that very street, and also to tax the fees of the officers who nominated him for the office of commissioner to the court, for these Commissioners are nominated by the Counsel of the Corporation, as appears by the Report of the Senate Committee. (See Ante, p. 380.) There is also another objection, which is, that the Court have been profuse in this patronage; and still another which is contained in the letter of the Chief Justice and Associate Justices of the Supreme Court of the United States, to President WASHINGTON, (see Ante. p. 403,) and from which we here make the following brief abstract: 'Bacon, in his abridgement, says, 'that offices are said to be incompatible and inconsistent, so as to be executed by one person, when, from the multiplicity of business in them, they cannot be executed with care and ability.' It appears, by the testimony of Assistant Alderman Townsend, before the Senate Committee, (see Senate Doc. No. 100 of 1842, p. 95,) that errors were committed, growing, no doubt, out of the multiplicity of business. The following quotation is an illustration:

"The witnesses' property was assessed

$52 for opening Mount Morris Square; witness examined the Assessment Map in that case, and found it to contain nine blank numbers, which had no Assessment carried out against them, which formed nearly a whole block which was not Assessed. The Fifth Avenue was the centre of the Square; on the easterly side, the property from 118th Street is assessed, and the property on the westerly side is not assessed at all. The lots not assessed, are within the limits of the Assessment district; lots beyond these lots not assessed, are assessed. Mount Morris Square is a cone of rock about 150 feet above the Harlaem Plain."

There was a similar error in the Beaver Street Assessment, as appears by the printed documents of the Common Council, and we could name others, but it is needless. There are other cases similar to that of Mr. Hallets in some respects. M. D. L. Gaines, who is brother-in-law of the Street Commissioner of 1836 to 1844, and was a Clerk in the Street Commissioner's Office, and received a salary of $1000, and was the person who paid Commissioner Robinson his fees of the Seventh Avenue, a large amount, as appears by Mr. Robertson's testimony, (see Ante pg. 393,) held the office of Commissioner of Estimate and Assessment on Eight Streets, and the office of Clerk of the Street Commissioner at the same time. Mr. Gaines was Commissioner on 33, 34, 45, 46, 48, 54, 57, 59, in which the Commissioner's fees are $6458,00.

Mr. Andrew Warner, a Deputy or Clerk in the Office of the County Clerk, and brother of Mr. Warner, who was Assistant Street Commissioner, and whose duty it was to pay the Attorneys, Commissioners and Surveyor's fees, was Commissioner on seven Streets, viz: 11, 19, 26 and 89 streets, and Avenues A, 1 and 5, in which the fees were $4,234.00.

The services of these persons we have named, were all the time required in their respective offices, and the diagram of the 1st Avenue Assessment on Mr. Phelp's land, between 39th and 40th Streets, is another illustration. That proceedings of the importance which these are, should be incapable of being examined into, seems more than unreasonable. It will be seen by the City Comptrollers for 1840, p. 108, that the Commissioners fees for opening the Eighth Avenue throughout, was $760.68—Counsel fees, $745.47—Surveyor's charges, $310.50. This Avenue was opened in 1811. In 1839, the Commissioner's fees for opening a parallel Avenue of less length, was $4,920. Counsel fees, $3,976.77. Surveyor's fees, $2,801.—A comparison of the charges of fees in these proceedings, together, is an illustration.

The Court say:

"But to me the idea is incomprehensible, that *a court* can, at the same time, and upon the same subject, act in a double capacity, that is, not only as a court, but in the separate office of Commissioners. But if this, in the nature of things, is possible, which is not granted, I am unable to see how it can occur under the street laws of New-York. This court possesses the powers and exercises the jurisdiction which belonged to the Supreme Court of the Colony of New-York, with the exceptions, limitations, and additions created and imposed by the Constitution and laws of this State. (2 R. S. 196, §1.) The street statutes, in explicit terms, devolved the power, in street cases, upon "the *Supreme* Court of Judicature of this State," and make it lawful for the said court, not the Justices thereof individually, to perform the duty. [2 R. L. of 1813, p. 409, § 178.]

[NOTE.—BY THE EDITOR.—The learned Judge has overlooked the provisions of the Act of April 3d, 1807, Section 186 of the very Act he refers to, and Sec. 2, of the Act of April 5, 1816, which he refers to in another part of this opinion, the latter of which contains these words: "That whenever Commissioners of Estimate and Assessment may hereafter be appointed by the Supreme Court of Judicature of this State, *or any one of the Justices thereof.*"

The learned Judge, in giving the opinion of the Court, says:

Chief Justice Spencer says, "the powers thus possessed by *this court* 'are derived wholly from the statute;' 'we act under a limited and circumscribed authority;' the general powers and jurisdiction of the court cannot be brought into exercise; 'we act as Commissioners.'"

These different phrases seem to me to have been used to express the same idea, to indicate the character and extent of the powers possessed by the court in these cases; in brief, that the court possess such powers as pertain to Commissioners, that is, the powers of a court of special and limited authority, and not that it holds the separate and distinct office of Commissioners. The opinion of the Chancellor cannot be mistaken; he holds that the power is thrown upon the *court*, and not upon the Judges individually; and *Cowen*, J., as we have seen, says emphatically, that 'our award is like that of any inferior magistrate having a limited jurisdiction."

[NOTE.—BY THE EDITOR.—The Chancellor discussed the constitutionality of a proceeding altogether unlike this case, now being considered—it is not like this, we respectfully suggest, in any respect whatever.

The Court say:

"While acting in its ordinary capacity as court of general jurisdiction, the authority of this court will be presumed.

"But when exerting its powers under the special provisions of a statute, this presumption does not attach. It is then *quoad hoc* an inferior or limited court, and the facts to give jurisdiction must be proved. This is the rule as to subordinate and limited tribunals, and is equally applicable to this court when acting in that capacity. [3 Hill. and Cowen's Notes to 1 Pvil. Ev. 946, 988, 1013. Notes 681, 694. 19 John. 35. Mills vs. Marin. 11 Wend. 647. Dunning vs. Comin. 8 Cow. 361, 370. Galatin vs. Cunningham.]

Regarding this, as I do, as a new power thrown upon the Supreme Court, and not as a new office conferred upon the justices of that court, the constitutional inhibitions is wholly inapplicable, and can have no bearing on the question to be determined.

[NOTE.—REMARKS BY THE EDITOR.—The Court speak of this being a new power thrown upon that tribunal, and not as an office conferred upon the Justices of that Court. This view of that power thus taken by the Court, is wholly at variance with the express provisions and plain language of the Statute, as well as of the Constitution. The act of April 9th, 1813, and the act of April 5th, 1816, (see Ante pg. 385,) gives the exercise of these powers to any ONE of the Justices of the Court. The powers conferred, are extraordinary powers, and such as are unknown in judicial proceedings The power of appointment—one of the most dangerous powers in the whole machinery of Government, is here given in violation of the express prohibitions and plain language of the constitution, (see Ante pg. 384, §XXIII,) without limit or control. The Statutes of New-York, prior to the Constitution of 1821, do not authorize the Justices of the Supreme Court to hold A COURT, unless a majority of the five Judges are present. The power here given may be exercised by one Judge, any where in the State, on any day of the year, except the Sabbath, and without the advice of his associates, and against the advice of a majority of the Judges. The Constitution as quoted, (see Ante pg. 384, § XXXI,) says: "That all writs OR OTHER PROCEEDINGS shall run in the name of the People of the State of New-York, and be tested in the name of the Chancellor, or Chief Judge of the Court from whence they shall issue." The street proceedings were never so tested under the old Constitution, for the plain reason that the Judges did not consider these matters AS BEING PROCEEDINGS in the Supreme Court. The Street power was a new office conferred upon the justices, viz., that of Road Commissioners. The Court say, that this is "A NEW POWER," and here the court are right—it is "A NEW POWER"—not an enlargement of the powers of the Court, nor an extension, for they never had had jurisdiction of these Street matters. The Mayor's Court of the city of New-York, in the Colony, and afterwards in the State of New-York, had a power in Street matters, but it was confined to the confirmation of the verdict of a jury by the judgement of the Court. In executing THIS "NEW POWER"—the Supreme Court cannot issue an execution, nor any "summary process," to enforce the payment of the assessment. The Court say: "Regarding this not as a new office conferred upon the Justices of that Court, the Constitutional provision is wholly inapplicable." Suppose the act of 1813 and 1816, instead of making a justice of the Supreme Court "ROAD COMMISSIONER," had provided that the command of the Militia of the State of New-York should devolve upon the Supreme Court of Judicature of this State, or upon any of the Justices of the Supreme Court—would it, we enquire, be "a new office," or only an enlargement of the powers of the Court? The taking command of the Militia by one of the Justices, is as much a judicial act, as the appointment of Street Commissioners under the act of 1813 and 1816. The new Constitution contains this provision: "Neither the Chancellor, nor Justices of the Supreme Court, nor any Circuit Judge, shall hold any other office OR PUBLIC TRUST." This language is plain and explicit, and if it means any thing, it means what its language imports.

We cannot do better in this part of our review, than to introduce some extracts from a very profound opinion delivered in the Court for the Correction of Errors, by one of the ablest Jurists in our land, in a case involving the construction of a section of the Constitution of this State. The learned Judge remarked:

"We live under a government of laws, reaching as well to the Legislature as to the other branches of the government; and if we wish to uphold and perpetuate free institutions, we must maintain a vigilant watch against all encroachments of power, whether arising from mistake or design, and from whatever source they may arise."

Again, the learned Judge in another part of his opinion, states:

"We are not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language."

"If we may get round this clause of the constitution because it stands in our way, or we do not like it, we may in the same man-

ner get round any other clause in that instrument; and thus all hope of fixing the boundaries of power by written instruments will be at an end."

In another part of the opinion of the same learned Judge, he remarks:

"In this way a solemn instrument, for so I think the constitution should be considered, is made to mean one thing by one man, and something else by another, until in the end it is in danger of being rendered a dead letter; and that too, where the language is so plain and explicit, that it is impossible to make it mean more than one thing, unless we first lose sight of the instrument itself, and allow ourselves to roam at large in the boundless field of speculation. For one, I dare not venture upon such a course."

"Written constitutions of Government will soon come to be regarded as of little value, if their injunctions may thus be lightly overlooked and the experiment of setting a boundary to power will prove a failure."

In a paragraph of this opinion the learned Judge uses this language:

"If the clause can be so construed," (here he refers to a particular case) "it may then, I think, be set down as an absolute fact, that the English language is too poor for the framing of fundamental laws which shall limit the powers of the legislative branch of the government."

Senator Ruger, in an opinion which he delivered in the same case in the same court, among other things, said:

"To maintain the Constitution, is our first duty; and if the Legislature has, for any cause, encroached upon that sacred instrument, or if an erroneous construction has been given to it, we are imperatively called upon to declare its meaning, and to assert its supremacy. Nothing can be more dangerous to our free institutions, or to the rights of the people, than to encourage doubtful interpretations of the Constitution, contrary to its more plain and natural import, as understood by the great body of its readers. The view taken of this question, by Mr. Justice Bronson, should be attentively read by every individual in our State, who considers the Constitution worth preserving." 4, Hill 418.

Senator Paige, in the same case and the same Court, said:

"For me, I cannot consent to 'patter in a double sense' with any part of the Constitution; especially not, with the Section under consideration. Through no agency of mine shall it be made to 'keep the word of promise to the ear, and break it to the hope. I trust that, in reference to the present case this Court will not hesitate to array itself in favor of the old and revered doctrine of strict construction; the only sound and safe doctrine for the governance of either Judges or Legislators. If Courts are allowed to depart from it, and venture upon the perilous experiment of substituting, for the clear language of the instrument, their own notions of what it ought to have been, or what its framers intended, there will be an end of written Constitutions, and of all attempts to fix limits to Legislative and Judicial power." Hill, 4, 383.

We quote from the opinion of Mr. Justice Cowen, in the matter of 39th Street, delivered in July, 1843—thus:

"*It is indeed difficult to see what the provision in the Constitution against a Judge holding any other office is worth to the people of the State, if it can be avoided by turning him into a Commissioner of highways, a Trustee of Colleges, &c.*, as the Legislature have in several instances done. We have also I believe been declared members of the Police Courts in the City of New-York. The office of Sheriff for that city or indeed any county in the State, might perhaps with as much constitutional propriety have been imposed, *as some of the duties I have attended to;* and had the question been made as I admit it should have been, a reconsideration by the Legislature would probably have ensued, and the evil of interruption in the regular business of the Court been prevented."

Mr. Justice Beardsley, in giving the opinion of the Court, says:

"The course of the federal judiciary in relation to an act of Congress of March 23, 1792, was pressed upon us to maintain the position that the statute of 1813, assumed to make the Justices of this Court Road Commissioners of the city of New-York.

"But the instances are far from being parallel. The Act of Congress was held to appoint the Judges of the Courts, *individually*, Commissioners to perform certain duties, and those duties not of a judicial nature, nor to be performed judicially. (See Hayburn's case and note, 2 Dallas 409.)

[Note.—By the Editor.—The Court are greatly in error in reference to this case.—We have the act of Congress of March 23d, 1792, before us, also the 2 of Dallas pg. 409, containing the opinions of the Federal Judges: The act of Congress is in 2d vol. laws of U. S., pg. 28. We copy from § 2 of that act, as follows: "That any commissioned officer" &c., "shall be entitled to be placed on the pension list" &c., "**as the Circuit Court,** of the districts in which they respectively reside may think just, and every applicant shall attend the **Court** in person, and every **Circuit Court,** upon the proofs aforesaid shall" &c. There is nothing in this language of the act of Congress that makes a difference in the conferring power upon the Judges of the Court **individually** as Commissioners, any more than in the New-York State law, if we understand the English language. We here quote from the opinions of the three benches of Federal Judges, which are stated at length in 2 Dall. 409 and 10, as follows: Iredell Justice, and Sitgreaves, District Judge, say:

"The power appears to be given to the Court only, and not to the Judges of it."

Chief Justice Jay, Justice Cushing, and Duane District Judge say:

"The act can only be considered as appointing *Commissioners* for the purposes mentioned in it, by **Official** instead of *personal* designation."

Wilson and Blair, Justices, and Peters, District Judge, say:

"It is a principal important to *freedom*, that in government, the *Judicial* should be distinct from, and independent of, the Legislative department."

The opinions of the Federal Judges thus quoted, are in direct opposition to the views expressed by the New-York Supreme Court, in their opinion in this case. [Their opinions are in full on pages 286 and 287 of this volume.

The Supreme Court at the January term of 1844, in the 39th Street and other Street cases, decided, that the Justices of that Court in appointing Commissioners of Estimate and Assessment, and in confirming their reports, act as *Commissioners*, and not as a *Court*. Mr. Justice Bronson delivered the opinion of the Court, and says:

"Bronson, J.—The Statute in relation to the opening and laying out of Streets, Avenues, Squares and public places, in the city of New-York, has been in operation thirty years; (2 *Revised Laws*, 342, 408, § 177 192;) and the question is now distinctly made, for the first time, whether we have the constitutional right to exercise the powers which the Legislature has attempted to confer upon us. But it is never too late to appeal to the fundamental law; and the question is none the less entitled to a careful examination because it touches our own authority. If, by common consent, and without having our attention called to the subject, we have heretofore taken cognizance of matters which did not rightfully belong to us, that cannot be a good reason for going on in the same way after our authority has been plainly drawn in question.

"The Constitution declares, (*Art.* V. § 7,] that "the Justices of the Supreme Court shall hold no other office or public trust," and the question is, in what character do we act in these street cases. Although the power to appoint Commissioners of Estimate and Assessment, and to review their proceedings, is, by the words of the Statute, conferred upon the "Supreme Court," it has been fully settled that we do not act as a Court, but as Commissioners, to discharge this special trust or office. The question was considered in the *Matter of Beekman Street* [20 *John*, 269,] which was decided within a few years after the law was passed. It was there held, that our powers were derived wholly from the Statute, and were not incident to our judicial duties; that we do not act as a Court, but as Commissioners; and that the general powers and jurisdiction of the Court could not be brought into exercise. The

case was likened to that of a judge sitting as a Commissioner under the insolvent laws. The same doctrine had been laid down before this Statute was passed, under the act of the Legislature conferring similar powers upon the Albany Mayor's Court. *Stafford* vs. *Mayor of Albany*, [7 *John*, 541.] It was there held, that the proceedings were not of a judicial nature; that there was no analogy between them and the judicial proceedings of a Court of Record in the progress of a cause; that the Court acted as Commissioners, and when an assessment had been confirmed, the Court was *functus officio*, and had no power to set aside the proceedings. In the *Matter of the Mayor of New-York*, [6 *Cow.* 571,] it was again remarked that we do not act as a Court in these cases, but as Commissioners appointed by the Legislature; and this doctrine has uniformly prevailed down to the present day. [*Matter of Canal Street*, 11 *Wend* 154; *Matter of Mount Morris Square*, 2 *Hill* 14.) There have been other cases to the same effect, which, as they contained nothing new, have not been reported. The principle has been fully carried out, by refusing to set aside the proceedings in Street cases under any circumstances, on the ground that while sitting as Commissioners we had no power to re-call that which had once been done. When the parties have desired a review in a street case the Supreme Court has issued a *certiorari* to the Justices of that Court as Commissioners; and after having thus got the matter before us as a Court, and affirmed what we had previously done in another character, a writ of error has been brought in the Court of Errors. In these and all other forms in which the question has arisen, it has been uniformly held, that in executing the Street law of 1813, we are but Commissioners discharging a special trust. The principle has been settled more than thirty years, and it is now quite too late to call it in question.

"The same doctrine has been laid down by the Federal Judiciary. By an Act of Congress passed March 23, 1792, [2 *Bis.* 259,] the Circuit Courts of the U. S., were directed to inquire into and decide upon the claims of certain persons to be placed on the pension list. The note to *Hayburn's case*, [2 *Dall.* 409,] shows that several of those Courts declined to execute the law, on the ground that the duties which had been assigned to them were not of a judicial nature. There was no disqualifications to hold other offices, as there is under our Constitution. The Circuit Court for the District of New-York, composed of Chief Justice Jay and Judges Cushing and Duane, said the Act could only be considered as appointing Commissioners for the purposes mentioned in it, by *official* instead of *personal* description; that the Judges regarded themselves as being the Commissioners designated by the Act, and therefore as being at liberty to accept or decline that office. As the object was a benevolent one, and the Judges wished to manifest their respect for the Legislature, they accepted the trust. The Justices of this Court seem to have acted upon the same principle when they accepted the office of Street Commissioners, under the New-York law. Chief Justice Spencer, in delivering the opinion of the Court in the *Matter of Beekman Street*, (20 *John*, 169,) said, "it might be a question how far the Legislature can impose such duties on the Judges." But he entirely overlooked the constitutional inhibition against holding any other office, which was substantially the same then as it is now, (*Const. of* 1777, *Art.* 25.) Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office, and execute the Statute. The further inquiry is now presented, whether we have any power to act in the matter. Upon that question I cannot entertain a doubt. The Constitution having declared that the Justices of this Court shall not hold any other office or public trust, we cannot accept this appointment, however willing we may be to carry out the wishes of the Legislature. If we can execute the office of Street Commissioners for the city of New-York, the like powers may be conferred upon us in relation to any other town or county; or the duties of the office of Comptroller, Treasurer, or Sheriff, may be assigned to us; and thus the constitutional disqualification would be rendered a dead letter. For one, I can never give such a construction to the fundamental law as will amount to practical nullification of its provisions. Indeed there is little room for construction in the case. If, in executing this Statute, we act as Commissioners appointed by the Legislature, and that point has already been settled, it is then almost too plain for discussion, that we are exercising another office or public trust, than that of the Justices of the Supreme Court."

[Note.—By the Editor.—Mr. Justice Cowen concurred in this opinion, and it was among the last acts of the life of that good man, he died four days thereafter—a Judgement thus settled should never have been disturbed—the order for re-argument was wrong."

Mr. Justice Cowen, in the matter of 37th Street, in the July Term of 1844, gave a very strong opinion against the Constitutionality of the Street law which we have already made extracts from.

The Court next say:

"But if I am correct in what has already been advanced, the Statute of this State devolved nothing upon the Justices of this Court as individuals, but *delegated* Judicial powers to the Court to be exercised in a *judicial* way."

[Note.—By the Editor.—But the Court is not correct in what it has already advanced, as we most respectfully suggest, and as we think we have clearly shown, and as for the "*delegated* judicial powers," we do not understand the meaning of the phrase, in the sense in which it is used.

The Court have said in the former part of this opinion, that "The *Corporation* of New-York having determined to open a Street or Avenue, apply for the appointment of Commissioners of Estimate and Assessment.—These Commissioners are but "aids to the Court." Is Road making the legitimate buness of a Court of Justice? Is that tribunal to send out its "*aids*" to make high ways? Surely it is a new business for a Court of Justice to perform, and so far from being Judical, that we should term the proceeding extra Judicial.

In Massachusetts, the Town Laws provide that a man who has entered into wedlock, subsequent to the next preceding annual Town Meeting, shall, for the following year, be, by virtue of said marriage, one of the Hog Reeves of the town, and the practice is so strict, that no station, high or low, exempts the incumbent from the performance of the duties of Hog Constable, when called upon by the humblest citizen. A Judge of the Court, if he has entered into wedlock, within the next preceding twelve months, is a Hog Reeve, by virtue of the marriage, and must perform the duties of it for one year, but if he refuses to perform this duty, we do not apprehend that he would thereby make himself obnoxious to impeachment, for the duty of a Hog Reeve, is not judicial, neither is it an enlargement of the Judicial powers of the Judge, but it is in the language of the Court 'a new office.' The illustration is a humble one, but nevertheless a good one.

As to the appointment of aids by the court we not understand exactly what is meant by the term. The Governor appoints military aids, and the appointment is more a compliment, than the imposition of a duty. Military commandants appoint aids, and the duty of all these aids is military duty, they are therefore military officers. Thus the aids of the Court it would seem from the opinion of the Court to be judicial officers, and their duty judicial, and therefore must be appointed by the governor and senate under section 7 of article 4 of the Constitution. [See Ante p. 388.] The aid that these commissioners render to the Court would seem to require examination. They aid the court in determining the value of the property to be taken for public use, for making a road—property which the Court never see, and perhaps never heard of. What does the court know of the value of the property to be taken?—We answer, the court is totally ignorant of its value, for the diagrams which accompany this review and the testimony taken before the Senate Committee show that the commissioners were governed by no rules or principles of valuation, that they make large awards to one person on one avenue for land taken, when that person owned all the land fronting on the avenue each side of it and two hundred feet back from each line, and therefore had nearly all the benefit, while on another, a person owning half the avenue in front of his land and his land running back but one hundred feet from the line of the avenue, is assessed more than his land is worth. Now both these assessments were confirmed by the court, and on the principle upon which these assessments were made illustrates the opposite extremes. The High

CHANCELLOR of our state, in a case which was brought before him in the matter of the estate of Mr. Messeroles infant children, who were assessed out of house and home, said:

"It is pretty evident in this case, that an assessment has been made on the lands of the complainants, which must probably produce a total sacrifice of the property assessed, unless they can obtain relief, either in this court or the Legislature. Judging from the facts before me, I cannot see how it was possible for the Commissioners of estimate and assessment, to have come to the conclusion that the lands assessed, could have been benefitted to the amount of about $14,000 by the contemplated improvement; even upon the principles upon which they proceeded relative to the Bedford Road as a public highway, already laid out and established."

Chief Justice Nelson who gave an opinion in this case in the court for the correction of errors, voted to reverse the decision of the Chancellor, who had taken jurisdiction in this case, and said that the Chancellor had been carried away by the peculiar hardship of the particular case, and added that "these hard cases make bad precedents." What a commentary upon the acts of these "aids of the Court"! Is it to be wondered at that the hardship of this particular case operated upon the mind of the Chancellor, who is himself the father of a family—that he should be moved to pity in such a case? The wonder is that every mind that was acting in this matter in the high court had not been similarly influenced, for it may in truth be said that public sentiment was shocked by the vote given in the Court for the Correction of Errors to reverse the decision of the Vice Chancellor of the first circuit which had been sustained by the Chancellor, and a great surprise was manifested that the Chancellor should have expressed a subsequent opinion that his decision first made, was wrong, and we think this expression of the great Equity Judge, influenced the vote of themembers of the Court, although we make the suggestion with the most profound respect.

The Court say.

"It was objected, that by these proceedings private property would be taken for public use without making just compensation, which is forbidden by the Constitution, (Art. 7. Sec. 7.) But no property belonging to the plaintiff was taken directly for the use of the public; his land does not **even adjoin the avenue** to be opened."

NOTE.—BY THE EDITOR.—The taking of private property for public use is restricted in the section of the Constitution quoted by the learned judge, and that restriction is without any qualification. We addressed an enquiry to a very learned and able jurist, three or four years ago, asking his views upon this provision of the Constitution, and upon the practice under it. His reply is a private letter, and is therefore sealed up against quotations for this public review. We shall therefore give our own views upon this provision of the Constitution, and in doing so, we will remark that they are wholly our own. "Private Property" means all that is called "real and personal estate," or "real and personal property," and the statutes have defined what these phrases mean in the various acts in which they have been used. It is not the mode or manner in which "*the forbidden thing is not to be done*," that the Constitution restricts—but it is that it shall neither be done "directly or indirectly;" that it shall not be done at all—*at all*. The attempt in this case to take General Striker's land, and give it to Ann Striker, the Fietners, the Counsel of the Corporation, the Surveyor, the Commissioners, &c., &c., is doing indirectly what the Constitution forbids, for in this case the Corporation pay these parties we have named, and George Lovett repays the Corporation, and the Corporation gives Lovett a lease (more extensive than any known fee) of General Striker's patrimonial estate, for a lease reaching so far into futurity that it is impious to anticipate it (and while speaking of this we may add that the Corporation have sold land for assessments for the term of two million of years. What trifling with futurity). Now this proceeding of paying the money by the Corporation and taking the money back again from Lovett, and giving Lovett the land of General Striker, is only one proceeding, and the same proceeding, *sealed up*, as the Court have suggested by the *conclusiveness of the lease to Lovett*, for such is the gist of this whole opinion as we gather it. NAPOLEON, in the days of his most extended power in the administration of the civil government, never acted thus, and the humble dwelling of the humble inhabitant of France is still remaining a MONUMENT of the sacredness of private property in that empire, and of the inviolability of the laws of the realm made for its protection; but in the martial operations of that distinguished military chieftan, himself and his aids, both, disregarded the rights of private property. The penalty of this violation is written in the history of the downfall of the Military Emperor, *for the Emperor and the General were one and the same man.*

We have already in this review quoted the remarks of Mr. Justice Story, in his Commentaries, on a provision of the same import contained in the Bill of Rights.

The account of a proceeding in the High Court in the Kingdom of Prussia, not long since, deserves a place in this part of our review, and for which we are indebted to the Albany Daily Advertiser. It is as follows:

"Some time since an effort was made to get rid of a windmill, the close approximation of which to the Royal Palace rendered it in some degree a nuisance, and certainly an eyesore. Overtures were accordingly made to the sturdy yeoman for the purchase of the obnoxious property; but whether it was that the man was possessed of a strong spirit of obstinacy, or was really too deeply attached to his old family habitation, the result was that the offers, though tempting, were again and again refused.

"There are generally some individuals attached to a court who are ready to suggest remedies, direct or indirect, for inconvenience or annoyances offered to royalty. Accordingly, upon a hint from some minion, a lawsuit was commenced against the obstinate miller for the recovery of certain sums alleged to be due for arrears of an impost on that portion of the crown land which it was suggested was occupied by the mill in question. The sturdy holder of the "toll dish" was not wholly without friends or funds, and he prepared vigorously to take his stand in defence of his rights. The question came in due time before the courts of law, and the plaintiff, having completely failed to establish any right on behalf of the crown the miller obtained a verdict in his favor, with a declaration for payment of his costs in suit. This was certainly no small triumph, and merrily went round the unfurled sails of the old mill, and well pleased, no doubt, was the rough owner with the sound as they went whirling and whizzing under the influence of the gale, which certainly seemed to blow strongly in his favor. But he was not the first who has found that when drawn into a lawsuit, particularly with so formidable an opponent, a man is more likely to "gain a loss" than escape scot free. What with extra expenses, interruption of business, and rejoicings after the victory, the miller found himself pressed by considerable difficulties, and after in vain struggling a few months against the pressure, he at length took a manly resolution, gained access to the monarch's presence, and, after roughly apologising for having thwarted His Majesty's wishes, frankly admitted that his wants alone had rendered him compliant, but that he was prepared to accept the sum originally offered for the property. The King, after a few minutes conversation handed a draft for a considerable amount to the applicant, and said, "I think, my honest friend, that you will find that sufficient to meet the emergency; if not come and talk to me again on the subject. As to the mill, I assure you, I will have none of it. The sight of it now gives me more pleasure than it ever occasioned pain; for I see in it an object which assures me of a *guarantee for the safety of my people, and a pledge for my own happiness by its demonstration of the existence of a power and principle higher than the authority of the crown*, and more valuable than all the privileges of royalty."

The same respect for the sacredness of private property is manifested by the King of Belgium, for in the vicinity of the palace of the King is a dwelling which obstructs the view from the windows of the audience room; but that monarch will not tolerate any proceeding to annoy the occupant, to induce or compel him to part with his house, which is his home.

The taking of the property of one citizen, and giving it to another, is not a proceeding recognized by any civilized code, and we trust never will be, and although such a proceeding may meet with temporary favor, yet we trust it will never find advocates in a land which boasts of a written Constitution—of a free government.

Despotism is despotism, in any and every country, whether the government is administered by a King, or a President. The flower which adorns the cultivated garden and gives out its aroma to the morning atmosphere, is as sweet and lovely when called by one name as when called by another, and that bane of civilization, despotism, is oppression and injustice, whether it comes at the hands of Commissioners of Estimate and Assessments, or at the hands of the invading chieftain decked in his tinselled adornings and ornamented plumes.

The court say:

"Upon the assumption that the opening of this avenue would enhance the value of his property, a charge was imposed upon it to pay a part of the expenses thus incurred.

This was local taxation for a local purporse, and to be applied as a legitimate and ordinary exercise of the taxing power. (8 Wend. 101. Livingston *vs.* The Mayor of New-York. 3 Paige 45. Beekman *vs.* The Saratoga and Schenectady Railroad Company.)

NOTE BY THE EDITOR.—Mr. Justice Beardsley says: "Upon the assumption that the opening of this Avenue would enhance the value of his *property*, a charge was imposed upon it to pay a part of the expenses thus incurred." Is this not indirectly taking private property, if the value was not enhanced by the charge, and this charge was imposed by the "aids" of the

court in their judicial capacity, "exercised in a judicial way."

Again the court say: "This was local taxation for a local purpose, and to be applied as a legitimate and *ordinary* exercise of the taxing power." The imposition of taxes is the exercise of a power that does not pertain to a Court. Local, unequal taxation, for making a public highway is a new proceeding, and this avenue is intended for such a road—a great highway to connect New-York with Albany; and to pay for the ground over which it is to pass, the farming land of a citizen is taxed more than its value. This is "local taxation," with a vengeance. It will be seen by the diagram which will be found at the end of this review, that the land of General Striker, did not come within two hundred feet of the avenue, and that it wes entirely shut out from the avenue except by an entrance through a narrow lane. The opening of this avenue was not needed, neither public necessity nor public convenience requires it to be opened. The learned judge himself says in reference to General Striker's land, which is assessed $3,927.00, that:

"His land does not even adjoin the avenue to be opened."

What a commentary this argument of the Court to excuse one proceeding, at the expense of the whole equity of the case. We are very glad to use this piece of argument of the learned judge to illustrate the assessment, and repeat in the language of the court that "his land did not even adjoin the avenue to be opened," and yet is assessed $3,927.00, by "the aids of the court."

The court say:

"There is no constitutional impediment to the imposition of such local taxes. Indeed in most instances the burthens of taxation come in this form.

"In towns, individuals are taxed to make and repair the town highways, and in cities to grade and pave streets. Each town has its local tax to pay town expenses, as also has each county to meet county charges.

NOTE BY THE EDITOR.—The learned judge seems to have lost sight of the very recent decisions of the court on this very point, in which the whole court were agreed. The case we allude to is that of *Sharp* vs. *Speir*, in a Brooklyn case, decided at the January Term of 1843, where the court say: "Our laws have made a plain distinction between taxes which are burdens or charges imposed upon persons or property to raise money for public purposes, and *assessments*, for city and village improvements, which are not regarded as burdens, but as an equivalent or compensation for the enhanced value, which the property of the person assessed has derived from the improvement." This distinction had been made in several statutes long before Brooklyn was incorporated, and was fully exemplified in the matter of the mayor of New-York. (11 Johnson 77.) There several churches in the city of New-York had been assessed for the supposed benefit which they would derive from the enlargement of Nassau Street, and they denied the legality of assessment because it has been expressly enacted that no church or place of public worship "shall be taxed by any laws of this State." But the objection was overuled and the exemption claimed by the churches was denied, on the ground that the assessment could not properly be regarded as a tax. This case apparently goes the whole length of deciding the one now before us. The authority is to sell for a tax, and the defendant shows nothing but an assessment for a village improvement. In *Bleecker* vs. *Ballow*, 3 Wend. 263, the question was upon an assessment for patching and paving a Street, and *Savage* Chief Justice, said "There is no doubt the assessment in question was not a tax, that being a sum imposed, as is supposed for some public object."—*This case is fully reported on p. 249 of this volume.*

If the learned judge had, when practising at the bar, been called upon by a client to draw a lease with covenants for the lessee to pay taxes, he would have used the words ordinary, and *extraordinary*; and why the *extraordinary* if he recognizes every proceeding in assessments and taxes as "ordinary"?—This amount when imposed on the 6th of August, 1836, amounted to the sum of $3,927.00, the interest from that time to the day of sale, was $656,66. The charge of advertising $15; of certificates of sale to the bidder $9; charge of leases executed to the bidder, $12. Interest on the assessment, and interest calculated upon the interest thereon, to the pretended sale, at the rate of 20 per cent. per annum, and interest also on the charge for advertising, certificate and lease at the same rate being for two years $1,847.80, making $6,467,46, Two per cent. interest on the amount of pretended sale, from the expiration of the two years to the present time, $92.36; total, $6,559.82. The land is not worth this sum. Is this, we enquire "*ordinary taxation*"?

We notice in the proceedings in this suit an error in the advertisement for redemption, as stated in the printed case for one of these lots which was the particular property in dispute, is set forth as having been sold for the term of one thousand years for an assessment, interest, and charges, altogether amounting to $2,053.32, when it should have been $2,354.84.

The learned judge has also overlooked the provisions of the very act under which Gen. Striker's land was sold, viz. act of April 12th, 1816, for that act makes a clear and accurate descrimination between a tax and an assessment, a distinction that cannot be mistaken by any person who carefully reads the act, also in Sec. 7 of Chap. 122 of the laws of 1830, in which the words taxing or assessing are used as meaning two distinct proceedings.

The Court say:

"These are all modifications of the taxing power, and quite as obnoxious to a constitutional objection, as is the assessment of lands benefitted by opening a street, to meet the charge of such an improvement."

[NOTE.—BY THE EDITOR.—The learned Judge, we respectfully suggest, errs greatly in the views he expresses in the last preceding paragraph, and discovers a want of accurate knowledge of the odious and abominable character of New-York Assessments.—The accompanying diagram of the land of Anson G. Phelps, Esq., on the 1st Avenue, where both his land is taken and an assessment put upon him; and that of Assistant Alderman Townsend, in the 7th Avenue, is an illustration of taking private property without compensation, and of the exercising of what he terms the **Taxing Power**, which requires no comment, for we cannot make black blacker. County and Town taxes are imposed by per cent. equally on all the property liable to taxation—it is not taking one mans' property and giving it to another, as in these New-York Assessment proceedings.

The Court say:

"These constitutional objections were elaborately argued at the bar. I am aware that adverse judicial opininions have been expressed upon one of them. The objections have received the best reflection I could bestow upon them, and the result in my mind is that neither objection is well taken, and they should be overruled.

"To establish his defence the defendant was bound to prove—

"1. A valid judgement confirming the report of the Commissioners, and thus imposing a charge on the land sold.

"2. A regular sale of the land so charged under the authority of the judgment.

"*First.* The rule as to all courts of limited and special authority is, that the facts necessary to give jurisdiction must be established by proof. No presumption that the court has jurisdiction is indulged, proof of the facts is indispensable.

"In order to give jurisdiction in this case, it was necessary that the Corporation of New-York should have decided to open that part of the Ninth Avenue which has been mentioned, and should thereupon have made, or caused application to be made, to the Supreme Court, for the appointment of Commissioners. Upon such application the court was authorized to act upon the subject, and make the appointment as desired.—(2 R. L. 1813, p. 408, 409, § 177, 178.)

[NOTE.—BY THE EDITOR.—There is a provision in the Revised Statutes, as follows: "Every public highway already laid out, that shall not have been opened and worked, within six years from the time of its being so laid out, and every such highway hereafter to be laid out, that shall not be opened and worked, within the like period, shall cease to be a road for any purpose whatever. (R. S. Vol. 1, p. 517, § 102, and 99.) This section is a re-enactment of the Revised Laws of 1813, (2 R. L. 277.) The Revised Laws contained exceptions to the operation of this provision, but we have not seen any such exceptions in the Revised Statutes, although it is possible and even probable that there are such exceptions—but there ought not to be.

The Court say:

"Testimony of various kinds were given to establish these facts.

(1.) The defendant's counsel offered an exemplified copy of a rule of the Supreme Court, entered in the Clerk's Office at Albany, on the eighteenth of December, 1835, appointing Commissioners of Estimate and Assessment, in the matter of the application of the Mayor, Aldermen, and Commonalty of the city of New-York, relative to the opening of the Ninth Avenne, between Forty-fifth Street and the Bloomingdale Road, in the Twelfth Ward of the said city. This rule recites that the said Mayor, Aldermen, and commonalty, presented their petition to the court by Robert Emmet, their Attorney, which petition is set out in substance, and states that said Corporation had deemed it desirable to open said Avenue, the same being an Avenue laid out under the Act of 1807, describing the same, and that said Corporation had accordingly ordered the same to be opened, and thereupon praying the appointment of Commissioners; the rule then states, that on motion of Mr. Emmet, of counsel for the petitioners, three persons named were appointed such Commissioners. The exemplification was in due form by the Clerk of the court, at Albany. To the reading of this in evidence, the counsel for the plaintiff objected on several grounds:—that it was not the original order of the court; that if made, the court acted as Road Commissioners, and not as a court, and none of their acts can be proved in this manner. These objections were overruled, and the paper read in evidence, to which the counsel for the plaintiff excepted.

"The defendant's counsel also offered in evidence a like exemplification of said petition, which thereby appeared to have been filed with said Clerk on the said 18th day of December, 1835.

"This was objected to on the ground that the original should be produced, and its execution proved, which it was urged could not be proved by the Clerk's certificate.—This was overruled, and the testimony was received, to which an exception was taken. The substance of the petition has been stated."

Mr. Webster again in his argument in this case, says:

"I now, may it please your honors, proceed to the points in the case; I will say, in

the first place, that some of them I shall leave as having been already alluded to.—The point was raised about the regularity as to the exemplification of the papers, It strikes me that the question is involved in the largest sense. If the court in these assessments, act as a court, and these papers are before them as a court of record, in the custody of their clerk, his exemplification of them is regular. If not, it is proper that the original paper should be produced."

The Court say:

"(2.) Robert Emmet testified that he was counsel for the said Corporation, and acted as such in all the proceedings in the opening of said Avenue; that he first prepared a petition, to which testimony the plaintiff's counsel objected, as it had not been shown that the witness had any authority to prepare it. The witness was allowed to proceed, and testified that he presented the petition to the court, and as the counsel for the Corporation, moved the appointment of Commissioners.

"(3.) Certain resolutions were offered to be read from a book, but the plaintiff's counsel objected, 'that there was no evidence that the book was printed by the authority of the Common Council.'

"Mr. Emmet gave testimony on that subject, and the resolutions were read without further objection. One was approved by the Mayor the 29th of July, 1835, and resolved that the said Avenue be opened, and directed the counsel of the Corporation to take the necessary legal measures for that purpose.

"The other was approved on the 16th of November, 1835, and directed that the opening of said Avenue be carried into effect on the first day of April then next.

"Copies of these resolutions, certified by the Clerk of the Common Council, were also read in evidence, without objection.

"A witness called and examined on the part of the plaintiff, testified that he was Assistant Clerk to the Common Council, and had with him all the papers in relation to opening said Avenue, which were filed with the Clerk of the Common Council, which were a petition, remonstrance, reports of committees, and the aforesaid resolutions.—These papers were read in evidence. It appeared that the approval by the Mayor of the resolution of 29th July, 1835, was written on the remonstrance, but all the papers were attached together, and in that form sent to the Mayor, and came back with his endorsement, "Approved, July 29, 1835," signed by the Mayor, written on the remonstrance, as has been stated. But on the 3d of August, 1835, the Mayor sent a formal message, giving notice that he had approved the said resolution. This witness stated that it did not appear from any entry in the minutes that the resolution had been ordered to be printed, nor that the resolution was passed by ayes and noes.

"An objection was made to the resolution of the 29th of July, 1835, on the ground that it had never been approved by the Mayor, and so was invalid; that the Mayor's approval must be deemed to have been an approval of the remonstrance on which it was written, and not of the resolution thereto attached.

"This objection is merely formal; the papers were together, and the true meaning of the endorsement of the Mayor could not be mistaken. But if it could have been, the message left no doubt on the subject, and was alone sufficient for the purpose."

NOTE BY THE EDITOR.—The learned Judge says: "This objection is mere formal." If written Constitutions and mandatory Statutes are thus to be construed, then there is no use of legislation, and both the Constitution and the Statutes are, to all intents and purposes, a dead letter.

By the 7th section of the first art. of the Constitution of the United States, it is provided that, "Every bill which shall have passed the House of Representatives and the Senate, before it become a law, shall be presented to the President of the United States.—If he approves of it, he shall sign it," &c.

By the 12th section of the first art. of the Constitution of this State, it is provided that, "Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor, if he approve it, he shall sign it," &c.

By the 12th section of the amended Charter of New-York, it is provided as follows: "Every act, ordinance or resolution which shall have passed the two Boards of the Common Council before it shall take effect, shall be presented duly certified to the Mayor of the city for his approbation. If he approve it, he shall sign it," &c. (Chap. 122 of Laws of 1830.

The three provisions above stated can have but one construction, and this a strict construction. If the President of the United States, instead of signing the bill passed by Congress, should sign the Remonstrance presented against its passage, the Constitution would not be complied with, and the bill, if returned before the expiration of ten days, would be a nullity, and the same would be the consequence of a similar proceeding in the Legislature of this State, or in the Common Council of this city. Should the President afterwards transmit a message to Congress, saying that he had signed this particular bill, it would be most certain that he was mistaken. A merchant who sends his customer's Note to the Bank for discount, and should, instead of endorsing his name upon the Note, endorse his name upon the envelope, he would not, by any man of business, be considered as having endorsed the Note, nor do we think the learned Judge would, as a Director of the Bank, consider the name written on the wrapper as a valid endorsement upon the Note, to be discounted on the credit of the endorser. Chief Justice Savage says: "When the Statutes point out a form, that form must be followed, or the Statutes are not complied with." It is true, the Mayors of New-York, between 1834 and 1840, were in the habit of writing their approval of ordinances upon the wrapper, or envelope instead of the ordinances, but difficulties grew up, which showed that this slovenly and unauthorized practice would not do, for the ordinances and wrappers did not always agree. Practice, however long indulged, will not repeal a Constitution, or a Statute. The learned Judge seems to favor the validity of this endorsement of the Mayor's name upon the Remonstrance, as being a valid approval of the Resolution, which Resolution, it would appear, from his not signing it, that he never saw it. Mr. Valentine, in his testimony before the Circuit Judge, says, that the Mayor's message was in the hand-writing of Mr. Williamson, an Assistant Clerk in the Common Council, therefore, we add, he was not a Clerk in the Mayor's Office. This makes the matter still worse, for had the Mayor's Clerk written the message, it would have had some more plausibility about it. The learned Judge will find on pg. 60, of Senate Document No. 100, of 1842, in the appendix of the Report of the Senate Committee appointed by that body to investigate assessment abuses in the city of New-York, several cases where the Mayor approved the confirmation of assessments which had never been signed by the Assessors, and one of them amounted to $43,922.25 The Mayor's name was written on the outside.

What is the presumption in such a case? Would the learned Judge allow the Books kept by an individual to be read in evidence in any suit in support of his claim, after the fact was established that such books were full of errors? We think not.

The Court say:

"It may be that the resolution for opening this Avenue should have been passed by ayes and noes.—(Laws, 1830, p. 126, § 7.) But the statute on the subject is directory, and the act of the Corporatiou is not a nullity because it was not passed in that form. The essence of the thing was that the Corporation should so determine; the manner of ascertaining or expressing that determination was not essential to its validity.—(2 Hill. 20. In the Matter of Mount Morris Square, 9 Paige, 24. Wiggin *vs.* the Mayor of New-York.) And as to the necessity of publishing the ayes and noes, resolutions, &c., as is directed by the above section of the statute it is enough to say, that whether published or not, cannot be material to the question of jurisdiction. Had they been published, the fact need not have been shown to the court when application was made for the appointment of Commissioners. Indeed that application might have been made immediately on the adoption of the resolution, and before a publication could have been made. But the fact is irrevalent to the question of jurisdiction. (See the cases last above.")

Mr. Webster, in reference to this part of the case in his argument, says:

"There is another question respecting the legality of seizing, arising out of the charter, which I cannot omit stating. By the 7th section of the amended charter, it is provided that the boards shall meet in separate rooms, choose clerks, &c., and each board shall keep a journal of its proceedings. The doors shall be open, except when the public welfare requires secrecy, and all resolutions or reports of committees which shall direct any improvement involving an appropriation of public money, or taxing or assessing citizens, shall be published immediately after the adjournment of the board, in all the papers employed by the corporation; and it goes on to say that the question, in all such cases, shall be taken by ayes and nays.

"There has been some difficulty in the conclusion of a separate provision. I confine myself to this one,—the matter of publishing the report or resolution appropriating public money, levying tax, or laying assessments. It is agreed that this was not done. There is no proof that it was so, and it is said it was never done. Here was a resolution and a report, recommending this improvement. Why was it not published?—Here was a solemn injunction on the city government, emanating from the highest authority of the state. Two answers were given. It is said this report and resolution did not fall into the category—because the report recommends a distinct improvement,—it does not mean to apply to cases where public money is paid out of the treasury, or to assess the whole of the people to replenish that treasury. I have two answers to that, in either of which I may rest this part of the

case. One is allowed by the counsel himself, because he said in his argument that this improvement did involve the appropriation of public money, for the moment the report of the commissioners awarding the owners was made, that moment they had a claim on the public treasury. This city itself is liable for the sum awarded to the owners for land taken for public improvements, and an action may lie for it. It could only be paid by an appropriation out of the public money, because the man to whom an award is made is not obliged to wait a day for it, although to be finally paid out of his neighbor's property. The moment the report is confirmed, it necessarily involves an appropriation of public money. This answer, then, I trust, is a good one, for I am indebted to the learned counsel for it. But I have another, equally respectable, but higher in authority. I mean your honorable court. Your honors say taxing is not assessing. In the Brooklyn case of Sharp v. Spear, this court said it is a matter of settled law that there is a difference between the term tax and assessment; that one was peculiar to the improvement, and never applied to public tax. If the term assessing be used, and there be a settled signification to it, it is to be presumed it will be allowed, for sure, sure, your honors, why should we refuse this to another part of the case. They say it is important to the public to know how taxes are placed, not the individuals, who are taxed out of their fortunes. This tax, every body finds out, by some means or other, as soon as he desires. But this assessment, which is laid on behind a man's back, he has no interest in its being made public! Strange! Strange, that that object should be the one, according to the argument, which the statute does not include. Then this is involving appropriations, and the proceeding means just what the statute says, and the resolution should have been passed as the statute requires. But there is another point. It is said that these injunctions are only directory! not made to be considered peremptory as to conduct, but only directory. It would be very strange if in laying down a statute of rules which permit others by summary process to take away a man's property the most vital of those rules should be observed, or not observed, by those interested. What is the value of this provision in the charter if only directory? What was the object? Was it merely as a matter of curiosity that the public might see the proceedings? and as to the ayes and nays was it only to read, as we would the proceedings in congress, to learn the opinions of the members. I have read the discussions of those who have formed that charter. They said it was that the individual interested may know what is done affecting his interests. The propositions in this part of the charter were drawn and prepared by the citizens of New-York. They sought security against those assessments, and they found their security in these ayes and nays, so that they might have a chance to be heard. The whole argument has proceeded on a hypothesis which overlooks the main ingredient in the case. They are to be published to give notice when it is done. The provision in the statute is perfect, that while these things are under consideration of the council they shall be published. Any resolution or report recommending expenditure involved in an improvement shall be immediately published on the adjournment of the board. It could not be acted upon as a principal of law, and finally disposed of, unless it be published for the benefit of those interested. This report was adopted on the 20th of July. It lay without having received the sanction of the Mayor till the 29th of July. The requirement of the statute is, that the report and resolutions proposing it should be published immediately, and Mr. Striker was entitled, among the rest, to these nine days to know how he might protect himself. If the case were doubtful, 10,000 reasons stand up to demand that the proclamation should be made. The man has no notice. He is proceeded against to the forfeiture of his freehold. In the act of 1813 he has no other notice. Is not this to be construed favorably, particularly where those who are interested should have the earliest notice. In the 1st Burroughs, respecting the appointment of overseers of the poor. In this case the 43d Elizabeth related to the number of persons who should be appointed overseers. Among other remarks the ground was taken this provision of the statute was merely directory, and might be disobeyed, but the court said not. They said the 43d Elizabeth is the great magna charta of the poor law system, and lays down a course of proceeding which must be observed. I do not think we are allowed to consider any one of these provisions as merely directory. They are all essential to be observed, and all requisites of law, because they arise under the law. This is one of the great fundamental maxims of the regulations of the corporation, and it would be dangerous on general accounts to disregard such regulations, on the ground that they are not requisite, but only a bye law. And what realization of the sentiment entertained by the convention will it be to say that they should not be published after all. Another ground in that case, was the court holding that the parish had an interest in paying less rather than paying more, and as it was an interest to which others were concerned, it was not directory but binding.

"My learned friend argued, in the next place, these proceedings must be regarded as having been confirmed by your honors—that we could not go beyond the order by which your honors accepted and confirmed the report. I suppose a great deal of time need not be consumed in that part of the case. Acting upon the report has nothing at all to do with the proceedings of the common council. They were never brought to you for confirmation. No law requires them to be submitted to the court at all. The first that the court knows of such a proceeding is that the improvement has been decided upon, and that the assessment has been voted to be made, and your honors are asked to execute the statute duty of appointing commissioners. That is all. The petition says that it is necessary for the public convenience to open the avenue, and after some other recitals they say that they have ordered the said avenue to be opened, and they therefore ask this honorable court to appoint commissioners of valuation and estimate to assess the property. The court has nothing to do in the world with the appointing of these commissioners. How can your honors approve? How can your honors approve what the legislature of this city has done? They proceed as a legislature and expect their acts, even if invalid, to be passed by this tribunal. These observations dispose of that branch of the argument which respects the right to sell, the validity of the proceedings, and supposing the law as constitutional under which Mr. Striker lost his patrimonial inheritance."

NOTE BY THE EDITOR.—We will illustrate Mr. Webster's argument by giving some of the debates in the Convention, and some extracts from the address of the Convention to the Citizens, and will premise these by saying that Judge Beardsley introduces on this point some extraordinary doctrine and refers to cases which he names. All these cases are to be found in this volume, but we are not aware that any of them favor his conclusions, or "*that an application might have been made immediately on the adoption of the resolution, and before any publication could have been made.*"

We are familiar with all the New-York Assessment Laws, and those which regulate the proceedings of the two separate Boards, which compose the Common Council, and we know of no means of making such a speedy application, without trampling down all law and order in the matter.

If the learned Judge will look at the proceedings of the City Convention, in 1829, which formed the amended charter, he will find the following:

"In the month of May, 1829, the citizens of New-York, at an election held in the different Wards, elected by the ballot sixty-five delegates (five from each ward,) to form a convention to amend the City Charter.—These delegates met in convention in June, 1829. In the Journal of their proceedings, as published with Kent's notes on the Charter are the following doings as to *Assessments and Taxes.* These deserve a careful reading.

"IN CONVENTION, July 23d, 1829.

"Mr. John Duer offered the following additional section to come in between sections 9 and 10, as reported by the committee.

"Every law, ordinance or resolution, which shall be introduced in either Board, and also every report of a committee recommending any public improvement, or any appropriation of public monies, *shall be published without delay in all the newspapers employed by the corporation.*

"Mr. M. M. Noah offered the following amendment:

"And all reports of committees which shall recommend any specific improvement, involving the appropriation of public monies, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the Board, under the authority of the Common Council, in the daily newspapers.

"Mr. Whiting moved that the further consideration of the 9th section be, for the present, postponed.

"The chairman having put the qnestion on the motion, it was determined in the negative.

"Mr. Duer then moved, that the consideration of the additional section offered by him, and also of the amendment thereto, offered by Mr. Noah, be postponed.

"The chairman having put the question on Mr. Duer's motion for postponement, the same was determined in the affirmative."

JULY 29, 1829.

Mr. Noah made a motion, that the committee of the whole do re-consider the 6th section of the report of the committee of fourteen; and the chairman having put the question on Mr. Noah's motion, the same was determined in the affirmative.

"On motion of Mr. Noah, the committee of the whole then proceeded to cousider the said 6th section offered by him in convention on the 23d instant.

"Mr. Hedley made a motion to amend the amendment of Mr. Noah, by adding after the word 'Board' in the third line thereof, the words, '*in one or more of the daily newspapers*,' and to strike out in the last line the words '*in the daily newspapers.*' Whereupon Mr. Noah assented to the said amendment for striking out.

"Mr. Stephen Allen made a motion to amend the amendment offered by Mr. Noah, by adding after the word '*all*' in the first line, the words '*resolutions and.*'

"And the chairman having put the question on Mr. Allen's amendment, the same was determined in the affirmative.

"Mr. Van Buren made a motion to amend the amendment of Mr. Noah, by adding at the end thereof the words '*in all the newspapers employed by the corporation.*'

"Whereupon Mr. Hedley withdrew his amendment.

"Mr. John Hone made a motion to amend the said amendment of Mr. Noah, by adding at the end thereof the words '*and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*'

"The chairman having put the question on Mr. J. Hone's amendment, the same was determined in the affirmative.

"The chairman then read the 6th section as amended in the following words:

§ 1. "6. *The Boards shall meet in separate chambers*, and a majority of each *shall* be a quorum to do business. Each board *shall* appoint a president from its own body, and *shall* also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board *shall keep a journal of its proceedings*, and the doors of each *shall* be kept open, except when the public welfare shall require secrecy; *and all resolutions and reports of committees which* SHALL *recommend any specific improvement involving the appropriation of public monies, or taxing or assessing the citizens of said city,* SHALL *be published immediately after the adjournment of the board, under the authority of the Common Council, in all the newspapers employed by the Corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*"

"SEPT. 28, 1829.

"Mr. Philip Hone offered the following resolution:

"Resolved, That the committee appointed under the third resolution of the proceedings of this day, be *instructed to prepare an address to the people, explaining the provisions of the act now to be adopted*, and urging their sanction to the same."

"The President put the question, shall this Resolution pass? and it was determined in the affirmative."

We make the following extract from the address of the Convention, signed by Stephen Allen, Peter A. Jay, Gulian C. Verplanck, Philip Hone, John Duer, John M. Bradhurst, Saul Alley, John Morss, and 49 others, which is to be found on pages 241 to 244 of this volume, as follows:

"*It is designed to prevent the hasty or careless hurrying through of measures involving important interests of the city, of individuals, upon partial representations and imperfect information, before either those Citizens interested in the subject, or the public, know that such measures were in contemplation. This has heretofore repeatedly occurred; and been a well grounded cause of serious complaint.* By requiring the successive sanctions of two separate boards, public opinion will have time to operate upon every measure, *private interest will be deliberately weighed and protected*, information will be communicated, and the careless or ignorant decisions to which all legislation is subject, if they occur in either body, may be corrected on maturer deliberation in the other.

"As a still further guard against such evils, it is proposed to exclude the Mayor from the ordinary deliberations of either branch, but that *all acts of the Common Council*, when passed by both boards, shall be presented to him for his approval, which, if he does not sign, he shall return with his objections in writing; and after an interval sufficient for the consideration not only of the Corporation but the Citizens at large, on the validity of his objections, the act or ordinance is to be re-considered, and cannot become a law unless a majority of all the members elected to each board *shall record their names publicly in its favor.* Thus the Mayor may become a most useful sentinel, not only against corruptions and private views (should such at any time infest our city councils,) but against, what is of more frequent occurrence, the inconsiderate adoption of ill-advised measures, on the authority of a Committee, or on the partial representation of interested individuals. Checks of the same or a similar nature have been provided in many of our constitutions, and experience has shown their effect to be most salutary.

"*Another guard of the City Treasury is provided by recommending that all bills or resolutions involving the appropriation of public monies or imposing burdens on the Citizens, either by general tax or local assessment, shall be immediately published in the newspapers; and whenever a vote shall be taken thereon, the Ayes and Noes shall be called, and the Names of the members, with their Votes, shall be Published.*

"*This, it is trusted, will secure at once due publicity and notice to all concerned, and the strong influence of personal responsibility on the vote of every individal member.*

"Thus, should those amendments be accepted, all laws and ordinances must successively pass the Board of Aldermen and that of Assistants, and then receive the consideration of the Mayor. All matters of executive administration and disbursement of public monies, will be managed by experienced and responsible officers, specially charged with such business, *acting under the direction and supervision of the Mayor and Common Council. All propositions involving assessments or burdens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard.* All other expenditures and appropriations of the common funds and property of the city, or to be met by city taxes, will be guarded against abuse, and regularly made public, by all the precautions which the experience of this and other cities, and the example of our state and that of the federal government could suggest.

"If, therefore, these amendments are attentively and candidly considered, they will be found to be simple and consistent, keeping always in view one great object—that of preserving the principle of republican representation pure and unimpaired by excluding from the city councils all inducements to the adoption of any measure for personal objects; all temptations to waste or profusion, or abuse of power. The aim at imposing strict accountability on all officers, at preventing hasty or ill-formed decisions, and above all, at continually bringing all the measures of the city government, its management of the city revenues, and of the various interests, private and public, within its control, under the constant inspection of the people themselves. Careful and deliberate legislation, strict accountability, judicious economy, *and perfect publicity*—these are the remedies which the Convention have sought against the evils and abuses to which all wealthy city governments are subject, *of which this City has felt its share, and of which the public voice has, at different times, loudly complained.*

"In the trust that the proposed amendments will accomplish these desirable ends, they are now respectfully and earnestly recommended to the adoption of the people.

"On all foregoing points, the Convention were nearly unanimous; but upon the question of the term of service of the Alderment, the members were much divided in opinion. They therefore considered it proper to submit that question to the people for their decision, on the separate vote of "one year" or "two years."

"The Convention respectfully recommend to the Citizens to hold meetings in their respective wards, before the approaching elec-

tion, to express their views in regard to the proposed amendments, and to take such measures as may be expedient for their adoption."

"In CONVENTION—SEPTEMBER 28, 1829.

"Resolved, That the Members of this Convention who are present, and also those who are absent, who approve the amendments to the City Charter, sign the same as engrossed.

"Done in Convention, at the City Hall, in the city of New-York, the twenty-eighth day of September, in the year one thousand eight hundred and twenty-nine, and of the independence of the United States of America, the fifty-third.

"In Witness Whereof, We have hereunto subscribed our names.

"WILLIAM PAULDING, President,
and Delegate from the Fifth Ward."

NOTE BY THE EDITOR.—What a commentary these extracts from the address of the Convention, are upon that portion of Mr. Justice Beardsley's opinion! Yes—what a commentary!!

We now come to an important judicial opinion given by one of the ablest Equity Judges in this land. The extracts which we make from this opinion, the whole of which is to be found on p. 67 to 77, inclusive, of this volume, are a valid endorsement to our commendation, as follows:

"The part of the 7th section involving the question is as follows: 'All resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of the public moneys, or taxing or assessing the citizens of the said city, shall be published immediately after the adjournment of the board, in all the newspapers employed by the Corporation. And whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner."

"It is necessary to settle the precise meaning of this clause not only by a philiological dissection, but by examining the object of those who adopted it. I shall break it into all the propositions of which it seems susceptible. There are two distinct branches of it. In the first place it may mean, that all resolutions as well as all reports, recommending an improvement involving the application of public moneys, shall be passed and published in the mode directed. This construction has this difficulty: that a resolution properly does not *recommend* an improvement, which a report of a committee does, but enacts it, or directs an inquiry.—It is, however, in exact conformity with the section as originally introduced into the convention. [See p. 156 Kent's Charter.

"A second reading is this: *First*, all *reports* recommending a specific improvement involving the appropriation of public moneys must be so passed and published. *Next*, all resolutions involving the application of public moneys, must be in like manner passed. If this is the true meaning, then a resolution respecting a specific improvement not leading to the expenditure of public money is not within the clause; but a resolution, whether relating to such improvement or not, is within it, if such expenditure is involved.

"The second branch relates to taxing or assessing the citizens. Here, also, there may be several interpretations. One is, that the clause refers to resolution, or report, or both, recommending an improvement involving [*the*] taxing *or* assessing the citizens. Another, that it refers to a resolution involving such taxing or assessing, irrespective of any improvement. And a third that it relates only to a resolution directly taxing or assessing citizens."

"The last construction cannot be sustained. I have before shown that the power to tax is nowhere specially granted, and that the Bill of Rights forbids it without the assent of the Legislature. An assessment directly laid, is similar in its nature to an imposition within the Bill of Rights. The annual application to the Legislature, and the annual law passed authorizing a general tax, show conclusively that this action was not referred to.

"But if it is interpreted to mean a resolution *involving* the taxing or assessing the citizens, there are several cases in which it would apply in a broad extent.

"For example, to the annual resolution to apply for a tax law which specifies the sum to be raised. And two striking illustrations may be adduced of this—one before the new charter, and one afterwards. A resolution was adopted in March, 1821, for erecting a public market between Fulton Street and Crane wharf—that $15,000 be raised annually for ten years by tax, which, with the income of the market, should be applied to pay the debt created for the purpose, and that the Legislature be applied to for a law authorizing it. [See Corp. Ordinances, 149 Ed: 1839.] Another was after the Corporation had obtained the Fire Indemnity act, an ordinance was adopted that application be annually made for power to raise $25,000 by tax, for the redemption of the stock.

"It may be remarked, that there is certainly less reason for such a provision, where the Legislature is to be applied to for the specific purpose of authorizing a general tax upon all the citizens, than where the Corporation is acting under its ordinary powers. Publicity is obtained in the former instance by the notice required by the act of the Legislature of 1818, re-enacted 1 R. S. 150, § 1.

"Nor does it seem consistent with the provision, or the object of its makers, to hold it applicable to cases only of such a general tax upon all the citizens. In the address of the members of the convention, they speak of it thus: "All propositions, involving assessments or burthens upon individuals, will be brought to the knowledge of those interested, so as to give them a chance of being heard."

"But in fact, if we adopt the most limited meaning which can be reasonably urged, viz: that the clause applies to resolutions involving the expenditure of public money, or the taxing or assessing the citizens at large for specific improvement, then there is not a case in which in contemplation of law and consequently in fact, an opening or alteration of a street, or pitching and paving it, or the making of a sewer, may not involve such an expenditure or such a charge. In opening streets, if the improvement is below the line of the map of 1807, one third of the value of all buildings on the premises may be assessed upon the Corporation, and if within the map one third of the value of such buildings as existed before it was filed. In every case, property belonging to the city is assessed, where that of individuals would be.

"It strikes my mind as too plain for cavil, that the provision covers every resolution relating to an improvement for which public money may be requisite through the effect of an existing law, and every resolution through which the citizens, or any class of them, may be assessed for improvements.—I know of no other construction adequate to the object, or cosnsitent with the spirit of the section.

"What was the object? In the language of the address before cited, 'careful and deliberate legislation, strict accountability, judicious economy, and perfect publicity. These are the remedies which the convention have sought against the evils and abuses to which all wealthy city governments are subject, of which this city has felt its share, and of which the public voice has at different times loudly complained."

"And for the securing this object, they provided, that in the cases of such resolutions, they were to be immediately published in all the newspapers employed, and that whenever a vote was taken relating to them, the ayes and noes should be called and published in the same manner. And thus they deemed, "would be secured at once publicity and notice to all concerned, and the strong influence of personal responsibility upon the vote of every individual member."

"The framers of this charter had, it is to be supposed, the constitution of the United States in view in adopting this provision as to the ayes and noes. By that, the ayes and noes shall, at the desire of one fifth of those present, be entered on the journal.—In our own constitution, if a bill is returned with objections, the votes of both houses shall be determined by ayes and noes, and the names shall be entered on the journal. By a rule of the Assembly, upon a division, the names of the voters shall be entered on the minutes upon the requisition of any ten members.

"In speaking of this provision of the constitution Judge Tucker says, 'In a representative government it is of the utmost importance that the people should be informed of the conduct of their delegates, individually as well as collectively. This purpose is fully answered by the rule spoken of. But to prevent a call of the ayes and noes too frequently, as is said to have been practised in the former Congress, the constitution has set reasonable limits to the exercise of the power, by requiring one-fifth, of the members to concur in it.' (1 Tucker's Black. 205 App.]

"Thus the convention and Legislature were not content with requiring the call, and the usual entry on the minutes which follows; but they also prescribe that the names shall be published. Now can it be possible that this provision was introduced thus expressively and imperatively, only to declare that in these instances the ayes and noes should be called if any member chose to demand them? Is it to be imagined that in these two selected cases, and in these alone, those grave bodies, the convention and the Legislature, meant no more than an admonition to do the act? Again, when this charter thus ex-plicity directs that every such resolution shall be published in all the newspapers employed by the Corporation, what did it mean? Did it mean that this need not be done unless demanded; that the performance or neglect of it was a matter of pure indifference; that if any member required it, it might be done, and if no demand was made, it might be omitted? Nay further, that if the requisition was made, it might be denied; for the right to refuse stands on the same basis of construction as the right to neglect? Can it be within the range of imagination, much less of argument, that the convention passed through this idle pageantry of legislation, in prescribing this act to be done, and then left its performance at the mercy of custom or caprice? They knew the summary process given by the law for taking away the citizen's property. They knew the vast powers of the Corporation over the subject.—They anxiously adopted these provisions as safeguards against neglect, as securities for caution, as methods of publicity, and as restraints upon recklessness: and yet the construction is that they left them to be broken down and contemned by that very body against whose heedlessness or encroachment they were reared. The supposition shocks every doctrine of the common law. It violates ever principle governing the action of municipal Corporations, clothed with speeial power for special purposes. It tends to the perpetual encroachment of those constituted and inferior bodies upon legislative authority; and it generates disregard and contempt for private property and interests. It begins in convenience, grows into a custom, and terminates in the defence of usurpation as a right.

"But it is urged that the clause is only directory. The meaning of this phrase is said to be, that while a particular direction of a statute is proper to be observed, its neglect is not fatal to the act done under it. The omission then not being material, the direction need not be pursued. As has been justly observed by counsel, it is then discretionary. This is a solecism in law as well as in terms. The true solution of the matter is this. Provisions are sometimes not essential, where the statute in question has itself upon a reasonable construction shown that it was not intended by its makers that the direction should be strictly and to the letter obeyed; that some equivalent act, or some substituted act, would suffice; or it is a case where the parties to the neglect seek to profit by it, or where the rights of innocent strangers are to be prejudiced.

"But before proceeding to the cases upon this subject, two important principles must be noticed. Each of them bears strongly upon the point.

"*First*,—The political and municipal power conferred upon the Corporation must be strictly pursued. It must be restricted to what is expressly granted, or necessarily implied; and the mode of executing a power prescribed in any statute must be rigidly followed. I shall advert to only a few cases upon this point. The language of Chief Justice Thompson in *The People vs. The Utica Ins. Co.* [18 John, 382,] is the text in our courts upon this topic. 'Incorporated companies have no rights except such as are specially granted, and those that are necessary to carry into effect the powers so granted. The specification of certain powers operates as a certain restraint to such objects only, and in an implied prohibition of the exercise of other powers.' This has been sanctioned by Chief Justice Savage in *The Firemen's Ins. Co.* vs. *Ely*, (2 Cowen, 709,) and by Chief Justice Nelson in the The *People* vs. *The Manhattan Co.* (9 Wendell, 384) "A Corporation can make no contracts and do no acts except such as are authorized by its charter, and those acts must also be done by such officers or agents, *and in such manner*, as the charter authorizes.' (Bank of Augusta vs. Earle, 13 Peters, 587.)

'Corporations created by statute must depend for their powers, and the mode of exercising them, upon the true construction of the statute.' (Runyon vs. Coster, 14 Peters, 122) In *Williard* vs. The *Warden &c. of Killingsworth*, (8 Con. Rep. 247,) it was said, "The borough and the town are confessedly inferior corporations. They act not by an inherent right of legislation, like the Legislature of the state, but their authority is delegated, and their powers therefore must be strictly pursued. Within the limits of their charter their acts are valid, without it their acts are void." Hence a vote of a town abridging the right of taking shell-fish in a free fishery was void, unless the meeting at which such vote was passed was specially warned for that purpose.—(See also 5 Con, Rep. 391.)

The case of The *Dublin Corporation* vs. The *Attorney General*, (9 Bligh, N.S. 395,) is a striking example of the rule that corporations must be restricted within the definite limits of the statute giving them power.—The Corporation of Dublin seized of a water course, was authorized by acts of Parliament to impose water rates on the inhabitants for the purpose of improving the supply. It was held that such rates could not be applied in discharge of debts incurred under a by-law for improvements made before the passage of the acts, although for the improvement of the course, nor in compensation of new or old officers. The case of The *Attorney General* vs. The *Corporation of Galway*, (1 Beatty, 298,) is similar.

"A second rule, equally inflexible, is that every act which is to divest an owner of his property without his consent, must be construed strictly, and rigidly pursued.

"In *Van Horne's Lessee* vs. *Dorrance*, (2 Dall. 316,) Patterson, J., said, "A statute should never have an equitable construction in order to overthrow or divert an estate: and every statute derogatory to the right of property, or that takes away the estate of a citizen ought to be construed strictly."

"In *Van Winkle* vs. The *Railroad Co.* (2 Green's N. J. Rep. 162,) the court say, 'A special authority delegated by an act of the Legislature to particular persons, to take away a man's property and estate against his will, must be strictly pursued, and must appear to be so upon the face of the order.'

"Upon the subject of such provisions as are termed directory, Justice Story observes, 'That some of the provisions of the Charter and by-laws may well be deemed directory to the officers, and not conditions without which their acts would be utterly void, will not be disputed. What are to be deemed such regulations must depend upon the sound construction of the nature and object of each regulation, and the apparent legislative intention. If a regulation be merely directory, then a deviation from it, though it may subject the officers to responsibility both to the government and to the stockholders, *cannot be taken advantage of by third persons.*' *(Bank U. S.* vs. *Dandridge* 12 Wheaton, 81.) There the charter prescribed that the cashiers should give a bond satisfactory to the Board of Directors. A bond was given, the subject of the suit, by a cashier and sureties. He had long acted as cashier. It was objected that there was no record of such satisfaction, and held untenable. This position was approved of by Justice Cowen, in *The Matter of M. & H. R. R. Co.* (19 Wendell, 136,) where it was held that the taking of an oath '*well* and faithfully to perform the duties of the office of inspectors,' instead of the oath prescribed by statute, 'to execute the duties with strict impartiality, and according to the best of their abilities,' was not ground to set aside an election. This oath is prescribed in the general statute, [1 R. S. 605,] not in the charter. The court appear also to adopt the position that if the oath had been omitted, it could not have been taken advantage of; citing several cases where it was held that such an omission shall not prejudice strangers, nor be taken advantage of by strangers. Justice Story says in another case, "that it is an established rule, that where the Legislature mean to impose a positive and absolute duty, and not merely to give a discretionary power, the word *may* should be construed *must.*" [1 Peters, U. S. R. 64.] In Plowden 206 b, it is said, "when a staute limits a thing to be done in a particular manner, it includes in itself a negative, viz. that it shall not be done otherwise."

"In the *King* vs. *Bagshaw*, [7 T. R, 363,] it appeared that power was given to

trustees of a turnpike company incorporated by act of Parliament to widen and turn any part of the road through private grounds making satisfaction to the owners, with whom they might contract and agree. The statute then enacted, that if any person interested in such lands, *upon notice* to him given, should, for twenty days, neglect or refuse to treat, or should not agree, then the trustees shonld cause the damage to be inquired into by a jury, and upon the ascertainment by a jury. the amount so assessed was to be paid to the owners," &c. The trustees made a new road through the close of the defendants. They tendered the sum of £100, which was refused, and then summoned a jury, who assessed the damage at £100; upon which the trustees made their order, reciting the dispute. &c., that under the act a jury had been empannelled, who had heard counsel and evidence, and had assessed the damage at £100, which they therefore ordered to be paid to the parties. The proceedings were removed by certiorari. Upon a motion to set the assessment and verdict aside, the court said, that notice to the parties interested was the foundation of the proceedings below; and that, therefore, it should have been stated; for if no notice were given, the trustees had no jurisdiction; and with respect to counsel having been heard, it did not appear that counsel for the defendants had been heard. The rule was made absolute.

"In the *King* vs. *The Mayor of Liverpool*, [4 Burr, 2244,] the application was made upon a certiorari to quash an inquisition of a jury, under "an act to enable the Corporation of Liverpool to make a grant to Sir Charles Moore for liberty to bring fresh water into the town." The jury had determined that there should be paid to the owners and occupants of the lands mentioned in the inquisition, the sum of £176 in the proportions therein mentioned. The assignee of Sir Charles Moore was the prosecutor. It was objected, among other things that there was no notice appearing to have been given on the face of the proceedings. The three judges, *Mansfield*, *Aston*, and *Willes*, expressed the clear opinion, that *notice* ought to have been given to the parties interested, and that it ought to have appeared upon the inquisition to show that there was a jurisdiction. Without notice there was none. The inquisition was unanimously quashed. The statute under which this corporation acted, directed that notice should be given twenty days before the inquisition. See also *The King* vs. *The Norwich and Walton Road*, [5, Adol and Ellis, 563.]

"In *Rex* vs. *Cooke*, (Cowper, 26,) an act of Parliament had given power to the Corporation of London to make a road from Blackfriar's Bridge across St. George's Field's. In case of the owners of the soil refusing to treat, a jury was to be summoned to assess the value of the lands, &c. Proceedings were had, and a verdict given, on which the Court of Quarter Sessions gave judgment for a certain sum as the value of the premises and for payment. The judgment was quashed on certiorari on the grounds chiefly, first, that the statute prescribed that "the Mayor, Aldermen, and Commons, in Common Council assembled, had not declared the land to be necessary, as directed in the act, but the Mayor, Commonalty, and citizens. No evidence was admissable to show that the latter were the proper persons. Next that the statute had prescribed a notice in writing, to be given, while the record stated that due notice had been given. Lord Mansfield said "This is a special authority delegated by act of Parliament to particular persons to take away a man's property and estate against his will; therefore it must be strictly pursued."

"In *Wispard* vs. *Wilder*, (1 Burr, 330,) it was held, that under the statute 12 Geo., 1 c. 29, the declaration on a bail bond deed not set forth that there was an affidavit of debt, or that the sum sworn was endorsed on the writ. That the provision in the statute was not in the nature of a condition precedent, but only directory to the sheriff; so that, though the sheriff might be answerable, yet the bond was not void.

"But in *Hill* vs. *Heale*, (2 Bos. & Pull, 196,) Sir James Mansfield, speaking of this case, says, "I should have great difficulty in agreeing with the doctrine imputed to the Court of the Kings' Bench, that the Statute of 12 Geo. 1, is merely directory. I cannot help entertaining great doubts respecting the dictum. The sheriff must see by the writ whether it be endorsed or not; and I cannot think he could justify an arrest without it. But this was merely a dictum, and not necessary to the opinion of the Court."

"In *Hill* vs. *Heale*, [2 Bos. & Pull. 196, N. S.] the question arose under the Bankrupt act, 6th Geo. 2 cap. 30 sec. 23. The act provides that no commission shall issue upon the petition of any creditor "unless the single debt of such creditor shall amount to £100 or upwards, or unless the debt of two or more creditors shall amount to £150 or upwards, or unless the debt of three or more creditors so petitioning, shall amount to £200 or upwards. Then the statute proceeded that the creditor or creditors petitioning for such commission, shall make affidavit of the reality of the debt or debts. This direction is not introduced by the word *unless*, but by the word *and*. In an action by the assignee of a bankrupt, the trading and act of bankruptcy was established, *also debts due* to the petitioning creditors, who were four in number, to the amount of above £200. But in defence the affidavits were produced, in which the petitioners swear respectively; one to a debt of £50 and upwards, another to the same sum and upwards, a third in £60 and upwards, and the fourth £39 and upwards; thus making £199 expressly sworn to; and it was insisted that the commission was void. But it was held that the existence of the debts was a condition precedent, while the provision as to the affidavit was only to regulate the conduct of the Chancellor in issuing the commission. It was irregularly issued, and on that account an application to the great seal could have been made, but it did not render the commission void. The requisition as to the affidavits was but by way of caution, to prevent commission being hastily issued.

"In *Exparte Sneyds* and *The Bank of Ireland*, (1 Molleys, 261,) it was decided that a Corporation might become a petitioner for a commission in bankruptcy, and that the bond might be given by the petitioner, an officer of the company, but the affidavit be made by another officer.

"The statute in force in Ireland is the same as that upon which *Hill* vs. *Heale* was decided. The Lord Chancellor adverted to the impossibility of a Corporation doing some of the things required by the act, such as making the affidavits, and yet that did not prevent them suing out the commission. That the case of Hill vs. Heale was an authority in point, there being a difference between the clauses; one being indispensable and the other merely formal, which the Chancellor might correct if important. He held the irregularity here unimportant.

"I look upon these two cases as plainly illustrating one of the distinctions I have taken. The Statute itself, by the change of its phraseology, in the same section, with respect to two matters, pointed out that the irregularity was not to be fatal, but was the proper subject of correction by the Chancellor.

"In *McCall* vs. *The Bryam Co.* [1 Conn. Rep. 428,] the general rule was recognized, that an officer elected for a year continues in office until another is elected in his place. That the time prescribed for such an election is generally not imperative, but directory, except where there is the expression or implication of a negative.

"In the *People* vs. *Rankle*, (9 John Rep. 156,) it was held that where a Statute directed that one third of the Trustees should be elected annually, and that the election should be at least six days before the vacancies should happen; an election on a moveable holiday was valid, though not a day certain, and it might happen that the election would not be six days before the vacancy.

"In the case of Wicks vs. the town of Lancaster, (1 Rolls. ab. 512,(was cited, deciding that where an election was to be held within eight days after death or removal, yet an election afterwards was good, for the power of election within eight days did not take away the implied power. So a case from Strange [625] is cited with approbation, that though certain aldermen were to be annually chosan, the words were only directory, and the Aldermen held over. But the distinction was noticed where the Statute was, that the officers should hold for one year only, or the election should be on such a day annually. It was doubted whether, under the peremptory word employed, the one third of the Trustees could hold over.—The ground, or the decision was, that the two thirds remaining, the Corporation was not dissolved.

The two cases last cited, *McCall* vs. *The Byram Co.*, and *The People* vs. *Runkle*, obviously rest upon one of the principles I have stated; that the Statute itself fairly admitted the construction that the act, or the mode of doing the act was not prescribed as imperative. The appointment in a Satute of the day of election is presumed to be subject to the known law of holding over, and there must be express words to make the case an exception.

"In *The People* vs. *Allen*, (1 Wend. 489,) the act regulating the militia directed that the commanding officer should, on or before the 4th of June in every year, appoint a brigade court martial. A court martial was not appointed until July, and the defendant was then fined an amount which the suit was to recover. The general rule was held to be, that where the Statute prescribed a time for doing any official act, regarding the rights and duties of others, it was *directory* only, unless the contrary was to be gathered from the Statute. The court rely upon *Jackson* vs. *Hooker*, (5 Cowen,) and *Pond* vs. *Negus*, (3 Mass. 230.) The Chief Justice observes, "There was nothing in the nature of the power showing that it might be as effectually exercised after the 1st of June as before; there was no prohibition to exercise it after that period, and the naming the day was a mere direction to the officer. There is nothing in the nature of the power given, or in the manner of giving it, that justifies the inference that the time was mentioned as a limitation."

"Test the present case by this principle of the learned Judge. Is there nothing in the direction in question, and nothing in the manner of presenting it, that leads to the inference that it was meant as a limitation? It is too clear for discussion, that it was introduced, canvassed, modified and enacted for that purpose—and that alone.

"In the case of *Johnson* vs. *Hooker*, (5 Cowen, 269,) the court held, that a purchaser at a Sheriff's sale who had got his deed, was not to be defeated by the omission of the Sheriff to file a certificate of the sale as prescribed by the Statute. The judgment debtor himself appears to have set up the objection. It is plain, from the Statute, that the intention was to give an opportunity to his creditors, more than himself, to redeem, and to ensure the facility of information to them. He must be presumed cognizant of the proceedings. I apprehended the case would have been different if a creditor, a mortgagee for instance, had got into possession. The answer to the case is, that may justly be inferred the judgment debtor was not the object of the protection given by the section.

"In the case in Massachusetts, (*Pond* vs. *Negus*, Mass. Rep. 230,) assessors were directed to assess a tax for building a school house, within thirty days after a certificate of a clerk that a vote for the purpose had been passed was delivered. An assessment was made for such a purpose after the expiration of the thirty days from the reception of that certificate. It was held valid. The Chief Justice said: "Although the assessors are directed to assess the tax within thirty days after the certificate, yet there are no negative words restraining them from making the assessment afterwards, and accidents might happen which would defeat the authority, if it could not be exercised after the expiration of thirty days. The naming of the time must, therefore, be considered as directory to the assessors, and not as a limitation of their power."

"Thus it could be gathered from the statute itself, (as the law-makers may have forseen the possibility that the direction could not be literally fulfilled) that they meant it as a mere regulation in matter of form, not essential to the imposition.

"No case can more fully illustrate this distinction than that of *The King* vs. *The Inhabitants of Birmingham*, (8 B. & Cresswell, 29.) The consent to the marriage of parties under a certain age, was required to be given by certain persons. The language of the section is explicit. But other sections declared the marriage void where certain other provisions of the Statute were not regarded. The want of consent was not among them. Thus the Statute itself exhibited what was meant for the officiating clergyman to require, and what rendered the marriage illegal.

"And the case of the *The King* vs. *The Justices of Leicester*, (7 Bard Cress. 11) proceeds upon the distinction that the power to fix the time for holding courts belonged to the Sessions, and an act directing the court to be held at specific times was affirmative and not exclusive.

"I have gone through all the important cases cited on the part of the defendants to this point, or which I have discovered.—They fall short of establishing that the provision in question was one that could be neglected without rendering the proceedings illegal. They are all distinguishable upon one or other of the grounds I have mentioned. They arise where there is an implication of a power, and the Statute has not expressly abridged it; where there is just reason for the construction that the Legislature did not mean an imperative rule; or where that body itself, which sets up the omission, was chargeable with the performance.—There are, however, a few very important decisions yet to be noticed.

"And first there is the case of *Thurston* vs. *Little*, (3 Mass. 430,) decided by the Supreme Court within two months after its decision of *Pond* vs. *Negus*. A Statute had directed that assessors of taxes were to make a list for invoice and valuation of the property upon which the taxes were to be imposed, and to keep the same in a book for inspection. The amount of tax was stated in such a book without the list of the items and proportions of the tax. It was held void, and judgment given for the defendant who was sued for his tax. The case deserves attention, for it was urged that the defect arose from the party's own act, who was directed by Statute to deliver a list of his taxable estate; that the uniform practice of the town was here pursued; that the law was merely directory to the officers; that a decision against the custom would throw the Commonwealth into confusion.

"In *Gilbert* vs. *The Col. Turnpike Co.* [3 John. Co. 107,] an inquisition was quashed for not showing on its face a disagreement between the company and the owner of the land taken, and that the judge who appointed the appraisers was not interested; all which was required by the act to give jurisdiction. The Court say 'that this was the case of a special power granted by Statute, and affecting the property of individuals, which ought to be strictly pursued, and appear on the face of the proceedings to have been pursued. This was an established rule, and especially to be maintained in cases which so materially interfered with private rights.'

"In *Van Winkle* vs. *The Railroad Co.*, [2 Green's N. J. Rep., 126,] the statute authorizing lands to be taken, directed notice to be given in a specified manner. The order stated that the commissioners had proceeded upon proof of *due notice* having been given. It was held insufficient. The power was delegated to persons to take away private property without consent, and must be, and appear to be strictly pursued.

"In *Parker* vs. *Rules Lessess*, [9 Cranch, 64,] the question arose upon an ejectment between a purchaser under a sale of land for taxes and the former owner. The case involves the examination of various sections of the act of Congress of July, 1798, [See Story's Laws, vol. 1, p. 549,] and is a strong case to show the necessity of pursuing rigorously the directions of a statute which authorises the sale of property for taxes. It was admitted, says the Chief Justice, that if the preliminary requisites of the law have not been complied with, the collector could have no authority to sell, and the conveyance can pass no title. The advertisements prescribed in some sections were held to be essential before the sale could be made.

"In *Williams* vs. *Peyton Lessee*. [4 Wheaton, 77,] the same doctrine was declared, and the marshal's deed was held not even *prima facie* evidence that the prerequisites required by law had been complied with.

"It should be noticed that in the statute there is nothing but the ordinary directing words, not a clause avoiding the sale, if the provisions are not complied with.

"We must also look at the great distinction prevailing in the books between the case of a company defending itself against a meritorious claim upon the ground of irregularity in its own proceedings, and that company seeking to enforce a demand, the existence and legality of which depends upon the due exercise of its powers. Of the former class are the cases of *Clarke* vs. *The Imperial Gas Company*, (4 Bar & Adol, 315,) *Marshall* vs. *The Corporation of Queensborough*, (1 S. & St. 519,) and *The Queen* vs. *The Trustees of Swansea*, (Reports of cases, &c., 1 Jurist Ed., N. York, p. 126.) The argument of Sir W. Follett in the latter case, contains the true principle well expressed, and is adopted by Chief Justice Denman.

"'With respect to the cases that have been cited, there is one simple answer to them all, that they were cases of a party setting up a particular claim of right or exercising a particular jurisdiction, of which on its being complained of by another party the strictest proof has been required. But in the present case the Trustees put the act of Parliament in motion, and now turn round and refuse the payment on account of some alleged informality." Lord Denman said, "It appears that the Trustees are the persons to set the law in motion under this act, and consequently they ought not to be allowed to take the advantage of objections of this nature. I am not prepared to say the proceedings are not sufficiently set out."

"The case was this. By an act of Parliament power was given to the Trustees to purchase certain lands of T. and S. Benson for the purposes of the charter, and all questions were to be submitted to a jury.—The order recited the summons to the jury, the attendance before them of counsel of the Trustees and of Benson, their verdict in a certain sum, and proceeded to award and adjudge the payment. The objection taken was that it did not appear on the face of the order, that a difference had existed, in which case alone the jury could be summoned.—The answer of Sir W. Follett was this: As the jury could only have jurisdiction in such a case, the existence of a difference must be intended. Justice Littledale adopted this in substance.

"Now what can be more striking than the comparison of this case with that of *Gilbert* vs. *The Turnpike Co.* before cited. The identical objection that the disagreement did not appear on the record, was taken in each case. In the one it was sustained because the Corporation was proceeding against the owner to enforce the order; in the other it was disallowed, because the Corporation sought to profit by the irregularity, See also Green vs. Klienhans, (3 Greens, N. J. Rep. 476.)

"And lastly, a glance at other portions of the statute of 1830 will show the extreme danger of tampering with words so express as these. The direction to meet in separate chambers is part of the same section, made in the same form of words, no more prohibitory than the clause in question, of any other manner of exercising power. No one has yet dreamed that an ordinance passed by the boards assembled together would be valid. I know of no right and of no reason to believe that the convention looked upon this security to the public for wise deliberation, as of more importance than upon the provision in question, as a safeguard for the citizens' property. And the necessity of obeying those mandates of the statute, before an assessment for a qublic improvement can be lawfully made, is established, in my judgment, upon such an immovable foundation that no ability can overthrow or even shake it."

We add to this the Veto Message of Mayor Morris, *which emanated from that intelligent and independent public officer, almost immediately on his entering the mayorality—an act which gained for him great popularity, for it witnessed that he possessed intelligence to discover the path of duty and integrity and firmness of purpose to pursue it:*

VETO OF MAYOR MORRIS.

Document No. 9—Board of Aldermen, June 14, 1841. —The following Message was received from his Honor the Mayor, and ordered on file—Samuel J. Willis, Clerk.

Mayor's Office,
New-York, June 14, 1841.

To the Board of Aldermen of the City of New-York:

Gentlemen—I return to your body the accompanying reports and resolutions and ordinances, viz: Report of the Street Committee in favor of flagging, &c., in Seventeenth Street, between Irving Place and Union Place, and resolution. Report of same committee in favor of paving Ninth Street from avenue C to avenue D and resolution. An ordinance to regulate and pave Washington Street. An ordinance to build a sewer in Morris Street. An ordinance for deepening Storm's basin. An ordinance to pave, &c., southerly sidewalk of Twenty-eighth Street, between the Third and Fourth Avenues. An ordinance for a well and pump in Twenty-third Street.

These were originated in your Board; they have been concurred in by the Board of Assistant Aldermen; and by that body sent to me for my approbation. These direct improvements involving an expenditure of public moneys, or requiring assessments upon citizens, and have been passed without calling or taking the ayes and noes in either branch of the Municipal Legislature. For this omission I am constrained to withhold my approval of them, although there is no objection to the improvement contemplated.

The seventh section of the amended Charter of the city of New-York requires, that, "all resolutions and reports of committees which shall recommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of the said city, shall be published immediately after the adjournment of the board, under the authority of the common council, in all the newspapers employed by the corporation; *and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.*"

Although some of the legal tribunals of the State have decided that the omission to take the ayes and noes upon the passage of such reports and resolutions, and ordinances does not make them void, while others have maintained a contrary doctrine, still the directions contained in the section of the charter referred to are obligatory upon the Common Council, and under no circumstances should they be disregarded.

These provisions were intended to protect the interests of the citizens, by ensuring deliberation and integrity in their representatives, upon subjects involving either taxation assessment, or an appropriation of public moneys. The authors of the section referred to, wisely determined that the most effectual method to ensure deliberation and honest action on the part of the agent, was to compel him to record and publish his vote; thereby giving to the constituent knowledge of the agent's acts, and exposing each agent to the animadversion of his constituents, when he voted incorrectly.

These provisions of the Charter, if strictly enforced, cannot but prove beneficial to the citizen. It cannot be denied that there are individuals, who may be elevated to office, so singularly constituted as to be influenced in their conduct more by the fear of public censure than by an internal conviction of right, who will vote improperly, and even corruptly, if they can do so without detection and exposure.

To protect the public against the acts of such persons, and to inform the constituents of such acts of the representative, the seventh section of the amended Charter was framed. I conceive it to be the duty of all of us, strictly to enforce observance of every requirement of the City Charter, that uniformly correct precedents may be established; and we may avoid all measures which we have not a clear right to effectuate.

That community is most scrupulous in its obedience to the laws, whose officers and legislators are strict in their observance of constitutional and legal requirements.

Example from those in authority is more important than their adjudications or their precepts.

We therefore should not only enforce, but obey the law.

The City Charter is a Constitution, which we as agents of the people, are bound to obey strictly, not only in its letter, but in its spirit.

Robt. H. Morris.

We deem it proper here to repeat that the application to one of the Justices of the Supreme Court for the appointment of Commissioners of Estimate and Assessment is wholly *exparte*. The compliance with the seventh section of the charter was therefore most important and necessary and without which the proceedings are *absolutely void*.

We are disappointed in not finding in this portion of Mr. Justice Beardsley's opinion some mention of what was said in the matter of 37th Street, in reference to the *ayes* and *noes* in an opinion in which Judge Cowan says: "It has been suggested on several occasions, that the omission to publish the ayes and noes &c. was not vital, but merely the disobedience of a directory provision, *though that question has never been decided*, nor is it necessary now to decide it."

This opinion of Judge Cowen in 37th Street, was given in 1843, and the Mount Morris opinion by Judge Cowen some two or three years previous.

Mr. Justice Bronson, at the May Term of 1843, in the matter of 37th, 39th Street, &c., says:

"The Report and Resolutions of the Committees recommending the opening of these Streets were not published pursuant to the act of 1830, nor were the ayes and noes called when the resolution to open the streets was adopted by the Common Council, Statute 1830, p. 226, §7. These are plain violations of the amended charter, and it is not improbable that they may in some form affect the proceedings of the Corporation."

We have here given the opinion of the court as delivered by Mr. Justice Beardsley, upon the requirements of the *seventh section* of the amended charter, the unanswerable argument of Mr. Webster upon that provision of law, the proceedings of the City Convention showing the why and wherefore it was adopted, the opinion of Assistant Vice Chancellor Hoffman in a proceeding involving that question, and the Veto Message of Mayor Morris to the Board of

Aldermen, in which he states his unwillingness to violate that law.

A careful reading of that section as it now exists, and of the amendments made to it, and of the explanation of its purpose in the address of the Convention to the citizens of New-York, will afford a complete KEY to its construction if a common sense construction of language so plain as that which forms this section should fail to convince.

The first mover of this section in the convention, was Mr. John Duer, one of the revisers of the New-York Statutes. The first amendment proposed to this section was by Mr. M. M. Noah, a man of learning and talent, a citizen of New-York who was familiar with complaints made against certain assessment proceedings without notice; other amendments were proposed by Mr. Stephen Allen, who had previously held the office of Mayor of the City, and who was, at the time the seventh section became a law, a member of the Senate of this State Mr. John Hone, an intelligent merchant of this city, also proposed amendments. The amendments which provided for the greatest publicity, were adopted and those which proposed a more limited publicity, were *defeated*. The class of cases designated by the word "*specific*," instead of the more general word "public" were agreed upon. The *time* the notice was to be given was also specified, viz. *immediately* after the adjournment of *the* board—and that the notice should be under the *authority* of the Common Council, and in *all* the newspapers employed by the Corporation.

We feel a delicacy in discussing a provision so plainly and so clearly expressed and must apologize to the gentle reader by referring to the opinion of the Court on this point as above.

The gentlemen who voted for this section as amended, were men of understanding—men of experience in public affairs—men who were familiar with the English language—and many of them were men of very distinguished legal acquirements. Peter A. Jay and Gulian C. Verplanck voted for this very section, as amended, and also signed the address to the people explaining the provisions of the seventh section.

Mr. Justice Story in his commentaries on the Constitution says:

"§ 400. I. The first and fundamental rule in the interpretation of all instruments is to construe them according to the sense of the terms, and the intention of the parties. Mr. Justice Blackstone has remarked, that the intention of a law is to be gathered from the words, the context, the subject matter, the effects and consequence, or the reason and spirit of the law. He goes on to justify the remark by stating, that words are generally to be understood in their usual and most known signification, not so much regarding the propriety of grammar, as their general and popular use; that if words happen to be dubious, their meaning may be established by the context, or by comparing them with other words and sentences in the same instrument; that illustrations may be further derived from the subject matter, with reference to which the expressions are used; that the effect and consequence of a particular construction is to be examined, because, if a literal meaning would involve a manifest absurdity, it ought not to be adopted; and that the reason and spirit of the law, or the causes, which led to its enactment, are often the best exponents of the words, and limit their application.

"§ 401. Where the words are plain and clear, and the sense distinct and perfect arising on them, there is generally no necessity to have recourse to other means of interpretation. It is only, when there is some ambiguity or doubt arising from other sources, that interpretation has its proper office.—There may be obscurity, as to the meaning, from the doubtful character of the words used, from other clauses in the same instrument, or from an incongruity or repugnancy between the words, and the apparent intention derived from the whole structure of the instrument, or its avowed object. In all such cases interpretation becomes indispensable.

"§ 402. Rutherforth has divided interpretation into three kinds, literal, rational, and mixed. The first is, where we collect the intention of the party from his words only, as they lie before us. The second is, where his words do not express that intention perfectly, but exceed it, or fall short of it, and we are to collect it from probable or rational conjectures only. The third is, where the words, though they do express the intention when they are they are rightly understood, are themselves of doubtful meaning, and we are bound to have recourse to the like conjectures to find out in what sense they are used. In literal interpretation the rule observed is, to follow that sense in respect both of the words, and of the construction of them, which is agreeable to common use, without attending to etymological fancies or grammatical refinements. In mixed interpretation, which supposes the words to admit of two or more senses, each of which is agreeable to common usage, we are obliged to collect the sense, partly from the words, and partly from conjecture of the intention. The rules then adopted are, to construe the words according to the subject matter, in such a sense as to produce a reasonable effect, and with reference to the circumstances of the particular transaction. Light may also be obtained in such cases from contemporary facts, or expositions, from antecedent mischiefs, from known habits, manners, and institutions, and from other sources almost innumerable, which may justly affect the judgment in drawing a fit conclusion in the particular case."

Here is a key to the construction—not what the Convention *intended*, but what they accomplished, and the remarks made by Mr. Chief Justice Savage, in the Court for the Correction of Errors in the Lorillard case in reference to resorting to the Revisor's Notes, in construing the trusts of the Revised Statutes, will apply equally and with the same force of opinion in this case. The doctrine of Mr. Justice Beardsley, in this case is, as we understand him, that "*shall*" means "*may*," or that the word "*shall*" has no meaning or force to it whatever, for such is the result of the conclusion which he comes to.

The proceedings of the Convention were "confirmed" by a vote of the People at the next annual election, and the Legislature passed the Bill which the Convention framed, into a law, and the Governor approved the same. The confirming of the doings of the Convention by the subsequent vote of the People did not make this act of the Convention a "judgment" like as contended for in the confirmation of a Report made by commissioners, by one of the Justices of the Supreme Court.

The Court say:

"Thus the resolutions of the Corporation to open this section of the Avenue, and directing counsel to take legal measures for that purpose, were well proved. Mr. Emmet testified that he, as counsel for the Corporation, presented the petition and made application to the court for the appointment of Commissioners; this fact, therefore, was in evidence, without the aid of the documentary proof offered and received. That rules and orders of court may be proved by copies thus authenticated, cannot be doubted.—(2 R. S. 403, §59, 60. 1 Phil. Ev. 388.)

"The order appointing Commissioners was, therefore, correctly received in evidence.

"It seems unnecessary to inquire whether the petition of the Mayor, Aldermen and Commonalty, as an original document, could in strictness, be proved by an exemplified copy, for independently of that piece of evidence, all the facts necessary to give jurisdiction to the court, were fully established.

"1. The resolutions of the Mayor, Aldermen, and Commonalty to open this section of the Ninth Avenue, and authorizing counsel to take the necessary legal steps for the purpose.

"2. The application of said Mayor, Aldermen, and Commonalty, by their counsel, to the court, to appoint Commissioners.

"3. The court entertained the application and made the appointment accordingly.

"Thus the jurisdiction of the court was proved.

"To show that the judgment of confirmation had been rendered, an exemplified copy of the order of the court, for that purpose was offered in evidence by the defendant. This order sets forth an original report by the Commissioners, and an additional, and further additional report made by them. Lot number ninety is designated and described therein; the plaintiff is named as owner, and the assessment with which it is charged is stated to be two thousand and five dollars; various other matters are contained in these reports, and the rule concludes by stating that, "On motion of Robt. Emmet, of counsel for the Mayor, Aldermen, and Commonalty of the City of New-York, Marcus T. Reynolds, Esq., being heard in opposition thereto, it is ordered that the estimate and assessment be and the same is hereby confirmed." The counsel for the plaintiff objected to reading this exemplification of the order, and of the affidavits set forth in the order. The exemplification was certainly admissable to prove the order, although it may not have been evidence of the authenticity of the affidavits emboddied in the order, nor was it material their authenticity should be proved. There was no error in receiving this piece of evidence.

"The course of the trial virtually admitted that a report had been made as was set forth in the order of confirmation, for the fact does not appear to have been denied or called in question, nor was it objected that the report was defective in form or substance.

"Here then was the proper evidence of a judgment of confirmation.

[NOTE BY THE EDITOR.

This important word "confirmation" cannot be understood by the reader, who is not conversant with New-York Assessments without some explanation. It will be seen by a careful reading of the extracts from the Statutes which we have given in the preceding pages, that the application is to one of the Justices of the Supreme Court, for the nomination and appointment of Commissioners of Estimate and Assessment, and from the Report of the Committee appointed by the Senate of this State to investigate assess-

ment abuses, it appears the nomination is made by the Corporation Counsel who is one of the principal *beneficiaries* in the proceeding, (See Ante. page 380.) the Corporation Counsel nominates these Commissioners from a list made up after the Spring election and kept in the Street Commissioners office. (See Mr. Perrines testimony, Ante. page 391.)—The Judge appoints the men nominated.

This proceeding, as we have before said, is wholly *exparte*. The same counsel subsequently presents to the Court a voluminous Report of these Commissioners, a great proportion of which is a repetition of the same words in almost every paragraph, and this Report, most generally on an *exparte* application, undergoes "confirmation." The confirmation is by one Judge, who, if enquired of, an hour afterwards, could not tell the name of a single person whose assessment he had confirmed, for he neither reads the report, nor does he hear it read, and this Report is put in the Clerk's Office, and kept in a very loose way, as will be seen by the testimony taken before the Senate Committee, (p. 85 of their report,) and by the testimony of John K. Paige, the former clerk of the Supreme Court. (See Ante p. 392.)

The court say:

"We have seen that the court had acquired jurisdiction of the case, and made an appointment of Commissioners, who duly reported on the subject. It does not appear, nor was it pretended, the proceedings had been discontinued, or that the court had in any way lost its jurisdiction of the case.—We need not inquire whether the proceedings of the Commissioners in the performance of their duty, were in all respects regular and in conformity with the directions of the statute. These are not points of jurisdiction. They may have been irregular, so that the judgment of confirmation ought not to have been rendered, or the judgment, for that cause, might have been erroneous.

"But there is a wide difference between an erroneous and a void judgment. If irregularities occurred, they would not render the judgment void, and it is wholly unimportant to inquire whether such irregularities existed or not.

"It was proved not only that the plaintiff in this action made objections before the Commissioners, but that on the final hearing he opposed the confirmation of the report by his counsel, Mr. Reynolds. He was, therefore, to all intents and purposes a party to the proceeding, and bound by the judgment rendered. As to lot number ninety, and so far as respects this suit, the proceedings were *in rem;* but the plaintiff appeared and was an actual party to the litigation; the judgment was therefore binding *in personam.*

"*Second.* The judgment of confirmation was an effective lien on lot number ninety, and a valid authority for its sale; the only remaining inquiry, therefore, is as to the regularity of the sale which was made.

"The principles which accordingly apply to and govern such cases, cannot be better stated than they are by *Bronson*, J. in 4 Hill. 86.—(*Sharp* vs. *Spier.*) Every statute authority, in derogation of the common law, to divest the title of one and transfer it to another, must be strictly pursued, or the title will not pass.

"This is a mere naked power in the Corporation, and its due execution is not to be made out by intendment; it must be proved. It is not a case for presuming that public officers have done their duty, but what they in fact have done must be shown.

"The recitals in the conveyance are not evidence against the owners of the property, but the fact recited must be established by proof *aliunde.* As the statute has not made the conveyance *prima facie* evidence of the regularity of the proceedings, the fact that they were regular must be proved, and the *onus* rests on the purchaser. He must show, step by step, that every thing has been done which the statute makes essential to the due execution of the power.

"It matters not that it may be difficult for the purchaser to comply with such a rule.—It is his business to collect and preserve all the facts and muniments upon which the validity of his title depends.—(Rex *vs.* Croke, Cowp. 26. Williams *vs.* Puyton, 4 Wheat. 77. Rochendorf *vs.* Taylor, 4 Peters, 369, Jackson *vs.* Shephard, 7 Cow. 88. Atkins *vs.* Kurnan, 20 Wendell 241. Thatcher *vs.* Powell, 6 Wheat. 119. Jackson *vs.* Esty, 7 Wend. 148. The People *vs.* The Mayor, &c., of New-York, 2 Hill. 9. Matter of Mount Morris Square, Id. 14, (c.)—These cases, and those to which they refer, will be sufficient to justify all that has been said concerning the necessary requisites for making out a title in the defendant.

"But the application of these principles to this case is, in most respects, precluded by a provision in the statute.

"The lot was sold by the Corporation on the 24th of December, 1838, and the purchaser was *entitled* to his conveyance at the end of two years from that time.

"A conveyance, called a lease, and dated the 14th of February, 1842, was given in evidence. No objection appears to have been made to it on the trial, and the statute declares that "such lease shall be conclusive evidence that the sale was regular, according to the provisions of this Act."—(Laws, 1816, p. 115, § 2. 7 Cow. 88. Jackson *vs.* Shephard. 7 Wend. 149. Jackson *vs.* Esty. 16 Wend. 553, 4. Bush *vs.* Davison. 4 Hill. 86. Sharp *vs.* Spier. 13 Savg. & R. 209. Birch *vs.* Fisher Ib. 370. Stewart vs. Shornfelt. 10 Watts, 208. Peters *vs.* Heasley.)

"The lease proves the *sale* to have been regular, under the authority of the judgment, and but little remains to be supplied by other testimony. Something, however, does remain; for after the sale, and before the expiration of two years from that time, a notice is to be published, as is particularly directed in the statute, (L. 1816, p. 141, §2) as modified by the act of 1840. (L. 1840, p. 274, § 10.) The publication of this notice was essential to the perfection and validity of the title of the purchaser, and it was not proved by the lease. (7 Wend. 148. Jackson *vs.* Espy. 16 Wend. 533. Bush *vs.* Davison.)"

Mr. Webster in his argument says:

"There are two points which it is impossible to get over. The first is the want of all proof at the trial in the court below, that the assessment remained unpaid at the time the proceeding of sale commenced; and secondly the want of all evidence to show the proof of an existing unpaid assessment. The statute requires proof that the assessment is unpaid before the city is authorized to take order for the advertisement and sale of property. That proof was called for and not given, and the judge ruled that the subsequent proceedings were conclusive against plaintiff, and showed the defendant's title. The trial below went on by bill of exceptions and ruling of the judge. I have not found it necessary to go into a previous examination of the rule, because it may be said in general that the judge ruled that the provision in the statute as to the lease being evidence, precluded all question as to previous matters. Now, by the law of 1813, these assessments, when legally made, constituted a lien on the estate, and give a right and use of occupation to any body who would take the land for a certain time and pay the assessment. But the sale takes place, and did take place, under the law of 1816, and I now call the attention of your honors to that law. The 2d section says that whenever and wherever an assessment on any land has been confirmed, and the amount has not been collected, the collector shall make affidavit of his demanding such two several times, and that the party has neglected to pay, or shall make affidavit that the owner could not be found, and then, and in such case, it shall be lawful for the mayor, aldermen and commonalty to take order for advertising the land for sale. In the trial below, these affidavits were called for, or proof that there had been such affidavit, and it was not given. I say that the authority to sell arises in the fact that there is an unpaid assessment. That is the only authority to sell. My learned friend admitted, if there is no tax, there is no foundation for the sale proceeding. Every lawyer knows that the claim there has been unpaid tax. The existence of an unpaid tax is the foundation and if there is no such tax, the proceedings are utterly void. The ruling of the judge below went to the extent that if we had had ten witnesses in court to prove the payment of the tax, they would not have been heard. He said the subsequent proceedings are conclusive. The lease shuts up the whole matter. I contest that altogether. No cases have been found to support such a decision; no symptom of authority in the books has gone the length of entertaining any such proposition as that. I repeat, that this affidavit for the non-payment of the tax, is the statute requisition. It has never been complied with. I know no answer to this but one, and that one will be found to be unsuppported by the rules of law, and the answer is founded on the lease. After the sale comes a lease to the purchaser, Mr. Lovett. That recounts the proceedings in common form. I need not say to your honors. the lease there could be no foundadation. It does not affect the rights of Mr. Striker in any degree. You must look at the statute, and see if the forms have been complied with; and if a mere piece of

paper without legal acquirement can take away the rights of a man in his property.—The statute allows no such thing. Again, if this provision of the statute were unreasonable or ambiguous—if it were capable of two constructions—then this part, like all the rest, if it has two meanings, the one most favorable to the owner is that which must be received.

"What is the expression of the statute? It says that this lease, when duly executed, shall be conclusive evidence that the sale was regular according to the provisions of the act. Well, what is meant in that term sale? Does it mean that the lease itself shall prove an authority to sell? Our learned friend says that they do not insist on such an idea that the sale proves the legality of the assessment: but they may as well argue in my humble judgment, that it is so, as touching the authority to sell.

"The lease is no more conclusive than the fact that the assessment is unpaid. They both touch the authority to sell. My friend asks, what do you mean by sale? What do you mean by sale! Is it the mere act of standing up and asking who will pay this assessment for the lowest term of years—let us have a bid? Oh, no! I say the term sale embraces fairly, and only so, the proceedings when the tax is unpaid. The statute itself makes that clear. The provision to sell succeeds, does not precede, what is said as to the necessary proof of unpaid assessments. It says whenever assessments on land, &c,, and the collector makes demand, and it is unpaid afterwards. The statute goes on as to when sales begin. It says, in that case, &c., your assessments are legal—you have got statute evidence—then in that case it may be lawful to take order for advertising the land in two or more papers, and then go through the process of sale. I say, every thing done by the board of aldermen, or others who are concerned, belong to the sale, the advertisement, and the giving notice, and all such. The case of Clark against Morse, 18 Johnson, in this court, decides that point, and it is but common justice to say that it is a precisely similar case to this. That case was the case of a tax on land. The property assessor of the township had certified to the comptroller that the tax was unpaid, and a sale was made. The party who owned the land sued the purchaser to recover, and the purchaser set up the sale. The law of the state gave the same effect to the lease or deed in precisely the same language that the law gives to this case, but it shall be conclusive evidence of the regularity of the sale, yet the judgment of this court was unanimous in the opinion that the lease proves the regularity of the sale, after the act of selling, but it does not say the proceedings were regular before. It is sufficient authority, prima facie, of the comptroller to execute the deed, that he had a return from the proper officer that the taxes are unpaid. If we had found an oath of the collector, that he had made the demand, and we could show not only that he had not made demand, but that he had been paid, yet the judgment of the court below is that we could not bring in proof, and they, on the other side, are called on for no proof. I suppose the words in the lease are in no way effective.

"My learned friend referred to several cases in the Pennsylvania Reports. I have looked at them. There are two cases in 13th Sargent, which are in point. In one of them the court lays down the law with respect to the necessity of making out regularly, step by step, in all these proceedings. In the other case, the court are called on to consider a statute of 1815, relative to certain lands stated in the law. The law says in express terms that the sale shall be proof not only of regularity of the proceeding, but of the assessment, and yet Judge Duncan did not agree with it. He said it was a great encroachment on private right, as it shuts out the power of giving evidence.

NOTE BY THE EDITOR.—We examined the printed copy of the lease without finding the following clause which originally was incorporated therein, that "*if any mistake or irregularities occur in the proceedings for assessment, collection or sales, on the part of the corporation the sale shall be void, and the purchase money returned to the purchaser.*"

A lease, with such a condition, to be declared "*conclusive,*" is a contradiction on the face of the instrument.

This word "conclusive," seems to be laid hold of with great avidity in all these assessment cases, and if that force should be given to this word of ten letters, that the gentlemen who sustain assessment proceedings insist upon, then the Constitution would become a dead letter.

A very learned counsellor said to us some time ago that in arguing one of the Corporation depredation cases involving the validity of an odious assessment before one of the New-York City Courts that he suggested to the Court a case in which the Corporation in giving a lease should make a mistake and instead of conveying the ground of A, which had been assessed and sold, should convey the land of B, which had not been assessed, or sold; and enquired if the lease in such a case would be held to be *conclusive?* If the lease is conclusive in one case, it is in every case.

We have come near to the close of this opinion without coming to any decision upon an important point in the case, which was argued at length by Mr. Webster, as will be seen by referring to p. 420 of this review. On referring to the points of the counsel for the plaintiff we find the fifth of the series as follows:

"That there was no evidence whatever to show that the Collector, had ever demanded the assessment of the plaintiff, or any other persons, pursuant to the second section of the act for the more effectual collection of taxes and assessments in the city of New-York, passed April 12, 1816," (see Ante p. 386) "or that the plaintiff had ever refused to pay the assessment." Why this ommission. It is noticed by Mr. Justice Bronson in the dissenting opinion given by him in this case.

There is another matter which is important in these proceedings which is in our opinion very material. The Statutes, the court say, make the lease conclusive evidence that the sale was regular according to the provisions of this act (see act of April 12th, 1816, Ante. p. 386.) Now then what are the provisions of that act now in force? It will be seen by a reference to page 389 of this volume that the greater portion of that act has been repealed, and by a reference to page 148 of this volume, that the Legislature have done away with the conclusiveness of the lease (see Ante. p. 389.)

By sections 3, 4, 5 and 6, of chap. 230 of the Session Laws of 1841, leases for lands sold for assessments in the city of New-York, do not become of any force in the hands of the purchaser until the purchaser performs certain acts and section 7 of the law requires of the purchaser the filing of certain papers in the Street Commissioners office. Will the learned judge who delivered the opinion of the court in this case be able to reconcile his views of the conclusiveness of the lease with the subsequent statute of 1841, requiring certain things to be done and providing a further time of redemption.

The court say:

"A Corporation notice under the statute, bearing date the 16th of June, 1840, was given in evidence, and testimony, written and oral, was adduced, to prove its publication.

"No objection was made to the form or substance of the notice, or that the proof of its publication was deficient, except that it had not been published in the State paper, which the law did not require.—(Laws, 1840, p. 274, §10.)

"No ground therefore appears on which the regularity of the sale can be questioned, and as far as this case discloses the facts, the purchaser has a valid title."

Again, Mr. Webster in his argument, says:

"There is a provision in the act of 1841, which takes away from the purchaser the right of entering into his purchase, where his tenant is in possession, without giving to that tenant six months notice. My opinion is, that the law does apply to cases like this, where land had been sold, as well as to future sales, and I think the court will be of that opinion. If so, the defendant could not set up the defence that he did. But that, and the more important question I have spoken of, I shall leave to be disposed of by the court."

Mr. Webster in conclusion says:

"There remains but another point to be considered, and I believe the cause may rest. It seems to be the opinion of a majority of the judges of the court, in the matter of 39th street, that though the law is unconstitutional, yet what has been done under it must stand. I had not prepared myself to discuss that question, because, until I came here two or three days ago, I did not know that view had been taken by the court. It would become me to address myself very guardedly, if I should venture to give an opinion, that that part requires re-consideration by the court. I do not know that in this court I should venture at all, but as it has been intimated that that is the case, I submit to the court that there is great doubt that any thing done under an unconstitutional law, could ever be valid. We have had many controversies as to the constitution, and unconstitutional law in the United States and State Courts. We have had questions of the validity of laws in almost every state in the Union, and some of the state laws, and those of the United States have been declared unconstitutional, yet this will be the first case where it has been declared, that although a law is unconstitutional, whatever has been done under it divesting persons of property, should be held to be valid. I know of no case where such has been held, but a great many where they have been held to be altogether void. It appears to me there is no color of right in the case of an unconstitntional law. See how they differ from the common cases. A clerk in your honors' court, who has not

taken the oath, may certify to papers. They had not been objected to in another court, and the objection is as to his personal disqualification. It is a disqualification, but I understand the court to have said, in the case of Sharp v. Spear, that in these proceedings, where title is to be divested, on pretence of steps by statute, the purchaser is answerable to see that every one of the proceedings have been legal and if that is important, what is more important than the question of authority to be exercised in that proceeding? I suppose there is no color of title, when it has been obtained under an unconstitutional law. I suppose one unconstitutional law is as unconstitutional as any other. The unconstitutionalty of the law may be as flagrant in one case as in another, but suppose your honors should decide in this case that, although it may have come up late, and a great many things done unconstitutional, we will hold, notwithstanding what has been done is valid. Suppose something more plainly unconstitutional were to pass now, and a man was in prison under it, would your honors not release him? In that case, you would say, this being a recent act, we will interfere. May I be permitted to submit to your honors, how will it be possible to entertain such doctrine consistently with the rights of parties? May not a man hold the constitution as a shield against the power of the legislature? What would you do with aliens or strangers, or a man who has been out of the country for thirty years, and comes to ask for his patrimony? Will you tell him that he comes too late?—He says, I know the constisution, and I knew the legislature could not pass such a law by the terms of the constitution. Will your honors not allow that he would be entitled to redress? If the power is not proper to be exercised now, it has always been void. The object and intention of the law is to impose a duty on your honors which the constitution does not permit. Is it not a void law? It is a law, or it is not a law!—a valid enactment or mere waste paper! If valid, your honors must go on till repealed. If void, and always has been void, then no man can obtain a right, or lose a right, by such a law. I place my view on that, and your honors can take it for what it is worth. I do not see how it is possible to sanction all that is done, and yet not make your honors proceed still under the law. I have not intended to comment on the opinion of this court, but to refer to those general principles, and in that in all the cases, none of them arises in a view alleged to be void; there were cases where officers were acting illegally in places where they were incapacitated. Let me call your honors' opinion to that whole class of cases which has been decided by the United States Court, on the validity of the law. It seems to be argued that the enactments of a law, gives prima facie authority that it is correct; if so, how is it, than in more than fifty cases, which the United States Supreme Court have heard, they did not succeed in justifying themselves under acts which the United States Supreme Court hold void. That, for instance, of the Bank of the United States against Osborn. Osborn was treasurer of the state, at the time the legislature of Ohio assessed taxes, and gave authority to the treasurer to go into the bank and take out $40,000; the treasurer did so, and was sued, and justified under the law. He had exactly done what the law required, but the chief justice said a void law gives no authority.—There was no de bene esse. It was void or good, and although he had this shield he was adjudged to pay the money. So in many other cases individuals have acted on judgments obtained under such laws, and all the consequences which I have named followed. Such laws have been regarded as mere blank paper. In this part of the case it is necessary to consider again that the claim is between the original parties—Mr. Striker and the city. Put the parties in this case in a situation to refer to, where the interest of third parties come up. Is it not pertinent to ask if the corporation did not know that these assessments had been complained of, and said to be void, yet they took the risk.—They were ready to pay out of the city funds, and to make Mr. Striker repay them if they could. If your honors came to the conclusion that this assessment cannot be sustained, no such consequences would arise to the city as those which have been spoken of.—There is no great danger of all the litigation alluded to taking place. It was said, yesterday, that the cases amounted to about a hundred, and that the city has been guarded in the leases. But suppose that it were otherwise, and there were more than a hundred, the emphatie declarations of your honors in the Brooklyn cases, that if there are many such cases of wrong, will truly apply.

"This controversy is actually between parties assessed for improvements and the city—the great enterprising city of New-York. If your honors should be of opinion that Mr. Striker and others have been sufferers, and it would take $100,000 or $200,000 to right all the wrong that has been done, is there a man of character or reason that would wish to avoid paying his share of it? Is there one who would not contribute that justice may be done? Is there one who would wish to keep his property at the sacrifice of a great constitutional question? I believe there would not be one found, or if there was, he would not manifest himself among a class where he would find so few associates."

The Court say:

Some objections and exceptions were taken on the trial, which are not noticed on the written points handed to the court, nor were they by counsel on the argument.

"Such have not been considered.

"Under the stipulation in the case the defendant should have judgment.

"Nelson, Ch, J., concurred.

DISSENTING OPINION.

"*Bronson, J.*—There are some points in the case upon which I am unable to concur with my brethren.

"If the New-York street law could be regarded as enlarging our jurisdiction, by conferring new judicial powers to be exercised as a court, then I agree that the statute would be free from constitutional objection. But it has been long settled, that the powers conferred by this and other laws of the same general nature, are not strictly judicial; and that in carrying them into execution we do not act as a court, but as Commissioners appointed by the Legislature.—(Stafford *vs.* The Mayor of Albany, 7 John. 541. Matter of Beekman Street, 20 John. 269. Matter of Mayor of New-York, 6 Cow. 571.—Matter of Mount Morris Square, 2 Hill. 14.) Acting on this principle, we have uniformly refused to set aside the proceedings in street cases, under any circumstances: holding, that while sitting as Commissioners, we had no power to recall that which had once been done. And when the parties have desired a review in a Street case, the Supreme Court has issued a certiorari to the Justices of that court as Commissioners; and having thus got the matter before us as a court, and affirmed what had previously been done in another character, a writ of error has been brought in the Court of Errors.—(See Livingston vs. Mayor of New-York, 8 Wend. 83. Patchin vs. Mayor of Brooklyn, 13 Id. 664.)

"In these, and all the other forms in which the question has arisen, it has been uniformly held, that in executing the street law of 1813, we act as Commissioners appointed by the Legislature, and not as a court. The same doctrine has been laid down by the federal judiciary. By an act of Congress, passed in 1792, (2 Bis. 259,) the Circuit Courts of the United States were directed to inquire into and decide upon the claims of certain persons to be placed upon the pension list. Several of those courts declined to execute the law, on the ground that the duties assigned to them were not of a judicial nature. The Circuit Court for the District of New-York, with Chief Justice Jay at its head, held that the Act of Congress could only be considered as appointing Commissioners for the purposes mentioned in it, by *official* instead of *personal* description; that the Judges regarded themselves as being the Commissioners designated by the Act, and therefore as being at liberty to accept or decline that office.

"As the object was a benevolent one, and the Judges wished to manifest their respect for the Legislature, they accepted the trust.—(Note to Hayburn's Case, 2 Dall. 410.) The Justices of this court seem to have acted on the same principle when they accepted the office of Street Commissioners under the New-York law.—(Matter of Beekman Street, 20 John. 269.)

"But the constitutional inhibition against holding any other office, which was substantially the same then as it is now, was entirely overlooked.—Const. of 1777, Art. 25. Ditto 1821, Art. 5, §7.) Since an appeal has been made to the fundamental law, it is no longer the mere question whether we will consent to accept the office, and execute the statute.—The further inquiry is now presented, whether we can rightfully act in the matter? And the Constitution having declared that the Justices of this court shall not hold any other office

or public trust, I think we cannot accept this appointment, however willing we may be to give effect to the wishes of the Legislature. If we can execute the office of Street Commissioners for the City and County of New-York, the like powers may be conferred upon us in relation to any other town or county in the State; or the duties of the office of comptroller, treasurer, or sheriff, may be assigned to us; and thus the constitutional disqualification to hold any other office, would be completely evaded. Following out the principles which have already been settled in relation to this law, I think it conflicts with the Constitution, and cannot therefore be supported. And in this opinion I had the full concurrence of the late Mr. Justice Cowen.*

"The Act of 1813 made the assessment a lien upon the land, but gave no power to sell. By the second section of the Act of 1816, [Stat. of 1816, p. 114, it is provided that *whenever* any assessment upon lands in the city of New-York shall not be collected, *and the collector shall make affidavit* of his demanding the money two several times of such owners as may reside in the City, and that they neglected or refused to pay; or shall make affidavit that the owners cannot, upon diligent inquiry, be found in the City, *then, and in any such case*, it shall be lawful for the Corporation to take order for advertising and selling the land for a term of years; and the lease to be executed to the purchaser, "shall be conclusive evidence that the *sale* was regular, according to the provisions of this Act," I take it to be entirely clear, as well upon the words of the statute as the reason of the thing, that the Legislature did not intend to authorize a sale of the land except in cases where the prescribed affidavit should be made.

"There must be an upaid assessment *and* an affidavit of the collector. The latter is made just as necessary as the former, and we might as well dispense with the one as with the other. The Corporation can take no order in reference to a sale, not even for advertising, until the affidavit has been made.

"It is familiar doctrine in relation to these statute sales, that it lies on the purchaser to show a strict compliance with the statute.—He must make out his case affirmaiively, showing step by step, the existence of all the facts on which the right to sell is made to depend.—(Sharp vs. Spier, 4 Hill. 76, and cases cited.)

"Under this statute the lease is evidence of the regularity of the sale; but not of the right to sell.

"No affidavit was produced, though the want of it was distinctly made a point upon the trial. This was a fatal objection to the defence, which was set up under the Corporation lease.

"It is well known that men acting in a body, especially when under the cover of corporate privileges, will often do what no one of them would be willing to do if acting alone, and upon his individual responsibility. And they will sometimes say aye, or permit a matter to pass *sub silentio*, when they would not venture to record their names in favor of the measure. To guard against such evils, and protect the citizens against the imposition of unnecessary burthens, it was provided by the seventh section of the amended charter, that the ayes and noes should be called and published, whenever a vote of the Common Council should be taken on any proposed improvement involving a tax or assessment upon the citizens. (Stat. 1830, p. 126.) The language is imperative—the ayes and noes *shall* be called. When the particular mode in which the Corporation is to act thus specially declared by its charter, I thinkit can act only in the prescribed form.—The contrary doctrine wants the sanction of legal authority, and is fraught with the most dangerous consequences. It would place corporations above the laws, and there is reason to fear that they would soon become an intolerable nuisance."

Remarks.—Thus we have placed before the reader the entire opinion of the Supreme Court in this assessment case, as delivered by Mr. Justice Beardsley; and we have also given entire the *dissenting* opinion of Mr. Justice Bronson. The opinion of Mr. Justice Bronson is brief and comprehensive and needs no criticism.

We have given in full the able argument of the Hon. Daniel Webster, made before the Court.

There is, in this history of the case, numerous provisions of the Constitution and of the Statutes introduced which were not referred to by the Counsel, and therefore not presented to the Court, and some of these we think very material. The attention of Mr. Webster, we presume, was not called to these provisions, and although he is a man possessing a herculean mind yet he could not be expected to have a particular knowledge of local laws which are of themselves, or at least some of them, a nondescript, unless brought specially to his notice.

It is understood that Mr. Webster is to argue this cause before the Court for the Correction of Errors, and he will then have an opportunity of presenting these provisions of law to the consideration of that Court, if in his judgment they have a bearing upon the points in the case.

We have made our review very lengthy—had we not been limited in time we would have made it more brief. We will hereafter present a brief review in the compass of two or three pages.

As an illustration of the system of making assessments in the city of New-York by the Commissioners appointed by one of the Justices of the Supreme Court we will present a case in the Seventh Avenue, confirmed by one of the Justices of the Court in February, 1839, which we find in the appendix of the Report of the Select Committee from the Senate appointed to investigate assessment abuses, on p. 92 of that Report as follows:

"*November* 2, 1841.

"The Committee met pursuant to adjournment.

Present—Mr. Furman,
Mr. Verplanck, and
Mr. Scott.

"*Benjamin Townsend* having been called on the part of the memorialists and duly sworn, says: That he resides in the city of New-York, and was formerly an assistant alderman of the said city; that as to the assessment for opening Seventh avenue from Twenty-first to One hundred and twenty-ninth street, while the same was pending before the commissioners, he was sick, and remained so for about eighteen months. Some three or four years elapsed between the resolution of the common council for opening said avenue, and the confirmation of the report. He supposed it was abandoned, and heard nothing about it until he was called on for the payment of the assessment on his property. When the bill was presented, he called at the street commisioner's office, obtained names of the commissioners, and examined the maps. In examining the maps and abstract, he saw the property adjacent to his, and owned by Baltus More, awarded at $293 and some cents. The division fence between More and witness runs through the centre of the avenue; the adjoining land below witness belonged to the estate of Thomas Addis Emmett, deceased, and he was awarded $205 and some cents. Mr. Guest for adjoining land above witness, was awarded $274 and some cents; and witness was assessed $213 and some cents, and awarded nothing. Witness owned to the centre of the streets on all sides of his property, except in the rear, and more land was taken from witness for said avenue than either said More or said Guest. Witness then made application to Mr. Murray to see his notes, and he said if he saw the map he could tell witness how it was. Witness then carried him a map of the property of witness and that adjacent, and he then said to witness, that to tell him the truth, he knew nothing about the maps, and had no knowledge by which he could judge or estimate the value of the property; that Mr. Harris made up the assessment, and if there was any mistake in it he presumed Mr. Harris would give explanations, and it would be corrected. Witness then called on Mr. Robertson, one of the other commissioners, who was in an office opening with folding doors into that of the then corporation counsel, Mr. Emmet, and he found Mr. Emmet and Mr. Robertson both present in that office, and witness asked Mr. Robertson in regard to that assessment, how such a mistake could be made; and witness described the situation of his property on the Seventh avenue. He answered witness that he knew nothing about it; he was never there; he believed the avenue was some five or six miles long; that he was never on the premises; that Mr. Harris made the assessment and witness should apply to him. Witness then asked Mr. Robertson where Mr. Harris lived, and he replied that he lived in Harlem, and that he did not know that he kept any office in the city. Mr. Emmet observed that Mr. Harris was frequently in the Times office, in the lower part of the same or an adjoining building; and witness wrote a note directed to Mr. Harris, and left it at the Times office, and called there once or twice, some little time afterwards, and there met Mr. Harris, and asked why he should have made such a difference in the awards and assessments for property taken for that avenue and adjacent to each other; and he told witness that the property was very accurately surveyed and examined into, and the value of the land in the awards made up by the square foot; that the land taken from Mr. More and other persons for the said avenue; that his minutes of making up his report would show that fact: and that if it was not so in the report, and such award made to the witness, it had been altered by the counsel of the board; and witness then asked him what authority the counsel of the board had to alter a commissioner's report, and he answered witness, that the counsel had done so sometimes.*

"Witness then petitioned the common council, and in the board of aldermen it was referred to the committee of which Aldermen Benson was chairman; and in the assistants, to the Committee of which Assistant Alderman Underwood was the Chairman; and that neither of said committees made any report. The witness attended the committee on assessments on notice, and the chairman told him that he had sent for the commissioners, and they had not attended; the witness was then dismissed, and never heard any more about it. During the last summer or fall, a special committee in aldermen, and committee of assessments in assistants, was appointed to hear complaints as witness understood; and Assistant Aldermen Underwood requested witness to make out his complaint in relation to opening the Seventh avenue; and in his

* This question was before the court in the Matter of Thirty-Ninth Street, and several other streets, on motions to confirm the Reports of the Commissioners of estimate and assessment, when Cowen, J. agreed with *Bronson J.* that the statute was unconstitutional. A re-argument was subsequently ordered, and the matter was discussed in connection with the principal case of Striker vs. Kelly.

* Whatever alteration is made, is done so before the report is signed, and such alteration is the act of the commissioners, not of the counsel or the clerk who writes out the report.—Ed.

petition he told said committee that the maps in the street commissioner's office would show, by the location of the property, that a mistake had been made and that it was an award due to the witness in place of an assessment against him for such opening. Witness told Mr. Underwood that Mr. Harris the commissioner had told him that his Harris's notes would show that it was an award, and that Mr. Emmet the then counsel of the board in the matter of the Seventh avenue had those notes. Mr. Underwood told witness that he had twice made application to Mr. Emmet for these notes of the commissioners, and he once promised to give them to him, but had not done so, so that Mr. Underwood could not have them to assist him in making out his report on the petition of the witness."

We remark—In order that the reader may be able to judge of the political patronage appertaining to the exercise of Street powers by the justices of the Supreme Court, we here set forth the fees of the Counsel, Commissioner's, Surveyor's and Collectors for the proceedings terminated in one single year, viz. 1839.

	Counsel fees and Court charges.	Com'rs fees and room hire.
7th Avenue,	3,976.77	5,580.00
6th "	3,589.77	3,339.00
2d "	2,033.55	2,644.72
1st "	390.00	823.25
Avenue A,	250.00	207.00
Manhattan Square,	1,449.13	1,781.00
Mt. Morris do.	938.00	850.00
John Street,	1,936.92	1,432.00
Art Street,	1,896.75	1,626.00
12th Street,	120.00	420.02
24th "	225.00	96.00
25th "	737.40	1,197.00
33d "	768.00	1,382.00
34th "	1,030.83	1,476.00
35th "	905.09	1,247.00
36th "	560.00	653.00
38th "	768.00	945.00
40th "	553.90	1,033.00
50th "	472.00	1,002.00
51st "	612.00	935.00
52d "	687,40	848.00
55th "	497.00	790.00
83d, 84th and 85th St.	360.00	770.00
90th Street,	580.00	738.40
94th "	450.00	731.40
Anthony Street,	2,786.00	3,577.00 }
William Street,	2,073.00	3,000.00 }
	$31,196.47	$39,143.79

It will be seen that the Counsel fees and Court charges amounted to $31,196.47, Commissioner's fees and Room-hire $39,143.79. Surveyor's fees, $22,517,-00. Collector's fees $7,274.00; in all $100,131.26.

A comparison of this sum with the salaries of the civil officers appointed by the Governor and Senate will illustrate the provision of the Constitution which has made a restriction to the exercise of the appointing power.

The amount paid out of the Treasury of the City of New-York to the Counsel of the Corporation for one single year ending Dec. 31st, 1839, as appears by the City Comptroller's Report, for that year, amounted to the large sum of $45000, and upwards.

The Counsel fees in the Brooklyn Reports confirmed by one of the Justices of the Supreme Court compared with those of N. York in 1839, will afford an illustration of the extraordinary extravagance of the latter. These Reports confirmed subsequent to May 1st, 1839, came under the law of April 20, 1839, (see Ante. p. 383.) requiring the fees &c, to be taxed, but the Justice who confirmed the Reports in 1839, made the "confirmation," notwithstanding the omission.

As respects the Commissioner's labors we will introduce the testimony of a practical man who was several years a clerk in the Street Commissioner's office, which testimony was taken before the Hon. the Select Committee, appointed by the Senate to investigate assessment abuses in the city of New-York, and is to be found on pages 81, 82 and 63 of their Report, Senate Doc. No. 100 of 1842.

"Witness made about four-fifths of the computations upon those assessments on which the street commissioner, assistant street commissioner, and chief clerk, were appointed assessors. The assessment made up by witness, if accurate, would produce the same result as they would if made by the assessors themselves. Witness has never acted as commissioner; but he would suppose, that to compute an assessment for paving or regulating a street or avenue was quite as much work, if not more, than to make an assessment for opening a street or avenue; he would think it was more work as there are many more items. Witness has discovered inaccuracies of addition in the estimate and assessments of Commissioners in opening Streets."

As respects Surveyor's fees, we will state, that the Island of New-York was laid out into Streets and avenues in 1807 to 1811—or rather that portion of it not previously laid out—maps were made and the streets and avenues laid down upon these maps which are upon a large scale, say about one inch to the 100 feet. The lands with the owner's names are also upon the map—a copy of the whole is in the office of Secretary of State at Albany, and another copy in the office of the Street Commissioner in New-York. In addition to this there is a small card in the office of the Street Commissioner, containing a complete table of measurement of the Streets, Avenues, and Blocks, and we have made a brief synopsis of a part of it, as follows:

The blocks from 11th to 16th Street are 206 feet 6 inches deep; from 16th to 21st Street, 184 feet; from 21st to 42d Street, 197 feet 6 in.; from 42d to 71st Street, 200 feet 10 in.; from 71st to 86th, 204 feet 4 in.; from 86th to 96th Street, 201 feet 5 inches; from 96th to 125th Street, 201 feet 10 inches; north of 125th Street, 199 feet 10 inches. The Blocks between the avenue are as follows: Between 6 and 12, 800 feet each; between 6 and 3, 920 feet; between 2 and 3, 610 feet; between 2 and 1, 650 feet; between A and 1, 603, &c. All the avenues north of 23d Street are 100 feet wide, and all the Streets 60 feet wide excepting 15 streets, which are each 100 feet wide, and these wide Streets are every tenth Street.

The detail of this card is on p. 311 of this volume. As to the fees of Surveyor's a comparison of 1839 with 1820 will be most convincing. The venerable Jonathan Thompson, of New-York, formerly collector of the Port a very estimable citizen was examined as a witness before the Senate Committee, (see page 47 of their Report,) as follows:

"*September* 25, 1841.

"The committee met pursuant to adjournment.

"Present—Mr. FURMAN,
Mr. VERPLANCK, and
Mr. SCOTT.

"*Jonathan Thompson* being called and duly sworn, on the part of the memorialists, says—that formerly, between 25 and 30 years ago, the witness was personally acquainted with all the assessments of the city of New-York, being the collector of the internal revenue of the United States. Afterwards, the witness in 1819, or 1820, at the request of the common council valued all the property of the city of New-York with Mr. Targee and Mr. Smith. Witness has been a commissioner upon forming and grading the third avenue, and upon a number of other improvements. Witness knows the labor and time necessary in making out assessments, as he has spent several weeks at it, or rather months. Witness has examined the commissioners' map of Second avenue, from Twenty-ninth to Eighty-sixth Streets, and also the abstract of the commissioners' report, showing the number of persons to whom awards and against whom assessments were made, in the matter of opening said Second avenue. He can only estimate the time necessary to be spent in making the assessment of said Second avenue, by comparing it with Third avenue from the Bowery road to Harlem bridge, which was six miles and a quarter in length, and on which the witness made the assessment for regulating and grading. The expenses of the commissioners on said Third avenue, (which was in May, 1819.) The assessment roll contained about a quire and a half of paper closely written, was as follows:

Total expense of working and regulating,		$97,514.00
To which add:		
For advertising	$8.00	
For Surveying	244.00	
Collector 3 per cent on $33,280.31,	998.41	
Assessors for assessing, stationery, &c.	886.56	
Contingencies (paid street commissioner,)	190.03	
		2,327.00
Total		$99,841.00

"The witness produces the surveyor's bill above referred to, which is sworn to Aug. 3, 1820, by the affidavit of Mr. Daniel Ewen the surveyor, which is "surveying, compiling, collecting information, and drawing maps of the Third avenue from its commencement at the Bowery to Harlem bridge, 61 days at $4 per day, $244." The assessment on the Third avenue, extended one-half way to the next block same as Second avenue. The Second avenue is parallel to the Third avenue and about 610 feet distant, and there is not much difference in their situation and grounds, and he thinks it was as easy to make the maps of Second avenue as to make that of the Third avenue; in fact he thinks it was much more labor to make the map for the Third avenue, for the same distance, that it was to make that of Second avenue; it was a new thing when that of Third avenue was made, and there were many more assessments. The witness should not say there was one-tenth of the labor in making out the estimate and assessment of the Second avenue, that there was in making out the assessment which witness made out on Third avenue. The assessment which the witness referred to, as being a quire and a half of paper, on the Third avenue contained descriptions of all the property assessed. The abstract of the commissioners' report on the Second avenue is made out on two sheets of paper. The witness knows what services used to be rendered in cases of street improvements by the corporation counsel. The commissioners or assessors would make out their report or assessment roll, and hand it to the counsel who would put it into legal form.

JONATHAN THOMPSON."

The expenses taxed upon assessment proceedings were not *one-tenth* the rate when Mr. Thompson was conversant with assessments, as are now charged.

In order that the reader may judge of the enormous abuses in these matters as now practised we will make an estimate per block of the Seventh Avenue, remarking at the same time that this avenue runs through farming land nearly its whole length.

The Senate Committee in their report state that this avenue consisted of 108 blocks of about 270 feet each. The Commissioners fees were $1640, for each Commissioner, exclusive of "*Room Hire*." This is pay for 410 full days.

Each block is consequently charged three and three quarters of a day's labor, of each and all the Commissioners. The land in most of these blocks is owned by one and the same person and requires no estimate whatever.

The attorney's fees to each of these blocks is $36.81, and the surveyor's fees $25.93, or about five dollars per acre.

We will here introduce before presenting the DIAGRAMS, some quotations from the Federalist, No. 78, as pertinent to this issue, as follows:

"The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution, I understand one, which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."

Again:

"There is no position, which depends on clearer principles, than that every act of a delgated authority, contrary to the tenor of the commission, under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid.—To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to themselves; that men, acting by virtue of powers, may do, not only what their powers do not authorise, but what they forbid.

RUINOUS ASSESSMENTS ILLUSTRATED.

The two Diagrams on this page are copied from the Maps of the Commissioner's of Estimate and Assessment.

DIAGRAM NO. 1.

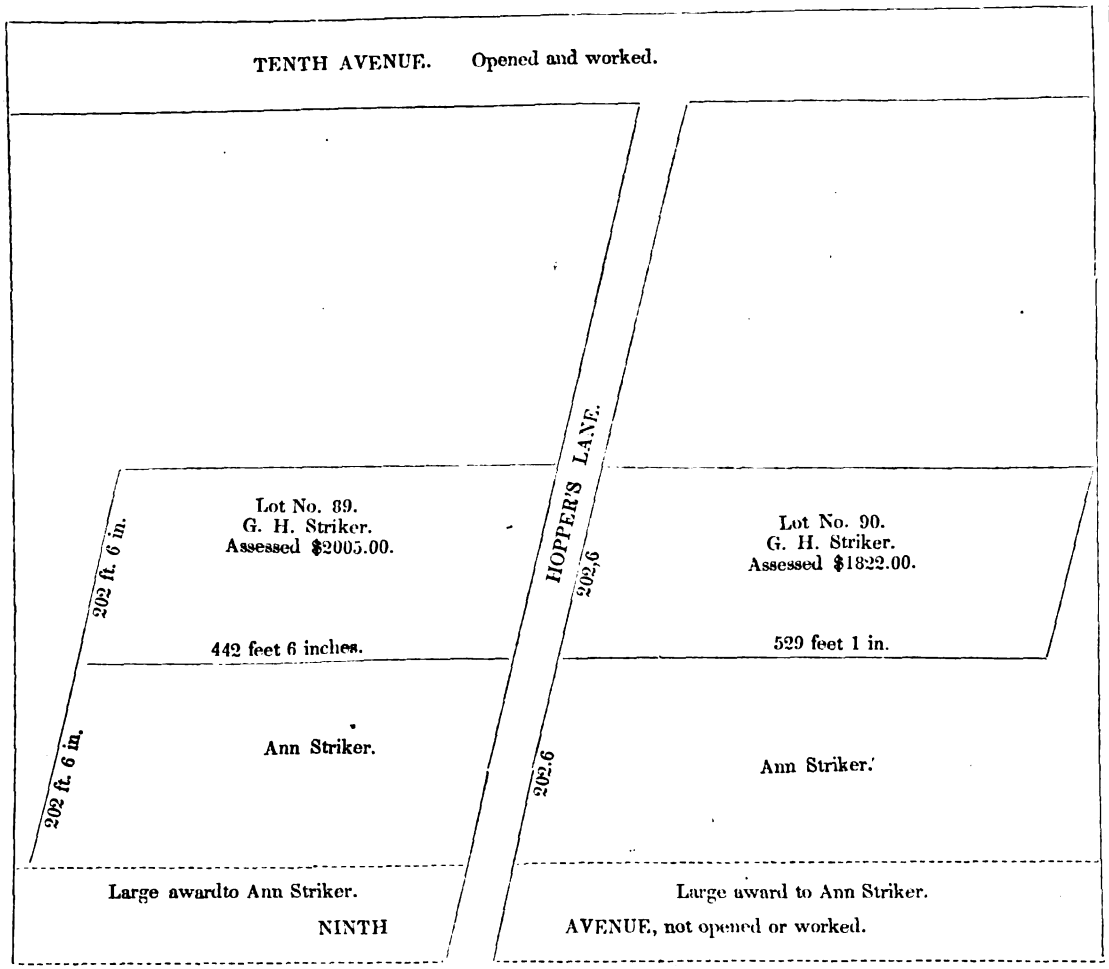
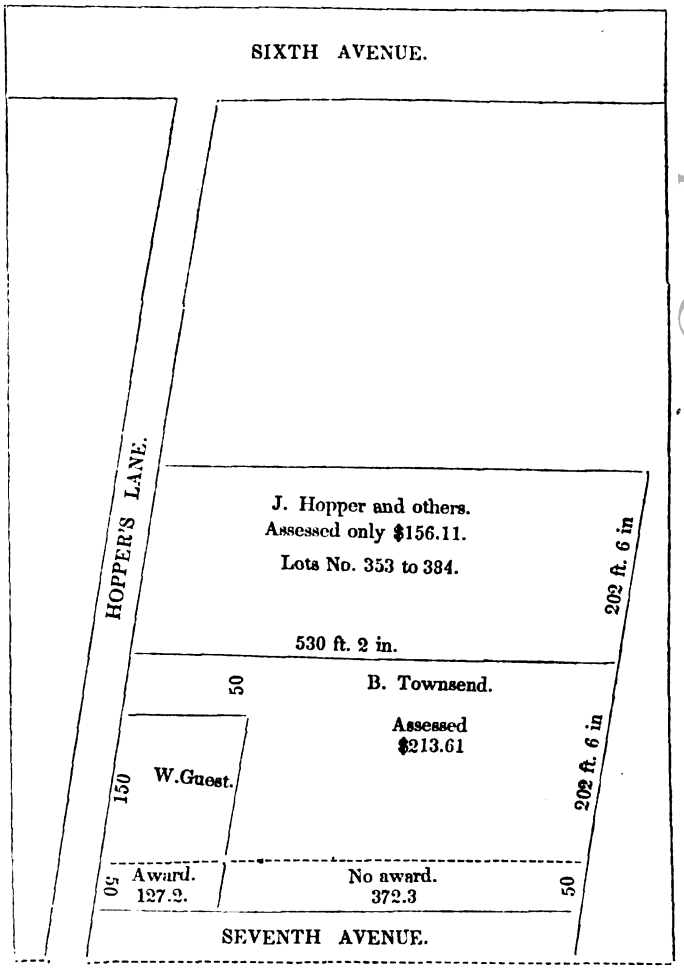
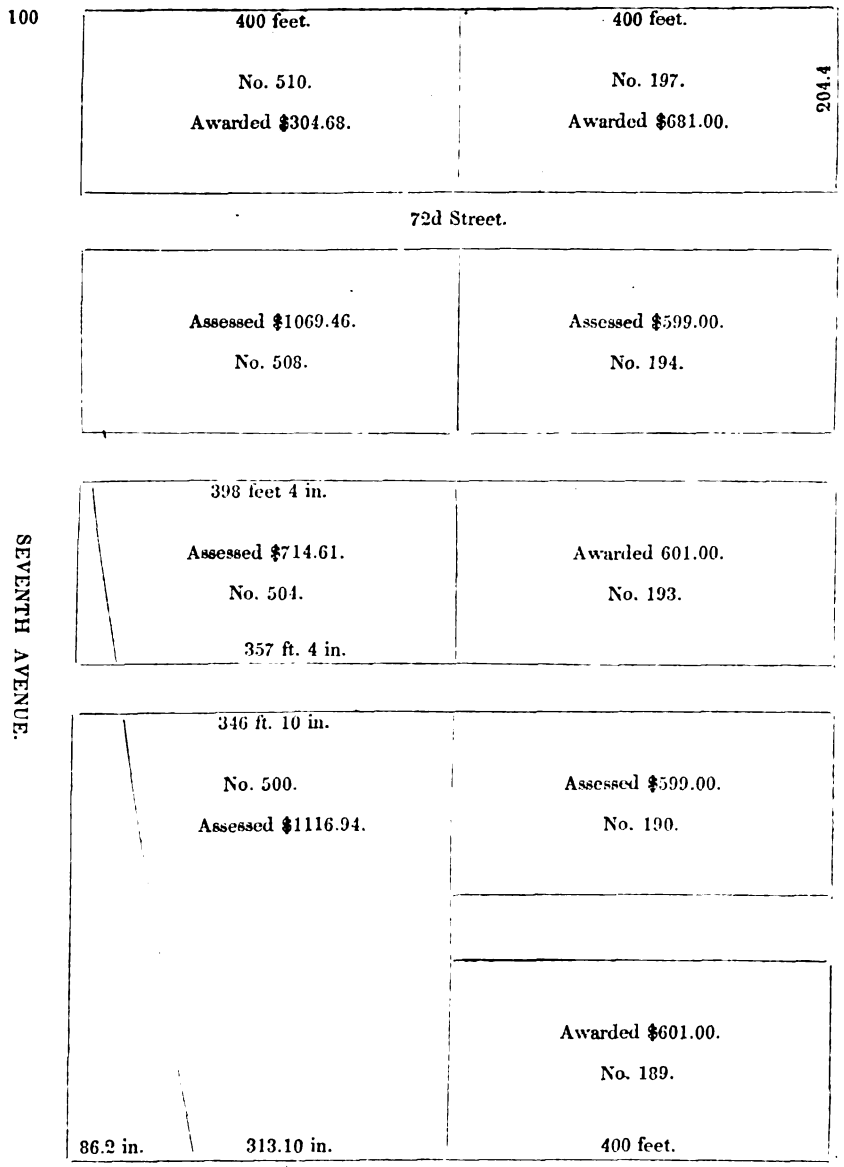


DIAGRAM NO. 2.



We present upon this page, two Diagrams, illustrating the inequality of Assessments, and the loose manner in which these extraordinary impositions have been made. The Land assessed as the property of Garret H. Striker, and designated as Lots No. 89 and 90, were assessed for benefit for the prospective opening of the Ninth Avenue, the large sum of $3,827.00. The Land assessed as the property of Jasper Hopper, T. J. Nelson, and C. T. Newcomb, and designated as Lots Nos. 353 to 384, J. Hopper and others, and which are Nos. 353 to 356—360 to 368, and 381 to 384, on the Commissioners map, of the Seventh Avenue Assessment, are assessed in the whole for benefit, only $156,11. This piece of ground is the same distance from the line of the Seventh Avenue that General Striker's land is from the line of the Ninth Avenue. The Lot No. 90, for which G. H. Striker is assessed $1822.00, does not contain as many square feet as the piece of ground for which J. Hopper, Nelson and Newcomb are assessed only $156.11. General Striker's Assessment is more than eleven times as much as that of Hopper, Newcomb and Nelson. The two pieces of ground are bounded on Hopper's Lane, and are 2300 feet apart and are both of about equal value. General Striker's Lot, No. 90, should not have been assessed $100.

These Diagrams also present an illustration of the system of making awards for land required to be taken for public avenues. The land of Assistant Alderman Townsend, lying within the lines of the Seventh Avenue as laid out and opposite his other ground fronting on the same avenue was taken for the said avenue, to the extent of 18,688 square feet and instead of making an award therefor, the Commissioners assessed him $213,61. Mr. Guest whose land adjoins that of Assistant Alderman Townsend, and of the same quality was awarded $137.00 for 6471 square feet. In the Ninth Avenue assessment, Ann Striker's property, on the westerly side of the centre of the Avenue extended back from that line 250 feet, from which the Commissioners took a strip 50 feet in width, the entire length, and awarded here about four thousand dollars.



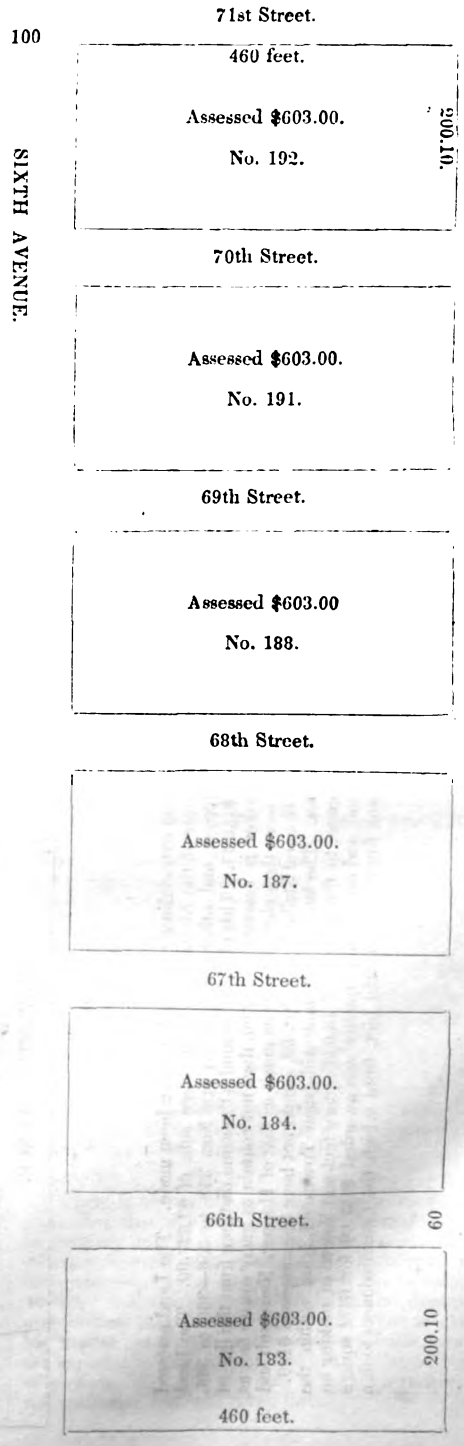
DIAGRAM

OF SIXTEEEN BLOCKS OF LAND,

BEING A PART OF THE FARM AND ESTATE OF

JAMES AMORY,

ON THE ISLAND OF NEW-YORK.



AMORY ESTATE ASSESSMENT ILLUSTRATED.

An opinion may be formed of the labor of Commissioners, Surveyors, and Counsel, in Street openings from the annexed Diagrams, of 6th, and 7th Avenues, and the statement of fees, &c., which accompany the same. The Sixth Avenue proceeding includes 190 blocks like the block designated No. 192. The property of the Amory estate makes 11 of these blocks. The fees of the Commissioner's, Surveyor's, and Counsel are $10,568.77, which is $55.62½ for each block; therefore for 11 blocks it is $611.87½. A competent person could make the survey of these 11 blocks in one day, and the Commissioners could make the assessment of these 11 blocks in one hour, and the labor of the Counsel in the matter should be but a few shillings at most.

The Seventh Avenue proceeding embraces 216 blocks like that designated No. 508. The Commissioner's fees in this avenue are $4,920, which is pay at four dollars per day, for 410 working days for each Commissioner, which is equal to about fifteen months solid time. The Amory estate has 5 blocks of this 216. Of course the share of the expense of the Commissioners on these 5 blocks is $111.55 making 9 days that all these three Commissioners must have been engaged upon these 5 blocks to perform less than an hour's labor. The room hire of these three Commissioners is $410, which is equal to the rent of a splendid mansion in the country for one year. Their Clerk hire, $250; Carriage hire, $30; stationary $48. The Surveyor's fees are $2,801, which at $4.00 per day is pay for 700¼ working days, equal to 116 weeks and upwards, or two years and nearly three months, which for 216 Blocks is three days labor on each block, and fifteen days labor on the 5 blocks in the 7th Avenue. What would farmers in the country say to having their farms surveyed at this rate. The Counsel fees in this avenue are $3,976,77, which is equal to the pay of the High Chancellor of the state for one year, seven months and three days.

Here is an assessment upon the farming land belonging to a widow lady and her children amounting to $5528.33, and the interest upon it to the present time to about $2,300.00, making in all about $7,800.00, for that which is not a farthing of benefit, for they own the land in front of their lots and can open their own street. Such proceedings as these are of the most odious character, a disgrace to the City Government and a shame upon the public officers who have committed these glaring and most reprehensible abuses.

On the next page will be found more upon this particular assessment.

Mrs. Amory petitioned the Common Council in 1843, in reference to this assessment, and on the 31st of July, of that year, the Street Commissioner, John Ewen, Esq., made a lengthy report thereon, which among other things contains the following:

"In the matter of opening the seventh avenue, the estate of Amory is awarded on lots 162 and 163 for land taken for the avenue, the sum of $304.63. The estate is assessed for benefits in the same matter, on lot No. 500, situated between 68th and 70th streets, and within about a hundred feet of the avenue, $1,116.94; on lot No. 504, situated between 70th and 71st Streets, and within about thirty feet of the avenue, $714.61, and on lot No. 508, situated between 71st and 72d Streets, and extending into the avenue, $1,069.46. A portion of this last named assessment is for the part of the ground extending into the avenue, and taken for the same, which belonged to the estate, but for which an award of $392.05, was made to the Corporation under a presumption that it belonged to the city.—The ground belonging to the estate of Amory on this avenue was formerly a part of the common lands, and was purchased by Amory from the corporation. The conveyance to him included all the land which the Corporation possessed in the Avenue at that place, it being the westerly boundary of the common lands. The Corporation would not be entitled to an award for the land in the avenue, even if it had not been formerly conveyed to Amory; the Supreme Court having long since determined that where land is conveyed as bounding upon a street or avenue, the grantor by such Act virtually appropriates the land belonging to him in the street or avenue in front of the land so conveyed. The Corporation therefore having wrongfully received this award, it is undoubtedly proper that it should be passed to the credit of the estate to which it belongs. The sum of the assessments against the estate of Amory over and above the award in its favor, on this avenue, by the assessment, is $2,596.33; which being credited with the award of $392.05, erroneously made to the Corporation, will be reduced to $2,595.33.* This is undoubtedly a very erroneous assessment upon about 186 unproductive lots of land for the mere purpose of divesting the owners of land in the avenue, of the fee, and placing it in the Corporation in trust for public use; and like most other assessments made during a period of high speculation in unproductive real estate, is excessive, as before stated, from an over valuation of the land taken for the avenue, which has caused a corresponding assessment for benefit upon the lands in this vicinity. The sum allowed on a lot of land in this vicinity as nearly as can be ascertained from an examination of the assessments, is about $300; which is probably more than three times its value for any purposes whatever.

"The valuation of the land taken in the opening of the 6th avenue appears to have been estimated at a still higher rate,—the sum of about $400 per lot having been allowed by the Commissioners for the rocks and swamps in that vicinity; and it is against the assessment for the opening of this avenue, that the Petitioner has the greatest cause of complaint not only from the over valuation referred to, but from gross errors as the undersigned believes, on the part of the Commissioners in making their assessments, which errors he will attempt to explain.

"The Estate of Amory embraces a number of blocks of land on each side of the Sixth Avenue, between 65th Street and 73d Street which formerly constituted a part of the common land street, sixty feet in width, laid out anterior to the laying out of the present avenue; its eastern side corresponding with the present easterly side of the avenue, leaving a space between its westerly side and the westerly side of the avenue, of forty feet in width.

"In some cases the Corporation, in conveying to Amory, bounded him on each side of this old street, by which he received a conveyance of a forty feet strip of land in the avenue, between the line of the old sixty feet street and the westerly line of the avenue. In other cases the Corporation in conveying to Amory, bounded him by the lines of the avenue, but reserved in the conveyance the forty feet, a piece in front between the westerly side of the old common lands street and the westerly side of the avenue, for the avenue, intending thereby to furnish the entire avenue between the premises conveyed, for avenue purposes. In the former case, where the forty feet space in the avenue was conveyed to Amory, the Estate has been awarded on that side of the avenue, as damages over benefits for this strip of land taken for the avenue, the sum of $601, and assessed on the land on the opposite side for benefits, the sum of $603, by which the benefit and damage is but equal; and in this case the estate has no cause of complaint, as the ground on each side of the avenue belonging to it should furnish the avenue between; but in the other case where the ground in the avenue had already been furnished to the estate by the Corporation, there being no award for the land in the avenue, there should be no assessment upon the adjoining property, except for its proportional part of the expense. There has been assessed upon the block, on the westerly side of the avenue between 69th and 70th Street, the sum of $599, and on the easterly side of the avenue directly opposite, the sum of $603; also upon the block on the easterly side of the avenue between 71st and 72d streets, where the entire avenue also had been furnished, and for the land in which no award has been made in the proceedings, the sum of $599, when ALL THAT THE COMMISSIONERS COULD HAVE PROPERLY CHARGED UPON THESE BLOCKS WOULD HAVE BEEN THEIR PROPORTIONAL PART OF THE EXPENSES, WHICH WOULD HAVE BEEN ABOUT $55 UPON THE THREE BLOCKS, INSTEAD OF THE SUM OF $1801 CHARGED IN THE ASSESSMENT."

* If the first sum is right this should be $2,204.28. —Ed.

IMPORTANT BILL.

We lay before our readers the following important Bill, in relation to the assessment of Taxes.

[Document No. 128.]

IN ASSEMBLY,

February 11, 1845.

Reported by Mr. Wheeler, from the committee on the judiciary—read twice, and committed to the committee on the whole.

An Act relative to taxes and jurors in the city of New-York.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Section 1. All lands situated in the city of New-York, and all personal property within said city, whether owned by individuals, corporations, monied or stock associations, shall be assessed for taxes now or hereafter to be imposed or authorized by law to be raised or collected in said city, subject to the exemptions specified in title first, part first, and chapter thirteenth, of the Revised Statutes.

§ 2. Every person residing in the city of New-York, shall be assessed in the ward where he resides or does business, at the time such assessment is made, for all personal estate owned by him or in his possession, or under his control, or held by him in any representative or other capacity, and the temporary residence of such person in any other ward or place, or the temporary absence of such person from said ward or city at the time the assessment is made, shall not free such personal estate from taxation.

§ 3. The real estate of all incorporated companies, and of all monied or stock associations in the city of New-York liable to taxation, shall be assessed in the ward where it is situated, and all the personal estate, including surplus moneys or funds, of every incorporated company, and of every monied or stock association liable to taxation, shall be assessed in the ward where the principal office or place of business of said company, monied or stock association is, and any individual or company owning a bridge, shall be assessed for it in the ward where the tolls of said bridge are collected.

§ 4. The persons elected assessors in the city and county of New-York, shall be sworn into office on the second Monday of May in each year, and immediately thereafter commence their duties as such assessors; and it shall be lawful for the said assessors, at any time before they shall have delivered the assessment roll as required by the Revised Statutes, and of the board of supervisors of the city and county of New-York, at any time after said assessment roll shall have been delivered to them, to correct the same by adding thereto the name of, and assessing any person or persons, body corporate or monied or stock association, that said assessors shall have omitted to assess to such an amount as to said assessors or said board of supervisors shall seem just and proper, the same being subject to be corrected by those thus assessed, as now provided by law.

§ 5. It shall be the duty of the assessors in each ward, when they have made out a list of the person, in their respective wards qualified to serve as jurorss to notify such persons to be and appear before them, at a day and place certain in the ward, to show cause (if any they have) why they should not be returned as jurors. Such notice shall be served at least five days before the day of showing cause, by delivering the same to the person so selected or by leaving it at his dwelling house with a person of suitable age and discretion, and if the person so notified does not appear, or if he appears and does not show good cause, he shall be returned as a juror, and the person showing good cause shall not be so returned.

§ 6. The assessors are hereby authorized to administer an oath to the persons appearing and claiming exemption from jury duty, and to examine them as to their excuse. In case of the death or inability to act, of one of the assessors in any ward, the other assessor may perform such duties, and in case of the death or inability of both assessors to act, the alderman and assistant alderman of such ward shall perform such duties, and the return of jurors shall be made under oath.

§ 7. The provisions of the third section, of title one, the fifth section of title two, article one, and the eighth section of the last mentioned title, article two, chapter thirteen, of the Revised Statutes, so far as the same are inconsistent with the provisions of this act, are hereby declared inapplicable to the city and county of New-York.

§ 8. This act shall take effect immediately.

Remarks.—We shall examine this bill with care, and give our views of its provisions in our next number, and in the mean time it will be printed on a letter sheet, and forwarded to those persons whose interests are to be affected by its provisions.

FREE BANKS

We have received from the Hon. D. R. Floyd Jones, State Senator, the following important letter:

"Albany, Feb. 18, 1845.

"My Dear Sir,

"I would state in reply to your letter that the case of the "Board of Supervisors of the county of Niagara, *vs.* The People, *ex rel*, Wm. G. McMaster," came before the Court for the Correction of Errors upon a writ of Error brought from the Supreme Court ordering that a peremptory writ of mandamus issue to the Supervisors of Niagara County, commanding them to restore to the assessment rolls of the town of Lockport, the assessment of the Canal Bank of Lockport, and the Lockport Bank and Trust Company. The only important question involved in the decision of the case was, "Were the two Institutions above named, *monied or stock Corporations?*" If they should be denied to be such by the Court for the Correction of Errors, then the reversal of the decision of the Supreme Court would necessarily follow. The judgment of the Supreme Court however was affirmed as follows:

"For Affirmance—Messrs. Bartlett, Corning, Johnson, Lawrence, Lester, Mitchell, Porter, Scott, Scovil, Smith, Varney.

"For Reversal—Messrs. Backus, Bockee, Jones, Platt, Rhoades, Sherman, Varian, Works.

"Yours, very respectfully,

"D. R. FLOYD JONES.

"E. Meriam, Esq.

RECEIVER OF TAXES.

The office of Receiver of Taxes has been crowded full, and also the avenues to it, for a number of days with persons to pay their taxes before the 15th of February. This is the ill management of the Corporation functionaries in 1843. It will be seen by reference to the Tax Bill in No. 16 of this volume that the anti assessment committee prepared a remedy for the inconvenience by a proviso to allow a deduction on all taxes paid between the 1st of January and the 15th of February as well as taxes paid prior to January 1st, but the Corporation opposed this in order to screw money out of the citizens before the ballancing day, 31st December, so that they could cover up the delinquent ballance sheet.

LEGISLATIVE POWER.

The Constitution of the United States contains this provision:

"ARTICLE 1, § 1.—All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Constitution of the State of New-York contains these provisions.

"§ 1. *The Legislative power of this State shall be vested in a Senate and Assembly.*"

Can the Senate and Assembly of the State of New-York delegate the right or power to pass penal laws to any other body of men?

By *Art.* 1, *Sec.* 12. Con. "Every bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated," &c. The Constitution then proceeds to say, that the objections of the Governor shall be entered "at large on their Journal, and they shall proceed to reconsider it. If after such reconsideration two thirds of the members present shall agree to pass the Bill, it shall be sent together with the objections to the other house, by which it shall be reconsidered: and if approved by two thirds the members present, it shall become a law. But in all such cases, the votes in both houses shall be determined by *yeas* and *nays*, and the names of the persons voting for, and against the Bill, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return, in which case it *shall not become a law.*"

The Governor is thus vested by the Constitution with a negative upon the acts of the Legislature, but this negative is greatly qualified, inasmuch as the vote of two thirds of a bare quorum can pass a Bill after his refusal to sign it, notwithstanding such refusal.

The Constitution provides that the members of the Senate and Assembly shall respectively be elected on a certain day, at a certain place, by persons possessing certain qualifications, and that they shall convene, &c. on a certain day, &c.

Thus the Constitution provides in what manner laws shall be enacted, and details with great precision the form and time. No Bill whatever can become a law of this State, unless enacted in the manner and form prescribed in the power thus given in the Constitution by the People, who are Grantors of the Power.

The Constitution contains no power of substitution, no authority, or permission to the Senate and Assembly to delegate the power of making laws to any other body of men. The power is special, limited and restricted in every respect.

The Act of the Legislature of the State, passed April 7th, 1830, which is called the Amended Charter of the city of New-York, contains this provision:

"§. The Legislative power of the Corporation of the City of New-York shall be vested in a Board of Aldermen and Board of Assistants, who, together, shall form the Common Council of the City."

The question then arises, can the Common Council of the City of New-York pass laws? Can the Legislature of the State grant to the Common Council, or vest in that body the power to pass laws?

To the first quiery, we answer in the negative, and add, that the city of New-York is a part of the State of New-York, and is governed by the laws of the State.

The reply to the second enquiry here propounded, is, that the Legislature of the State cannot in any manner or form, either direct or indirect, delegate the Legislative power vested in that body, that no power of substitution whatever, is contained in the Constitution.

A citizen who executes a written power to another citizen to act for him, and in his name, if he intends the power thus given to be exercised by another, inserts a special clause authorizing his said agent and attorney, to substitute another, or others in his place and stead, &c.; but in the Constitution, the grantors of the power make no such provision in that instrument which contains the grant, and none can be presumed, or implied.

If the Common Council desire an ordinance to have the force of a law within the bounds of the city, that ordinance should be made into the shape of a Bill, and be passed by the Legislature of the State, and approved by the Governor, in the manner and form prescribed by the Constitution.

The Common Council might with as much propriety pass an ordinance to regulate the rate of interest on money, as to pass an ordinance to regulate other matters than those which pertain to the management of the corporate property. The Common Council have no more right to pass an ordinance imposing a penalty on a citizen for a violation of their so-called laws, than a government of an incorporated bank has, and the passage of such ordinances are a violation of the Constitution of this State, and will be so held when taken to the high courts for adjudication, and this objection raised.

No one will for a moment doubt that there should be special laws relative to the City, but all such laws should be passed by the Legislature of the State, and not by the Common Council of the city.

The Common Council of the city of New-York is not the Corporation of the City, but the powers of the Corporation are vested in the Common Council, to be exercised by that body in a certain manner, &c. And what, or who is the Corporation of New-York? It is the citizens and inhabitants of New-York, in whom is vested certain property which has been granted to them by the name and style of the Mayor, Aldermen and Commonalty of the city of New-York, and the management of this Corporate property is committed to the Common Council and particular officers.

The Common Council have the management of this Corporate property for the citizens and inhabitants, the same as the President and Directors of a Bank have of the Capital Stock which is the property of the Stockholders.

If this Corporate property consists of market-houses, they have the right and power to say at what rate the stalls shall be leased and what hours the Market shall be opened, but they have no right to say that the citizen who owns a store shall not sell Pork, Beef, or Poultry in that store, nor can they pass any valid ordinance, making it a penalty for a citizen to sell meat on his own premises. We know that such ordinances have been passed by the Common Council, and that some of the Courts have held such ordinances valid, but such a decision would not be held valid by the Supreme Court of the United States.

There is a vast difference between the powers which may be vested by a Charter in a Political Corporation granted by an absolute government possessing unlimited power, and these which are possessed by our free Government exercising the limited and restricted powers conferred by the Constitution.

No one conversant with the provisions of our Constitution, will for one moment pretend to deny that even the Legislature of the State, is greatly restricted and limited in its power; and yet there are others, and some of them members of the Common Council, who pretend to say that the Common Council, a mere creature of the Legislature, can do that which the Legislature of the State dare not attempt to do—this is, in effect, making the creature greater than the creator.

Hume, De Lolme, Sidney, Tucker and others, who have written much upon Legislative power, speak of it only in such cases as where its exercise is unlimited and unrestricted.

In our free country, this power is possessed by the people, and they are the grantors of power in all cases—the people are sovereign. The legislatures are mere grantees.

The Legislative power, is, by able writers, said to be arbitrary, overwhelming power, and for this reason it was restricted, limited, and defined, in our Constitutions.

If it is necessary that municipal corporations, created by the Legislature of this State, should possess legislative power over a portion of this State, then the Constitution of the State should be amended, and this provision incorporated in that instrument; or if it is desirable that the Senate and Assembly should be authorised to delegate the legislative power vested in these bodies by the Constitution, then, in that case, a suitable clause to that effect should be embodied in that instrument.

If the Legislature were to frame a bill containing all necessary general provisions for the incorporation of all cities, towns and villages in this State, and frame a code of laws which should have a special application to the districts embraced within the chartered limits of each, it would reduce the labors of legislators greatly.

LAWS RELATIVE TO THE CITY.

The Common Council of New York have applied to the Legislature for the passage of several laws, among which are the following:

1 Respecting Gambling Houses and Houses of ill-fame.

2 Respecting the License system, raising the price of a license to twenty-five dollars, and providing a penalty of fine or imprisonment not exceeding forty days, for selling liquors without license.

3 Respecting taxing nonresidents, and relating to the return of jurors.

4 As to betting on elections.

5 For power to enact Penal laws, which is asking for a vesting in that body of the Sovereign power of the State.

6 Relating to unpaid taxes.

The Common Council before applying for a Law, should submit the bill to the People, and any act which they may ask for, which affects a particular private interest, must be presented on notice of six weeks in the State Paper under the provision of Sec. 1 and 2 of page 142 of Vol. 1 of the Revised Statute.

The Common Council will apply for a law to raise money by tax.

Allso for a law to raise $200,000 by Debt to build a poor house.

Also for money to be raised by Debt to complete the High Bridge.

The money to erect the High Bridge, should be placed in the hands of the State Croton Board for disbursment This board consists of Stephen Allen, Saul Alley, W. W. Fox and Thomas T. Woodruff, all of whom are business men, in whom the public have the most implicit confidence.

The two hundred thousand dollars for the poor House should not be granted. Gentlemen in whose opinions we have implicit comfidence say that it will entail on the city an outlay of a million of dollars and an annual outlay of one hundred dollars besides.

It is high time for the city Government to retrench expenditures, but the Alms house project is beginning at the wrong end. The present members of the Common Council were elected to office to reform abuses and not to practice them.

We received a few days ago, a letter from a most estimable citizen on this subject, which is as follows:

"Mount Washington, Jan. 31, 1845.

"DEAR SIR,—

"Indisposition will prevent me from meeting the Mayor by appointment, in relation to matters in general, relating to the Alms House Department.

"I regret that it has been determined to remove the establishment to Randals island, and that the buildings on a most extensive scale are in the course of erection, and for this purpose an application is about to be made for permission to raise a large amount.

"My opinion is that this is the commencement of a most disastrous state of things, reaching, in their consequences, far beyond any considerations of money.

"I sincerely believe that it will add at least one million of dollars more to our already alarming debt and that it will increase the annual tax one hundred thousand dollars, and in a short time a far greater amount.

"I suggest the propriety of making an effort to resist the raising of any money for the object.

Yours Respectfully, JOHN M. BRADHURST.

To E. MERIAM.

Mr Bradhurst is a practiced business man of great experience, and he is a large tax payer. He held the office of Alms House Commissioner for two years, and resigned the office in preference to making extravagant outlays for buildings which the Common Council insisted upon.

Other gentlemen who are familliar with our City affairs and who have had great experience in public life express the same opinion as that expressed by Mr. Bradhurst.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, FEB. 12, 1845. [VOL. I....NO. 27

MAYOR'S OFFICE,
January 20th, 1845.

To the Hon. the Board of Aldermen:

With much regret, and after careful deliberation, accompanied by an earnest desire to add my official sanction to the measure, I find myself compelled to return to your Honorable Board, without my signature, the resolution granting a lease of the Rotunda, (or building now occupied as the Post Office,) to the "New-York Gallery of the Fine Arts," at the nominal rent of one dollar per annum.

I appreciate as highly as the Committee of your Honorable Board by which the resolution was reported, the claims of the institutiou on the public regard and countenance; and the long list of petitioners for the lease, including, as it does, the names of some of our most estimable and distinguished citizens, adds a powerful motive to those already existing in my own miud, for wishing that I could sanction the resolution, consistently with my sense of duty.

But I cannot see that the City Government has the right to make such disposition of a valuable property. The vast and increasing expenses which the citizens have to meet, admonish us that we should not only practise rigid economy in expenditures, but also put to the most profitable use all the city's property and means of revenue. I was chosen to office under this profession and pledge, and I feel myself bound to act up to the profession and redeem the pledge.

Already there is a want of office accommodation for officers connected with the City Government, and the want is likely to increase. The Rotunda, occupying a most suitable and convenient position, might be fitted up at no great expense, so as to furnish several offices which we are now obliged to hire; and if such use of it should not be deemed expedient, there is no doubt that it could be let, at an annual rent of from three to four thousand dollars, which we should be careful not to lose from the public treasury.

The resolution proposes no term for the duration of the lease. If it is intended to grant the building for only one year, the institution might be subjected to the serious inconvenience of having to remove at the end of that time. If a perpetual lease is contemplated, I confess that the propriety of thus binding the city governments that may come after us, appears to me extremely questionable.

Whether a great number of our citizens might not be benefitted by a location farther up in the city than that proposed, is a question for others to decide. As I have already said, my feelings toward the New-York Gallery of the Fine Arts (of which I am a member) are most friendly and of my own property I would cheerfully be liberal to an institution so laudable, and promising such benefits to the citizens; but in dealing with the property of the people I think it is our duty to be careful and economical, not generous, especially at this time, when the expenditures are so large, the taxes so heavy, and the prospects so remote in consequence of the enormous outlays with which we are threatened for the support of schools and of the Alms House establishment—outlays that are continually increasing with no apparent means of prevention.

With these views, I think it my duty to return the resolution without my signature; and I do it with some diminution of reluctance because I know that if my views are wrong, the Common Council still have it in their power to consummate the measure.

JAMES HARPER.

We have given as above, a copy of the VETO MESSAGE of HIS HONOR MAYOR HARPER, and below, we give the opinion of several of our most estimable and intelligent citizens of this act, expressed in a memorial addressed to the Common Council.

To the Honorable the Common Council of the City of New-York.

The undersigned Citizens of the City of New-York, approve of the objections made by His Honor the Mayor, to the passage of the Resolution appropriating the Rotunda, a building belonging to the City, for the purpose of being used as a gallery for the display of paintings, &c., and ask your Honorable Body to sustain the Mayor in the course he has taken in this proceeding.

And your memorialists, &c.

New-York, Feb. 8th, 1845.

Stephen Allen,	Jonathan Thompson,
D. S. Kennedy,	David Hale,
Robt. C. Cornell,	Henry Parish,
D. Halden,	Jon. Goodhue,
John I. Palmer,	John D. Wolfe,
A. G. Thompson,	John Haggerty,
W. W. Fox,	C. H. Russell,
Nat. Richards,	John Onthank Fay,
Geo. Ireland,	P. Lorillard, jr.,
C. Swan,	Saul Alley,
Wm. H. Russell,	J. Boorman,
Peter Schermerhorn,	Wm. E. Dodge,
W. B. Crosby,	Stacy B. Collins,
Anson G. Phelps,	Abm. Ogden,
Silas Brown,	Geo. Newbold,
N. G. Rutgers,	J. M. Bradhurst,
Benj S. Whitney,	Henry Brevoort,
H. W. Field,	John A. King,
Burtis Skidmore,	G. A. Worth.
Wm. Mandeville.	Abm. Van Nest,
Walter Bowne,	Peter Embury,
F. R. Tillou,	Thomas Glover,
Jacob Drake,	James Brown,
James McBride,	C. W. Lawrence,
Lambert Suydam,	J. L. Bowne,
James J. Jones,	Edward Prime,

James G. King.

MAYOR SPRAGUE.

The message of this clear headed and independent public officer to the Common Council of Brooklyn, deserves a careful reading, and the citizens of New-York should contrast this message with the statement of the New-York City Finances, which follows this message.

GENTLEMEN OF THE COMMON COUNCIL.

"I deem it a matter of importance to communicate to this common council, and to all concerned, some facts in relation to the taxes and current expenses of 1844.

"An inquiry is often repeated—Why are the taxes more onerous this year than last? Why, say the tax-payers should they not diminish in proportion to the great increase of houses, property and population? A brief and satisfactory answer to this question is due to all who pay taxes.

It appears that an additional sum of $17,721.16 has been raised for 1844, more than was raised for 1843, as follows:

The increase of lamps required that the Corporation should add - - - - - -	$1,100.00
By an act of the last Legislature was added for the Common School Education -	1,321.16
Also for County purposes to build an Insane Asylum -	13,000.00
The State called for 1-10 of a mill additional on the mill tax, say - - - - -	2,300.00
	$17,721.16

Thus may be seen the amount of increase by whom and for what purpose. It is a common remark, that the rapid growth of the city will tend to diminish the taxes; but it will be borne in mind while the State and three organized bodies are annually increasing in wants irrespective of each other, the advance of the city will probably be anticipated if not greatly exceeded.

Since the year 1833, the current expenses of this city have exceeded the amount raised on tax account, about $70,000; to which, if we add many incidental expenditures, the excess over receipts from taxes, for the last ten years, cannot fall much short of $10,000 a year, and met by the sale of bonds of $500,000, all of which were disposed of long ago.

It is a painful reflection that the same system is still progressing, and if continued, must inevitably lead to serious consequences, such as no discreet individual would allow to interfere in his private affairs. It is not possible to arrive at an accurate statement of what will be the actual deficencies of the several appropriations for 1844, until the financial year shall be closed by all the bills presented and audited. Enough, however,

is ascertained to satisfy any reasonable mind that it is time to pause, and to adopt some system by which this city may hereafter be guided within its legitimate means.

Some of the deficiencies that may be safely estimated for the present year are as follows:

There will be paid out in the shape of salaries, more than raised, - - - - -	$950.00
There will be paid out to watchmen, more than raised. -	2000.00
For repairs of wells and pumps,	600.00
Municipal Court, - -	800.00
Repairs streets and roads, -	700.00
Cleaning streets, - - -	675.00
Interest less receipts from South Ferry (docks claimed by individuals), - - - - -	1400.00
	$7,125.00

There are many incidental expenses, of which Law is a large item, that will swell the amount of deficiencies to $10,000 for the present year, not to say anything of heavy assessments in and about the Park, as is already seen in the assessment list for the sewer, which will probably be followed for regulating and paving Navy Street, and all similar work.

There is what is termed a Sinking Fund, created by a law, for which $5,000 is annually raised by tax to sink the public debt; but there is also what may be, not unaptly, termed an anti-sinking fund, by the Corporation, which has and is sinking the city deeper and deeper in debt.

Every successive Mayor and Common Council find it much easier to increase expenses and Corporation patronage, than to diminish either. They can seldom devote their time and attention to the financial affairs of the city; hence it is natural for men in a corporate capacity to do what they would not do as individuals. I admit, if we had bonds to meet the deficiencies, as usual, the city affairs might go smoothly on, until the interest, instead of absorbing nearly half the taxes now raised, would, in process of time, require the whole amount, and leave nothing for current expenses. Every year must add to the amount of *contingent interest*, to be paid on monies borrowed in anticipation of taxes. The more the city is suffered to run behind on tax account, the more will be required to be borrowed from year to year, and for a constant increase of time, until it shall be necessary to hypothecate the taxes of next year to meet the wants of this, and so onward.

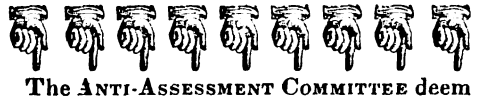
It should be remembered that many of the deficiencies will fall upon the first seven wards, on a settlement with the 8th and 9th, and its importance will increase when called upon to pay up.

Six years previous to 1833, the public expenditures were held sacredly within the means raised by tax. It may be said we were then a village; but I know not why the same principle of finance is not applicable to a city. With this brief view of the city affairs to what conclusions shall we come? Shall we proceed as for the last ten years, and confirm an example for our successors, or shall we at once set about devising the best means in our power to put an end to the anti-sinking fund for which no taxes can be levied, and no bonds be applied? To over-run the appropriations, as has been the practice is a sure road to bankruptcy and unauthorized by law. The remedy is simple: either retrenchment, or an act of the Legislature to increase the taxes; or both seem to me inevitable. The former should be well considered before a resort to the latter especially as we have already approached too near the percentage levied in our sister city.

Thus I have been urged by a consideration of duty to make this communication in the belief that it is much better to know the worst, and speedily to apply a remedy.

All of which is respectfully submitted.

J. SPRAGUE, Mayor.



The ANTI-ASSESSMENT COMMITTEE deem it of great importance to place before the Tax-paying Citizens, some facts in reference to the peculiar state of the City Treasury, at the close of the fiscal year, from 1839, to the present time. In the first place, they place before you the official admission, of the actual amount of the arrears on the 31st of Dec., 1839, as follows:

"To the Honorable the Legislature of the State of New-York.

"The memorial of the Mayor, Aldermen and Commonalty of the City of New-York, *Respectfully represents*,

"That by reason of the great expenses which they have incurred in consequence of the various improvements in the said city, they have found the ordinary revenues of the Corporation altogether inadequate to meet the demands which these expenses have produced, and that they have therefore from time to time been obliged to issue their bonds under their Corporate Seal, to defray some of these expenses, as a means of mere temporary relief. The amount of this floating debt on the 31st of December last amounted to ONE MILLION SEVEN HUNDRED THOUSAND, FOUR HUNDRED AND SIXTY DOLLARS, and can probably be reduced from anticipated sources of revenue to *one million three hundred thousand*.

"The amount to be raised by the annual tax bill will be required for the *ordinary expenses that will accrue pending its collection*, and will therefore furnish no relief in liquidation of the floating debt.

"Your memorialists therefore pray your honorable body will grant *to them authority* to fund such amount of the said floating debt as they may deem expedient, not exceeding *one million three hundred thousand dollars*, by the creation of a six per cent. stock, redeemable in annual installments of $100,000 each.

ISAAC L. VARIAN, Mayor.

THOS. BOLTON, Clerk of C. Council.

Endorsed.—Board of Aldermen, January 13th, 1840. Board of Assistants, Jan. 13th, 1840. Approved, Jan. 14th, 1840.

ISAAC L. VARIAN.

Presented in Senate, Jan. 17th, 1840.

The Legislature authorized the funding of $400,000, payable $50,000 per annum, by general tax on the Real and Personal Estate of the inhabitants and freeholders of the county of New-York.

The state of the City Treasury, as per Comptroller's reports, is as follows:

December 31st, 1840.

Temporary Bonds outstanding,	$1,115,500 00
Overdrawn account in bank,	2,650 42
Tax money of 1841, collected and used in 1840,	102,545 11
	$1,220,695 53

December 31st, 1841.

Temporary bonds outstanding,	$847,947 00
Overdrawn the Bank,	247,437 12
Tax money of 1842 collected and used in 1841,	193,283 80
	$1,288,667 92

December 31st, 1842.

Temporary Bonds outstanding,		$887,433 04
Tax money of 1843, collected and used in 1842,	$765,823 26	
Less bal. in bank,	359,365 43	
	$406,457 83	406,457 83
		$1,293,890 87

December 31st, 1843.

Temporary Bonds outstanding,	$510,000 00
Overdrawn the Bank,	77,690 74
Tax money of 1844, collected and used in 1843,	739,089 48
	$1,326,770 22

It will be seen by the very brief statements above, that the Temporary indebtedness, has increased, notwithstanding the payment of $50,000 annually by tax for its reduction.

The change in the unpaid checks outstanding and undrawn in 1842, to a balance in the bank to the close of that year, as compared with former years, was in consequence of the provision incorporated as an amendment to a tax law of 1842, procured to be made by the Legislature on the application of the anti-Assessment Committee, by the substituting of voluntary payment of Taxes in advance, and deducting of the Interest from the tax paid.

The Receiver of Taxes has, up to 3 o'clock P. M., of Dec. 31st, 1844, received of the Tax of 1845, in advance, the sum of $881,678 34. The outstanding temporary Bonds on the 31st Dec., 1844, the anti-Assessment Committee have not the means of ascertaining until the printed Report of the Comptroller comes to hand, nor will the State Bank Books show the balance in the City Treasury, as that Institution has

no account of Checks drawn and outstanding, which have not been paid before the termination of Bank hours this day.

The balance of the Tax of 1845, to be collected, will not be sufficient to pay the interest of the City debt, the temporary bonds falling due, and the City expenses "*pending its collection*," consequently, the old unauthorized system of issuing temporary bonds must be continued to meet these payments.

This temporary indebtedness should be funded, payable by tax at the rate of $100,000 per annum, until all is extinguished, and the Legislature should also require the Receiver to deposit the money collected from the Mill Tax to the credit of the State Treasurer—that collected from the Croton Tax, to the credit of the State Croton Water Commissioners—that for the support of Schools, to the credit of the proper department, &c., &c. A Committee to investigate the Fiscal concerns of the Corporation, should be appointed by the Legislature, and a Board of Auditors of public accounts, should be created by State authority. The Department of assessing Taxes, building Sewers, opening and improving Streets, &c., should also be created by the State Legislature. The assessment of Taxes should be made by a permanent Board, which Board should have the power to correct erroneous Taxes.

TAXATION.

A friend has sent us the Albany Knickerbocker, of 1844, containing an article on TAXATION, which we give below. It is from the pen of a practical business man of very high standing in the community in which he resides. We omit the bill which is a part of the article

"TAXATION OF BANKS.

"A few reasons are offered in favor of a law embracing the above principles of taxation, together with a few remarks on the taxation of real estate.

"First—Taxation to be just ought to be equal—and to be equal ought to reach all species of real and personal property.

"Secondly—It is a conceded fact that real estate pays too much tax in proportion to personal property. It therefore follows that our laws ought to be so framed as to reach, if possible, all personal property, as it will not be denied, that personal property which can generally be vested at 7 per cent. is more profitable than real estate on an average; but in our zeal to reach personal estate, do not let us be unjust. Some years ago a tax was laid on all incorporated Banks. At that time banking was a monopoly, and most of their charters when obtained were worth from 10 to 25 per cent., and but few could be obtained—but since the passing of the Free Banking Law the monopoly has entirely passed away, and there is now no good reason why a Bank stockholder should pay any more tax on Bank stock than on the same amount of other personal property, or that because it was in Bank stock he should be deprived of his right of swearing it off in case he owes enough to balance it and all other personal property. It is hardly supposable that a man would take a solemn oath to reduce his assessment and makes himself liable to the laws of God and the penalty of perjury.

"It is the opinion of some, if not all the learned counsel of the state, that Bank stock held under the Free Banking Law is free from taxation—should that be so, is not the above Law required?

"Many hard cases in respect to taxation of real estate might be cited; but as most of the cases are well known to you, I will merely name one—a mechanic or other person has a vacant lot on which he wants to build a house—he goes to some insurance office or money lender and mortgages the lot and contracts to have a house built and insured, and the policy to be transferred for security, and he then takes his money as the building progresses, so that when completed he owes about all his property is worth. Yet as the law stands he must pay the tax on it and the insurance office pays a tax on their mortgage on the same property and there is no way for the owner to escape—unless he should be taxed for personal property; in that case he could swear off the amount of the bond; but generally such men are not taxed for personal property.

"Would it not be just for the owner of real estate to say to the assessor when he calls on him to assess his house, which is admitted to be worth $12,000, I owe $10,000 on this house. To Mr. A. $5,000,—to Mr. B. $5,000, and would it not in such case be just for the assessor to assess to A $5,000, to B. $5,000, and the balance to the owner of the house—the non-resident of the town or ward of such bondholder could be reached the same as non-resident stockholders of Banks in section 2 of the above bill by authorizing the mortgagor to pay the tax and deduct it out of the interest on his bond."

PUBLIC SEWERS.

We have laid by for examination, an essay on sewers, by J. B. JERVIS, Esq., of this city. Mr. Jervis is a worthy gentleman of high standing as a civil engineer.

We do not agree with Mr. Jervis in many of his conclusions as to sewers which terminate under water. Such sewers cannot so easily be kept clear by water collected in a large body at the head of the sewer for that purpose, for the foul air in the sewer would not be absorbed by the water, but would be forced by the water into the surface atmosphere.

A gentleman who is familiar with our city affairs, has recently returned from Europe. In October he examined a sewer which was being laid down in Bow Street in London, at the depth of 20 feet. The Church, called the "Bow Bells," had its walls cracked by the excavations for this sewer, and it became necessary to prop up the building. This gentleman expresses the opinion that the use made of sewers in London for conveying off animal excrements, is highly objectionable. Our informant is a practical man and highly intelligent, and his opinions are entitled to great weight for these are formed from personal observation.

That sewers for drainage are extensively required in the city of New-York is undisputed, but the use of these subterranean conduits for other purposes, is too serious a question to be determined by any other means than a thorough investigation, by persons whose minds are not influenced by pre-formed opinions. In narrow Streets like Beekman Street, there is not room for a sewer between the house vaults, unless the sewer is laid low, and then it will endanger the foundations of the houses.

The State Croton Water Board, is composed of practical men, whose opinions on this subject we should rely upon with great confidence, and this question should be referred to that Board, for their opinion.

A friend has put into our hands a small pamphlet on sewerage, the writer of which is a very worthy citizen who is very zealous in favor of universal sewerage. The writer, with great candor, in his preface, says:

"The article originally prepared for Hunt's Magazine was republished in the present form without any pretension on the part of the author to more knowledge about the matter it treats of than might be acquired by almost any citizen with very little labor."

The discussion of the subject will do much good, and the writer we have referred to, has improved himself in this matter. We have before us several essays on sewerage, from his pen, and the last essay on this subject is a very valuable paper.

Some of our best citizens favor his plans, and others, equally deserving and worthy, oppose them.

In changing the grades of Streets much mischief has been done by shaping the surface so as to form artificial basins, thus accumulating the surface water in places from which before it had a great descent. This is clearly illegal, and the public officer who thus acts, lays himself liable to damages in actions against him by the injured party.

If sewers were to discharge above low water into the East and North Rivers, the gases in those conduits will deteriorate the atmosphere air that is reposing within the reach of the sewers, and these conduits of bad air, in case of pestilence, will become conduits of infection. If the sewers terminate under water, the bad air cannot be discharged except on the surface of the streets. The Rector Street difficulty in 1822, and also that of Warren Street, with the old sewer, during the yellow fever, are matters of record. We will examine these records, transcribe and publish them. We should be glad to find ourselves wrong in this, and find our opponents right. We will endeavor if possible to take an impartial view of this subject. The opinion of Mr. Wells, the Superintendant of Sewers in Boston, which we published in our paper of Dec. 1844, is entitled to great weight. He has held the office of Superintendant for seven years, with approbation.

CHAPEL STREET SEWER.

We shall in one of our future numbers, review the Report of the Special Committe upon the Chapel Street Sewer, made in April, 1844, and dissect that printed document, and place the papers in the order in which they were originally arranged for to be printed, and show how these have been dis-arranged, what omissions have been made, what has been added that did not belong to the papers—what dates have been suppressed, &c. &c. &c. It is high time that this matter had a thorough, complete, and final sifting, that the public may know the whole matter. We will endeavor to do this, most thoroughly.

PUBLIC STREETS AND PUBLIC PRINTING.

These two subjects are in the same unmentionable condition as when we referred to them last which was in December of last year. This is inexcusable.

The little girls with their brooms keep a strip clean about two feet wide across Broadway, at the intersection of each street, without difficulty, and collect toll from foot passengers who are willing to compensate them for this labor.

The possibility of keeping this street clean is thus demonstrated, and it is thus shown that the Corporation do not do their duty in this case.

As to the public printing, the Committee to whom the subject was referred last May, have never yet reported, and probably never will.

JUDGE HOPKINSON.

In the argument before the High Court of Impeachment in the trial of Mr. Justice Chase, Mr. (now Judge) Hopkinson used this language.

"The pure and upright administration of justice is of the utmost importance to every people; the other movements of the Government are not of such universal concern. Who shall be President, or what treaties or general statutes shall be made, occupies the attention of a few busy politicians; but these things touch not, or but seldom, the private interests and happiness of a great mass of the community.—But the settlement of private controversies, the administration of law between man and man, the distribution of justice and right to the citizen in his private business and concern, comes to every man's door, and is essential to every man's prosperity and happiness. Hence, I consider the judiciary of a country most important among the branches of government, and its purity and independence of the most interesting consequence to every man."—*Notes to Mr. Justice Story's Commentaries.*

TERRIFIC THUNDERBOLT.

On Sunday morning, the 2d of August, 1844, at an early hour, a thunder-storm passed over Brooklyn. I was at the time noticing the brilliant corruscations of the lightning, and the deafening peals of the thunder, with much attention, in order to be enabled to judge of the nearness of the descent of the different bolts, as these were successively discharged from the bosom of the storm. A terrific bolt came with a continuous crash so close upon the light, that I judged it reached the earth at a point not far distant. On inquiry, I found that three dwellings, and also the *track* of the rail cars, had been struck about a mile distant, which would give a measure of time of about eleven seconds between the light and the sound at my place of observation. It is difficult to measure time by seconds within the sound of the crash of the elements—and most of such measures are at best but guess work.

I visited each of the dwellings which were struck, and made minute and most particular examinations; and after making my memorandums, I re-visited these dwellings to make accurate measurements, &c. The dwelling of Mr. Speck in Warren Street, which is one of the houses struck, is a two story wooden house, painted white. This house adjoins another of the same material, &c. The lightning struck the chimney of Mr. Specks's house, and entirely demolished all that portion of it which projected above the roof, broke the gable-end weather-boarding and ceiling of the front attic bed room, in which were several Canary birds, none of which were killed, but several of them escaped through the opening made by the concussion. One of the timbers of this apartment which I examined was broken. A gilt portrait frame stood upon the floor in this room; the lightning passed over one side of it, and removed some of the gilding, but did not disturb the glass, although the same bolt had broken a timber 3 inches by 4. From this room it descended into the front chamber. In this chamber the glass in one of the lower sashes of a window was all broken, and some other damage done. From this room it passed down into the parlor in two places, making two holes through the plastering of the room: one of these was about the size of a pipe-stem—the other about the size of a small musket-ball. These holes were round. One of these perforations was over the mantel-piece at the end of the room, and the other over the looking-glass at the front of the room.

Thus it appears that the lightning divided, or else the clouds discharged several bolts at the same moment, and these of different sizes. The bolt which came down over the mantel-piece, first struck upon a brass headed nail, on which a portrait in a gilt frame was suspended by a brass ring. The whitewash around the nail was a little discolored, and appeared as if gunpowder had been burnt upon it. The gilt frame was uninjured, but a little of the gilding was removed. Two metallic girandoles stood upon a polished marble mantel shelf, each holding a sperm candle; one of these candles was broken, but the candle was not affected by the heat of the lightning. From the girandole the lightning passed over the surface of the marble mantel shelf, and over the surface of the mantel piece, leaving a discoloration as the record of its path. This discoloration was unequal in width, and uneven on both edges—the widest being less than an inch, and the narrowest over one-fourth of an inch. From this the lightning passed to the grate in the fire-place. The bolt which came down at the front of the room, struck the corner of the frame of a mantel looking-glass, which was then used as a pier-glass. The gilding on the corner of the frame was some of it removed; the lightning left the gilding of the frame, preferring the silvering of the glass, passing between the glass and the wooden back over the surface of the quicksilver flattened into a sheet, discovering elasticity in its body, and passed out at the bottom of the glass in two places, about six inches apart. The glass was in three pieces—that is a main or centre glass, and two end pieces, the points of which were covered over with a piece of gilded wood; at these joints there was a discoloration—showing, I think, that combustion or decomposition was going on during the whole time the lightning was travelling over the surface. The lightning which passed out near the centre of the bottom of the glass, came in contact with the surface of a highly varnished mahogany table and travelled over the surface of this, taking off a little of the polish for half an inch or less, in width, across the top and leaf of the table.

The lightning which came out of the corner of the glass, came in contact with a white muslin window curtain which hung in a fold over a large curtain pin—made a rent in the curtain, and stained it of a purple color, the subliming of the gold leaf used in gilding—and from this passed out of the front window, which was open, breaking the window blinds, which were shut, where the hinges and hasps were attached, and transferring some of the gilding of the looking-glass frame to the window blinds; from these it passed into the front area, breaking the front door-steps. A room communicates with the parlor by folding-doors, which were partly open, and a bed-room extended from this latter room into a wing or projection in the rear of the house near the cistern. Mr. Speck and his wife and child were in bed in the middle room, and Mrs. Speck was awake at the time, and saw a ball of fire pass through the room. Two panes of glass at the head of their bed were broken. The bed-room which extended to the rear, the lightning passed through, shattering the window in the rear, and throwing some of the wood work back towards the middle room. In the basement, the lightning made several excursions. A looking-glass plate without any frame, which stood upon the mantel, was visited, but not injured. A parrot in a tin cage was stunned a little, and the next day bled at the nostrils. A stone jar containing dry crackers, and which stood in the pantry of the basement, covered with a tin pan, was entered by the lightning, and a round hole made in the side of it, measuring seven-sixteenths of an inch in diameter. The tin pan was not knocked off, and it is probable that the lightning passed under it; but rather than travel the same road twice, it made its exit through the side of the jar, and without cracking it. It did not enter that way, it is evident—for the piece cut out would in that case have remained inside.

The outside of the house I will next notice. A wooden gutter receives the rain water from the roof, in front, from which a tin leader extends to the rear, uniting with the tin spout from the rear gutter; these descend from the rear roof to the roof over the rear bed room. I have noticed one from thence to a cemented cistern, in which there is a pump. The tin leader, in passing from the front to the rear of the house, was fastened to the weather-boarding, a few inches below where the lightning broke in the gable end of the house to the attic, where the birds were confined. The lightning passed down this leader, but whether in the inside or outside, or both, it is impossible to say. There were two elbows in the leader in the rear, and in the spout below each elbow, is a rent in the spout made by the lightning, and each of these rents show that the lightning passed from the inside to the outside of the spout, as the fracture made in the tin 1 3-8 inch by one inch show, as the tin was bent outward, and the pieces parted in the centre and held to one edge on each side, like the opening of a folding-door in the centre. The distance between the two open edges was less than half an inch. At the pump in the cistern, the lightning broke the woodwork of the curb, and passed out of the spout through a gutter, outside the fence, in the open lots, where it killed a hog. The lightning followed the rear tin leader of the adjoining house, and to the cistern in the yard of that dwelling, and there broke the pump, curb, &c. The persons in the houses were not injured. The lightning in passing from the front through the middle room into the rear bed room, went out of its nearest way to the atmosphere; for had it taken the nearest route it would have passed over the bed in which Mr. Speck, his wife and child, were reposing. Their escape is, therefore, providential. When the lightning reached the frame of the looking-glass it left the gilding and descended over the silvering of the plate and divided in the distance of the length of the glass into two parts, without affecting the glass or the coating of it, as neither was in the least affected.

This record, made by this thunderbolt, is the most minute of any that I have ever met with, for it witnesses the preference of the lightning for particular surfaces, having here had the opportunity of making a selection, also that it will pass over a thin surface, which is bright, without disturbing the most delicate substance on which the bright coating rests, and also that a bolt will divide into several distinct bodies—and that the track of the path of each is very narrow, it is closer, and will flatten where it is necessary. In the midst of the raging tempest, where the hard breathing of the storm comes in furious blasts, when the coruscations of the lightning illuminate the dark chambers of the storm, and the thunder is rolling with fearful crash from cloud to cloud, it is difficult to watch with accuracy the operations of the lightning, but when the storm has passed, and made its record—that record can be examined with calmness, and care, and found highly instructive, and besides it is impressive, for the writing is with the pen of fire guided by a thunderbolt.

LIGHTNING.

The various theories which have been put forth in reference to the laws of electricity are calculated to perplex mankind, and afford but little information to persons who wish merely to protect life and property from destruction by lightning.

Experience is, in all things, the best schoolmaster, and the lightning in this latitude is so frequent that the diligent and careful observer, has abundant opportunity of obtaining information from the records of the lightning itself, as to its habits and disposition. These records are very numerous.

It matters not whether we consider lightning a fluid or a solid. Records of the lightning are written by the thunderbolt upon material substances with which it comes in contact. The language of the lightning is universal, and it is intelligible to every mind that gives diligent application to endeavor to understand it from its own record. It is from facts that we are to gather knowledge, and not from the opinions of men. Facts that are ascertained and recorded for a series of years, of the operations of lightning afford more information than all the other sources put together. In an old file of newspapers, printed in 1758, which we have before us, we find the following notice from the pen of BENJAMIN FRANKLIN.

"Those of our readers in this and the neighboring Provinces who may have an opportunity of observing, during the present summer, any of the effects of Lightning on Houses, Ships, Trees, &c. are requested to take particular notice of its course and deviation from a straight line, in the Walls or other matter affected by it, its different operations or effects on Wood, Stone, Brick, Glass, Metals, Animal Bodies, &c., and every other circumstance that may tend to discover the nature and complete the history of that terrible meteor. Such observations being put in writing and communicated to BENJAMIN FRANKLIN, in Philadelphia, will be thankfully accepted and acknowledged."

MEMORIAL TO THE LEGISLATURE.

The memorial to the Legislature for the passage of a Law for taxing Incorporated Companies on their actual, instead of their nominal capital, is signed by his Honor Mayor Harper, by the Presidents of the following Banks, viz. Manhattan, Merchant's, American, Leather Manufacturers, American Exchange, City, Mechanic's, Union, State of New-York, Merchant's Exchange; by the President's of the New-York, Life and Trust, and Farmer's Loan Company; by the Presidents of the following named Fire Insurance Companies, viz. Mutual, Howard, Manhattan, United States, Fireman's, Contributionship, Equitable, North America, North River, and City Trust, by the Vice President of the New-York Marine Insurance Company, and the Secretary of the Eagle Fire Insurance Co., by the following named Banking Houses, viz. Prime, Ward & King, and Brown, Brothers, & Co., and several large capitalists of the city of New York.

THE MAYOR'S VETO.

The memorial to the Common Council for sustaining the Veto of the Mayor is signed by three gentlemen who have held the office of Mayor of the city of New-York, and several other distinguished citizens, without reference to politics.

The Mayor has reason to feel gratified that his acts are sustained by gentlemen who stand so deservedly high in this community.

There are several most excellent men who petitioned for the use of the Rotunda, for the use of the Gallery of Fine Arts, who approve the course of His Honor the Mayor, in this.

TAX ON INCORPORATED COMPANIES.

The following is a copy of one of the memorials to the Legislature of this State for the passage of a Law providing for equal and uniform taxation. As the law now is, under the construction put upon it by the Court for the Correction of Errors, Stockholders in Banks are put upon a different footing as to taxation from other citizens.

To the Hon. the Legislature of the State of New-York:

The undersigned most respectfully represent to your Honorable Body that a construction has been put upon the law providing for taxing Incorporated Companies which implies the right to impose a tax upon capital which has been irrecoverably lost.

The undersigned most respectfully suggest that such an imposition is inequitable and that it contravenes the great principle that taxation shall be uniform and equal.

Individuals are not taxed in this way, and the widow and the orphan who are often stockholders in Incorporated companies should not be thus assessed through the institution upon their stock.

The undersigned ask that the bill introduced into Senate by Mr. Bockee in 1843, a copy of which is hereto annexed, may be passed into a law.

And your memorialists, &c.

Jonathan Thompson,	James Harper,
Stephen Allen,	David Hadden,
Geo. Newbold,	John I. Palmer,
Robt. C. Cornell,	G. A. Worth,
Wm. W. Fox,	F. C.Tucker,
D. S. Kennedy,	A. G. Thompson,
Geo. Ireland,	Nath. Richards,
Henry Parish,	John D. Wolfe,
John Haggerty,	W. E. Dodge,
Anson G. Phelps,	Peter Cooper,
Stacy B. Collins,	J. M. Bradhurst,
Samuel Ward,	M. Morgan,
H. W. Field,	Abm. Van Nest,
Wm. Mandeville,	Peter Embury.
Burtis Skidmore,	J. Smith Rogers.
C. W. Lawrence,	Elias G. Drake,
J. L. Bowne,	F. W. Edmonds,
R. Ainslee,	Lambert Suydam,
John McBriar,	Jacob Drake,
T. B. Satherwaite,	Neil Gray,
F. Deming,	Samuel F. Mott,
Shepherd Knapp,	Rensaleer Havens,
Brown, Brothers, & Co.	Prime, Ward & King,
R. Whiley,	P. R. Warner,
J. M. Morrison.	W. H. Johnson,

Jas. Van Nostraud,

"IN SENATE—MARCH 29, 1843.

[Brought in by Mr. Bockee.]

"An act to amend the Revised Statutes in relation to the exemption of incorporated companies from taxtion, and for other purposes.

"*The People of the State of New-York, represented in Senate and Assembly, do enact as follows:*

"Sec. 1. Section 9, of Title 4 of Chapter 12, of Part 1 ef the Revised Statutes, which authorize the exemption of incorporated companies in certain cases from taxation, is hereby repealed.

"§ 2. All banks established under the act entitled 'An act to authorize the business of banking,' passed April 18, 1838, shall be subject to taxation on the amount of capital paid in, or secured to be paid in, in the same manner as incorporated banks. And the proper officer or officers of such banks shall make an annual statement to the Comptroller and the assessors in the manner provided by the 2d section, Title 4, Chapter 13, of the first part of the Revised Statutes.

"§ 3. The provisions of the 15th Section of the 2d Title of the 13th Chapter of the first part of the Revised Statutes shall be extended to all incorporated companies and other associations subject to taxation: and the affidavit in such case may be made by the president, cashier, secretary or treasurer thereof, and such companies or associations shall be assessed on the actual value of their real and personal estate existing at the time the assessment may be made.

"§ 4. This act shall take effect immediately.

JOSEPH GRINNEL.

Mr. Grinell who is now a member of the House of Representatives of the Congress of the United States, was formerly a merchant of this city, and a member of the Commercial House of Fish & Grinnel. His residence is now in New Bedford, Massachusetts, from the district of which he has twice been elected to Congress. As a citizen, as a man, as a merchant, Mr. Grinnel is highly respected and greatly and deservedly beloved. It would be a happy circumstance for our country if our Congress was composed wholly of such men as Mr. Grinnel. Intelligent and honest members of National Councils are a public blessing.

The following is a copy of a Bill, to be presented to the Legislature to be passed into a law. This Bill has been drawn up under the direction of some of the Banks in the interior of the State. Most of the Institutions in the city of New-York, object to it, and these Banks propose, as a substitute, the Bill reported by Judge BOCKEE, of the Finance Committee, in the Senate, in 1843, which is to be found in another column of this page.

§ 1. The Cashier of each Bank, and banking Association now established, or which may hereafter be established in this State, shall, in the month of May in each year, prepare a list of stockholders in such bank, or banking association, and shall extend opposite the name of each stockholder, the amount and cash value, as he shall estimate the same under oath, of such stock owned by each stockholder, as they stood on its books on the first day of May, in the same year, and shall file the same in the office of the Comptroller.

§ 2. Such Cashier shall, in the month of May in every year, furnish from said list, to the assessors of each town or ward, in which said Bank or Banking Association may be located; the name of each Stockholder residing in such town or ward, with the amount of stock and cash value thereof, also the name of each stockholder residing out of this State, with the amount of stock owned by them, and the cash value thereof: and it shall be the duty of the Assessors of such town or ward, to assess as personal property to each stockholder, who shall reside in such town or ward, the amount, or cash value of his stock: and to such Bank or Banking Association, the amount or cash value of the stock owned therein, by persons residing out of the State.

§ 3. It shall be the duty of each Cashier in the month of May, in ever year, to furnish from said list, prepared as aforesaid, to the Treasurer of the County where any stockholder may reside, out of the town or ward in which such Bank or Banking Association may be located, a list of each stockholder residing in such county, with the amount of stock and cash value thereof: and such County Treasurer shall, on receiving such list, notify the Assessors of the towns or wards in which such stockholders may reside: and the Assessors of such towns or wards where such stockholders may reside, shall assess to each stockholder as personal property, the amount or cash value of his stock.

§ 4. In case the tax assessed upon stockholders residing in this State, and out of the town or ward in which the Bank or Banking Association may be located, shall not be paid or collected by any Collector of any town or ward, where the same may have been assessed, and shall be returned by such Collector unpaid: the County Treasurer to whom the same shall be returned, shall return the same to the Comptroller, who shall pay the same, and who shall have the same power to enforce the collection of such unpaid tax, from the Bank or Banking Association, whose stock shall have been thus assessed, as now authorized by law.

§ 5. Each Bank and Banking Association shall pay all taxes assessed to it, on stock owned therein by persons residing out of this State: and on all stocks owned therein where such taxes shall be returned unpaid, as provided in the fourth section thereof—but it shall be lawful for such Bank or Banking Association to retain or deduct the amount of any tax paid by such Bank or Banking Association, or paid by them as above provided, for unpaid taxes returned from the dividends on such stock.

SAMUEL YOUNG.

We regret to notice that this individual has not been re-appointed to the office of Secretary of State. Col. Young is a man of stern integrity and possesses a mind well stored with useful knowledge We have heard several citizens of the City of New-York, who are of different politics from the Hon. Ex-Secretary, express great regret that he was not continued in office. Those who know him best esteem him most.

UNITED STATES SENATORS.

The members of the Legislature of this State, on the 18th ult., gave their votes for two Senators to represent this State in the Senate of the United States. Lieut. Governor D. S. Dickinson and John A. Dix, Esq., formerly Secretary of State, were chosen.

Jonathan Thompson, Esq., formerly Collector of the Port of New-York, and W. B. Cropsey, Esq., of Richmond County, received the votes of the American Republican members.

Willis Hall and Millard Fillmore, received the votes of the Whig members.

WEATHER IN CANADA.

We have a letter from a gentleman residing in Upper Canada, dated January 30th, 1845, which states thus—"The winter so far has been mild. We had a fall of snow in November, which soon disappeared. At present, the sleighing on the frontier is poor enough, but passably good further back in the country, although the snow is no great depth."

THE SNOW STORM.

A great snow storm commenced here on Tuesday the 4th inst., at about 1 o'clock in the morning, and continued through all Tuesday and Tuesday night, and a short time on Wednesday morning. The depth of snow which fell is about 20 inches. On Friday night, the 31st of January, the temperature of the atmosphere began to decrease, and on Saturday my Thermometer denoted 8 degrees, as the lowest point to which it has reached, the present season. At the time the storm commenced, my thermometer denoted a higher temperature than usual at the commencement of snow storms, and denoted 30 degrees. Most snow storms, on the commencement of which, I have noticed the thermometer, denoted a temperature of about 24 to 28 degrees, The wind, on Tuesday afternoon was heavy, and came in fitful blasts.

The Boston papers state the snow commenced falling there on Tuesday, at 12 o'clock, M. The storm was, therefore, eleven hours in travelling from New-York to Boston.

The New-Haven papers state that the snow storm commenced there at 4 o'clock on Tuesday morning, the Newark, New-Jersey papers state that the snow storm commenced at that city, about 12 o'clock on Monday night. At Philadelphia, rain fell abundantly. At Albany, on Monday afternoon, the weather was cold, but the sun shone brightly.

At Hartford, Springfield, and other places in the interior, the snow storm continued throughout Wednesday. The duration of the storm was, therefore, about equal at the different places we have heard from, as the commencement of the fall of snow was not as early as at New-York, but continued an equal number of hours afterwards.

Some time since, we made a map of the snow storm of the 29th of September. Snow storms oftentimes make a narrow path, and it is very instructing to note down the journey of a storm. Cold air passes over the surface of the earth in veins This is demonstrated in the paths of hail-storms in Summer, which leave on Vegetation, a testimony of the visit.

THE SEVENTH SECTION OF THE AMENDED CHARTER.—"The rules of legal interpretation are rules of *Common sense*, adopted by the courts in the construction of the laws. The true test, therefore, of a just application of them, is its conformity to the source from which they are derived."—*Federalis', No.* 83,

"It can be of no weight to say, that the Courts, on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the Legislature. This might as well happen in two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the Law; and if they should be disposed to exercise WILL instead of *judgement*, the consequence would equally be the substitution of their pleasure to that of the legislative body."—*Federalist, No* 78.

NEW-YORK SALINES.

Mr. Wright, the Superintendant of the New-York Salines, has made his annual Report to the State Legislature by which it appears that the quantity of Salt manufactured at the Onondago Salines in 1844, is four millions three thousand five hundred and fifty-four bushels.

The quantity of Salt imported into the port of New-York in 1844, from all quarters was but 1,578,347 bushels, of 56lb. Of this qantity 725,667 bushels was fine salt.

The quantity of coarse salt made at the Onondago Salines in 1844, was 332,418 bushels, and that of Dairy, or Ground Salt, 312,896 bushels.

The quantity of common fine salt made, is 3,258,240 bushels.

The common fine salt made at the Onondago Salines was soldat the Port of New-York in 1844, as low as seventy-five cents per barrel, of five bushels, including the barrel. This is fifteen cents per bushel, and is lower than salt can be imported from England at the present rate of duty.

It should be the policy of the State to encourage the making of a greater proportion of coarse salt, which is produced by solar heat.

The coarse salt of Onondago is of a most excellent quality, and the fine salt cannot be distinguished from Liverpool salt of the same kind. We have placed Liverpool salt in a paper, and also Onondago salt in a paper of the same kind, and on putting these together without marking, we were unable to distinguish the one from the other.

We learn from John Townsend, Esq., of Albany, that the provisions packed with Onondago coarse salt for the United States Government, for the Army and Navy, to be used in warm climates, has been found of excellent quality and well preserved.

The amount of duties collected by the Government of the United States upon salt imported into the Port of New-York in 1844, is $126.268,76.

The amount of duties collected by the Government of the State of New-York upon salt manufactured at the Onondago Salines in 1844, is $240,305.10, of which the drawbacks are $92,533.38.

No duty should be imposed upon salt made in this State that is destined to be consumed in another State.

The State of New-York might with as much propriety tax goods in transit, passing from Ohio to Massachusetts.

A Tariff, is a Tariff, whether imposed by the general or State Governments, and we are often led to look at the inconsistency of the argument of politicians when discussing the importance of separating the public monies of the General Government from the Bank, and at the same time these very politicians made a State Bank a City Treasury.

The duty on foreign salt is made a *bug-bear*, although the equal proportion of each inhabitant of the United States to pay of that imposition is less than four cents, and here the State of New-York is exacting from the labor of the people of Onondago almost a quarter of a million of dollars annually. It is a tax upon the sweat of the laborer. The State duty should be forthwith abolished.

The extent of this mineral deposite which feed these salines has never been properly examined, and probably never will be. It is a great error in the public officers of the State thus to proceed in the dark. During the extreme cold of winter, while Lake Onondago is covered with ice, the stratas which form the bottom of that Lake should be perforated and thoroughly examined. The expense would be a mere nothing, and the advantages immeasurably great.

The hydrometers used at these salines are not a sure guide of the specific gravity of the water. If the Superintendent should cause a vessel to be prepared holding exactly twenty gallons, and a balance beam attached with weights, he would be able to determine more accurately the specific gravity of the water than with his hydrometers. The importance of determining the fact as to the quality of the water remaining permanent, is very great.

I have in my Cabinet, saline waters from most of the salines in the United States and these have been raised at different times from beneath the surface—they are therefore instructing.

The inhabitants of Onondago are making application to the Legislature for the continuance of the drawback law of 1843. The continuation of that law will be highly beneficial to the trade of the city of New-York, and will also enable the coal dealers of Pennsylvania to obtain a supply of Onondago salt at a low price as a return freight for their coal boats, and this facility will cheapen the price of anthracite coal to the inhabitants of the city of New-York.

We have before us the Superintendent's Reports of 1840, 1841, 1842, 1843, and 1844. On referring to the table of the hydrometer for Syracuse, 1840, we find the specific gravity of the water varied from 67° to 72°, averagiing less than 69°. In 1841 the specific gravity was 77° throughout the year. In 1842, the same. The Report for the year 1843, is without this necessary table. In 1844, the highest is 74°, and the lowest 72°, averaging 73½°. When we visited Syracuse in the summer of 1844, we noticed this change in the quality of the water and stated the fact to Mr. Townsend, of Albany.

In 1842, the Liverpool Wells furnished water testing from 70 to 78°. In 1844, from 66 to 71°.

The Saltville wells in Washington county, Virginia, yield water of unequalled purity, testing, uniformly, 92°. The quality of this water does not vary, and is the extent of saturation of cold water with salt.

The waters of Kanhawha test from 32 to 52°. Some of the fossil salt from the Saltville mines, we placed in the Geological Cabinet at Albany for the inspection of citizens who may feel an interest in examining this mineral.

On the Saline Creek, in the State of Illinois, the saline waters are found between stratas of bituminous coal.

At Saltville, in Virginia, a strata of sulphate of lime of 40 feet in thickness overlays the mineral salt, and this salt extends to an unknown depth beneath.

That the waters of Onondago salines come from mineral salt near by, I have no doubt, and that Onondago Lake has been furnished with a basin to repose in from the dissolving of mineral salt, is more than probable. My examinations of that Lake and the reasons I assign for the appearance of the Lake in that locality are to be found in the previons pages of this volume.

THE COMET.

Another of these mysterious bodies has made its appearance in the southern chambers of the heavens, making three of these stranger visitors which have been visible in our latitude within the short space of two years.

These comets are of a class of members of our solar system of which we know comparatively nothing. Of the density of the comets, we have no knowledge whatever.

It is said by some Astronomers, that stars can be seen through the nebluæ of a comet, by others that comets have come in contact with the sun, and that such a collision took place on the visit of the comet of February, 1843.

Our knowledge of material bodies is confined to substances on the surface of our earth. Beneath this surface, but few explorations have been made, and these are limited to less than two thousand feet in depth—beyond this all is a blank page to us.

Of the heavenly bodies much knowledge has been acquired by observation, and that knowledge enables us to determine their motions, size, &c., but of the comets we have not arrived at that degree of knowledge although the return of comets have, in some cases, been predicted with tolerable accuracy; but we arrive at perfect accuracy in regard to the motion of the planets, even to a second of time.

Of the influence of comets upon our system we have no data. In 1811, during the visit of the comet of that year, the Vintage was extraordnary, and the quality of the Wine excellent. The Wine of the "comet brand," in the Wine Cellars bears a high price owing to this fact.

A collision of a comet with onr planet will not in human probability ever happen. Such an event is not in accordance with the harmonies of nature, and I am more inclined to believe that the observers were mistaken in reference to the comet of 1843, than to believe that the comet reached the body of the Solar Orb.

That some of the fixed stars have left the places occupied by them in the heavens is a fact which I presume will not be disputed. The number of these bodies which have absented themselves, is very considerable, and probably equal to the number of all the comets of which we have any knowledge.

When we look at our earth and compute its size and its motions, and then at the heavenly bodies, and compare our planet with others, we become lost in the immensity of the field presented to our view and overwhelmed by the sublime and the stupendous harmonies of Nature, as witnessed in the motion of these members of the mighty firmament.

We imagine that Mars, from its proximity to the solar orb, must have an atmosphere of intense heat, while that of *Georgium Sidus* which is remote from the Sun, has an atmosphere intensely cold; but the converse of this may be the fact. We have no means of determining the fact, and conjecture in such a case is out of place.

The comet of 1843 was first noticed at noonday, in latitude about 44° north, by the naked eye, and the comet of 1845 was first seen in this country in latitude about 30°.

THE SWEETS OF COLD.

The clear cold air is one of the phenomena of Nature which the inhabitants of this section of the globe have an opportunity of witnessing frequently every year, and sometimes for several days together, and further north, for weeks, and still further north, for months. The effect of cold upon every material substance is very great, and the extent but little known. As a purifier of the atmosphere its operations are more extensive than that of heat.

In the sultry months of Summer a cool breeze is one of the greatest luxuries. Often do we see persons laboring with a paper or feather fan to give motion to the atmosphere and thus decrease its temperature. The same atmosphere which is considered cool in summer would be considered warm in winter. In summer the atmosphere of a cellar feels cool to a person entering it from the air heated by a summer sun, but in winter the converse of this is experienced in passing into the same apartment from the atmosphere resting upon a surface covered with snow, or one locked up with frost.

Ice has within a few years become an extensive article of commerce. It is sold by the merchant by weight, and exchanged with the inhabitants of the torrid zone for the precious metals, and there are some sections of the world where a pound of Ice exceeds in market value a pound of Iron. We are accustomed to see ice formed and forming, and sometimes with a rapidity that is truly astonishing, but the frequency of this phenomena has divested it of its novelty.

We survey the rocks that lay in piles, and wonder how these could have been formed. The same Almighty Being who by his power changes a fluid to a solid, formed these rocks by a process as simple as that which transform water into ice.

Ice forms in the atmosphere above our heads and falls in little crystal pebbles upon the ground; these dissolve and rise again in vapor and continue ascending and descending at unequal intervals, and in most cases rise in one place and fall in another. The inhabitants of cities in low southern latitudes where pestilence wastes at noon-day, appreciate a visit of the frost as one of heavens richest earthly blessings—they can understand the meaning of the brief heading of this essay.

The writer of the ancient book of Job enquires:

"Hast thou entered in the treasures of the snowe?
Or hast thou seen the treasures of the haile?
Who hath ingendered the frost of the heaven?
The waters are hid as a stone,
And the face of the deep is frozen."

This quotation we have made from an ancient copy of Scripture, imprinted at London in 1599, two hundred and forty-six years ago.

The ancient history of the cold, penned more than 3300 years ago corresponds with this climate at the present day.

TAX UPON BANKING ASSOCIATIONS.

The Court for the Correction of Errors have decided that associations formed under the general banking law are Incorporations in the view of the law imposing taxes upon the capital stock of incorporated companies paid in or secured to be paid in.

The Legislature will be applied to for the passage of an act placing owners of Bank Stock on an equal footing with persons owning other personal property. Taxation must be equal otherwise violence is done to the fundamental law.

WINTER BIRDS.

The last day of January of the present year which was Friday of last week, I received a first visit since the commencement of cold weather, from the Ground Sparrows, which were my visitors during the whole of the previous winter commencing the 16th of December, and continuing until the middle of May. The latter part of June, these birds came on a visit of a few days with their young. I was glad to see these feathered acquaintances, and am glad to record the remembrance of my kind treatment to these little creatures. The previous winter the Sparrows were attended by fourteen Snow Birds. This winter the Snow Birds have paid me but about a dozen visits, and the first of these was on the last Sabbath in December. The cold has not been so intense the present season, as to prevent these birds from finding food at their usual places of stopping, but on Friday, a change of weather admonished them of the necessity of resorting to their old quarters. They come full of gratitude and full of cheerfulness, and I can read in the expression of the eyes of these little feathered visitors, a language which the shadow of a thought. This is the third winter which I have fed a flock of snow birds in my yard, and it is instructing te the human mind to watch their movements.

They present a picture from the hand of nature full of loveliness Sweet creatures, I admire them, and I prize their visits highly. Instinct and intelligence are both from the hand of nature. Birds are said to possess instinct—they possess intelligence, and many of them discover more knowledge than is possessed by some of the human species.

THE SOLEMNITY OF SILENCE.

Perfect silence is awfully impressive. There are very few who have the opportunity of experiencing the sensation produced in the human mind by profound silence. I have stood upon the mountain top towering above the clouds at the hour of midnight in the midst of silence so intense as to be overwhelming. I have stood beneath the earth's surface in far remote subterranean chambers, where silence and darkness had been constant companions for ages—and there silence was awfully sublime, for it was absolute—it commanded the homage of the human mind, for it controlled the pulsations of the human heart. The arctic navigators, in the highest northern latitudes which they were able to reach, found in the stillness of the air in that uninhabited region, a silence so profound as to be awfully impressive.

I have endeavored to transcribe my thoughts when my hand which guided my pen was shaken by the reverbation of the thunders of the waters of the greatest cataract on earth—and I have made the same endeavor when I was in the midst of perfect stillness, and found the result. in both cases, the same.

There is in silence a living teacher that opens to the human mind vast treasures of knowledge before undiscovered, the apartment of which cannot be unlocked by any other key. There is to be found in silent patient waiting, volumes of instruction, such as no written language ever has conveyed to the human mind, affording to the human heart that light which illuminates the dark chambers of thought, illuminating the path to futurity with its undescribable corruscations, the light of which reaches to the remotest chambers of the celestial world.

LONGEVITY.

The early ages of the world present some extraordinary cases of the prolonged duration of human life. Adam became an inhabitant of earth on the second solar day of the first year of solar time. and lived to the age of 930 years. His death occurred in the year 930.

Methuselah was born in the year 687, and died in the year 1655, at the age of 969.

Noah was born in the year 1056, and died at the age of 950, three hundred and fifty years after the flood had covered the face of the whole earth.

Methusalah was 234 years old when Adam died, and Noah 599 years old when Methusalah died. Thus these three individuals were enabled to transmit from one to the other, a history of the great events of early time, bringing it to a period which covered 2006 years. The aggregate ages of these three individuals was 2849 years.

The persons born prior to the deluge were very long lived compared with those born subsequent to that great event. Noah, although comparatively an aged man when he entered the Ark, lived more years than any individual born after the flood. The great age to which mankind attained prior to the deluge must have given to the earth at the period when the deluge commenced, an overwhelming population.

The change in the duration of human life, which took place at the same period that the earth was covered to an immense depth with water, is as extraordinary as the occurrence of the deluge itself, and both were the special acts of the Creator. Shem, the son of Noah, and the great grand-son of Methusalah, was 98 years of age the year the great flood took place. Shem lived to the age of 602, which brought down a history of the world to a period of 154 years subsequent to the death of Noah. The children, grand children, and great grand children of Shem lived to a less age than himself by near two hundred years, and their children and grand children lived to about half the age of their parents.

A COLD WINTER NIGHT.

It was in the month of January, more than thirty years ago, during intense cold weather, that I encamped, with several others, in a Northern Forest near the base of a mountain, far from any human habitation. The snow covered the ground to the depth of six feet upon a level.

The shantee in which we took shelter had been erected years before, and abandoned. We were able with a few hours labor to render it comfortable, that is comfortable compared with lodging in a snow bank. One end of the shantee was open to the atmosphere, and at this end we kept a large fire burning continually. Night came upon us in a little while after we had lighted our fire. Not a cloud was to be seen, nor a sound of wind to be heard—the air was clear and the cold increased as the night advanced, and before midnight the trees of the forest commenced cracking with the severity of the frost, and during the remainder of the night the sound was like that produced by the discharge of volleys of musketry. It seemed as if the whole forest would be torn in pieces with the severity of the cold. The stillness of the air, the intensity of the cold, and the remoteness of the scene from the bustling noisy world, gave greater force to the sound upon our organs of hearing. Once during the night the ice of a distant Pond cracked, from one extremity to the other, with a force and concussion like that of the heaviest thunder. It was impossible to sleep during this severe attack of the frost upon the forest trees, as the land was heavily timbered, and the detonations were so constant and so loud that the one could only be distinguished from the other by the distance and the greater or lesser detonation.

A WILDERNESS RECORD.

In an extensive wilderness tour, I came to a ravine in the forest. made by a hurricane. It presented a winrow of timber torn from the earth by the fury of the storm in one of its resistless blasts as it journeyed over this local surface, marking the width of its track by the prostrate trees which it left in its path, as the witness of its visit. The point of commencement was noted by the first prostrate tree, and its termination by another mute witness of the same order. What a record this—and what testimony—written by the hand of a Tornado in the bosom of a Forest. I have travelled in the wilderness path of the whirlwind, but its record of its journey was unlike this—the whirlwind breaks the trees above the surface, but the tornado tears them up by their roots.—The edges of a path made by a tornado are well defined, and quite even. This ravine was about forty rods in width. It opened to the ground quite a strip of sunshine. I have seen the whirlwind in the commencement, the germ of a tornado.

This was an instructive page in the great volume of nature, and the wilderness is a wonderful place to study this great volume. A ravine like this when intersecting a bridle path presents an impassable barrier to the traveller. Trees piled on trees form a fence too high and too wide to be leaped by a horseman, and he has no choice but to travel up or down the edge of the path of the mighty wind. The record of the storm when written by its own pen, is in a language which is universal, presenting no difficulty of construction. It chronicles the width and length of its path with unerring exactness.

A MAY MORNING.

There is in the atmosphere of a brilliant May morning, an essence which is exhilirating to the human mind. It has a sweet which can be tasted, a beauty which can be seen, and a charm which can be felt, be enjoyed—be realized.

The human breast, when inflated with such an atmosphere. expands with the emotions of delight, which are kindled up in the bosom, and the human countenance becomes illuminated by that feeling thus produced, which gives it an expression that is almost superhuman—a smile which is the offspring of happiness.

I have watched the approach of the orb of day on a May morning, as it gradually arose above the horizon in its entrance from its Eastern Chambers, with an emotion that no pen can express—its magnificence—its splendor—its glory, no pen can portray, nor language describe—the atmosphere was warmed by its presence, adorned by its brightness, and made refreshing by its powers of life. What a treasure this world of light, for it is one of the fountains (under heaven) of life.—

THE FIFTIETH, AND THE FIFTH YEAR.

In 1826 Ex-President Adams and Ex-President Jefferson died.

In 1831, Ex-President Monroe, died.

In 1836, Ex-President Adams, departed this life.

In 1841, President Harrison, died.

1846, remains in the unopened volume of time, and its events are known only to him who put the wheels of time in motion. There is both admonition and instruction in these periodical markings of Providence.

This Republic is yet in its infancy, and this extraordinary marking of regular periods of time—every fifth year, commencing with the 50th year from the Declaration of American Independence, is a solemn warning, and if unheeded by our rulers may bring down awful judgments upon the land.

THE FROST.

There is knowledge to be obtained by reading the beautiful lessons of this Great Teacher. The inscriptions made by this, one of Nature's penmen, upon the surface of the glass of the windows of dwellings and stores, are well worth reading, and will amply repay transcribing, for the language is perfectly accurate, not an error can be found in the beautiful page.

The side-walks of our streets in cold mornings that succeed moist and temperate days present upon the pavements beautiful drawings of plants, &c., and some of these chrystalizations might, if they remained permanent, be mistaken for the tracks of birds, for thousands of these fanciful embossings of the frost present precisely the same figure, illustrating the same order of arrangement with regard to expression as men make in the use of letters to form words, and words to form sentences. Chrystalization, is not always the offspring of frost—it is produced also by heat—but the same uniformity and exactitude characterize both, and it is often, I determine a fact, by the close study of the lessons of this great teacher.

PETITION FROM THE SOCIETY OF FRIENDS.

To the Senate and the House of Representatives of the United States of America, in Congress assembled.

The Memorial and Remonstrance of the Religious Society of Friends, in the States of New-York and Vermont, and parts adjacent, respectfully sheweth:

That your memorialists learn, with regret, that it is proposed to annex the state of Texas to, and incorporate it with, the states of this Union:—and, believing as they do, that the consummation of this measure would extend and perpetuate slavery, and place in jeopardy that peace and harmony which now exist among the nations of the earth, they feel it to be an incumbent and religious duty respectfully but earnestly, to remonstrate against such annexation.

The views and opinions of your memorialists, in relation to slavery, are well known. They are not of recent origin—nor are they connected, in any degree with party or sectional feelings.

The greater part of a century has elapsed since the predecessors of your memorialists—influenced by what they believed to be the will of Him who is no respector of persons—and who, it is declared, "made

of one blood all the nations of men," emancipated their own slaves, at what then appeared to be, a great pecuniary sacrifice. At a still earlier period, and near by half a century before the foreign slave-trade was declared by law to be piracy, the religious Society of Friends forbade all participation in it;—and impelled by the same sense of religious duty which now prompts it to approach the national Legislature ceased not to importune those in authority to prohibit the unrighteous traffic.

Slavery originated in a dark, and comparatively barbarous age; at a time when the political and civil rights of men were little understood, and less regarded; when civil and ecclesiastical tyranny oppressed the nations, and subjected the people to grievous and cruel sufferings. Against these violations of human rights, the members of this religious society have ever sustained a peaceable, but a firm and unwavering testimony—and they even sealed that testimony with their blood.

In the progress of time, it pleased the King of Kings —by the spread of the Gospel of his Dear Son—to soften the hearts of rulers, and to enlighten the minds of the people, until we have seen, even in the despotisms of the old world, a greatly meliorated condition of the subject, and the shackles rapidly falling from the limbs of the slave.

That the example of the free political institutions of this country has exerted a powerful influence in improving the condition of mankind, will scarcely admit of a doubt;—and yet your memorialists have to deplore that it is in danger of being the last to extend the benefits of her own beneficent and righteous principles to all who may justly claim an interest in them—to all who are made in the image of Him, who, we have solemnly declared, "created all men equal, and endowed them with certain inalienable rights"—including "liberty and the pursuit of happiness!" Against every measure which may deepen and fasten this foul stain upon the character of our beloved country, and retard the progress of free institutions throughout the world, by the contradiction it involves and the imputation it would seem to justify, that our love of liberty is selfish and exclusive—your memorialists earnestly and solemnly remonstrate.

If it be conceded that the colored man is comprehended in the plan of redemption accomplished by Him who died for all men;—if he be a man, in the sense signified in the divine injunction—"Whatsoever ye would that men should do unto you, do you even so unto them," then the fact of our depriving him of freedom, and preventing his "pursuit of happiness," is as gross a violation of the spirit and precepts of our holy religion, as it is incompatible with our boasted Declaration of the rights of man.

Your memorialists are aware that this subject is one of great delicacy; they are not insensible to the obstacles to general emancipation; but being fully persuaded that He, to whom "nations are but as the dust of the balance," and who will "judge them in righteousness," calling for this sacrifice at the hands of the American people; and believing that to nations, as to individuals, who sincerely seek his aid, he will "provide a way, where there seemeth no way," and will sustain them by his outstretched arm in every honest effort to discharge an incumbent duty, your memorialists cannot hesitate in urging the commencement of the great and noble work of universal freedom. They do so with the less hesitation because they believe that even the temporal interests of the master will ultimately be promoted by it; and they are impelled by a serious apprehension that, *if not performed in mercy*, the work *will be accomplished in judgment*, and attended by an awful retribution; for they coincide in opinion with one of the most eminent of American statesmen, that it will be found, should such a conflict occur, that the Almighty has no attribute which can take sides with "the oppressor."

Your memorialists apprehend, moreover that the annexation of Texas will involve this country in war.

They have indulged the hope that correct views of the benign religion of the Prince of peace were hastening the day when "nation should no longer lift up sword against nation, nor learn war any more."

History furnishes ample evidence that wars have mostly risen from the pride of princes and their lust of empire; that nations have often been deluged with blood, and subjected to the most dire calamities, by causes and considerations, regarding which, the people —those upon whom the burdens and the miseries of war devolve—had little knowledge and felt less interest; that wars have frequently been waged by unprincipled rulers, to divert the attention of an oppressed people from their own sufferings. But the mitigation of despotic sway which modern times have witnessed, has produced a repose, which awakens a cheering hope in the mind of the christian philanthropist. Should a country, upon which the gracious Giver of every good and perfect gift, has shed the choicest of his blessings;—a country every way fertile and extensive beyond the possibility of speedy occupation, be the first to interrupt this repose, and to unsheath the sword for the acquisition of additional territory, great and fearful indeed must be the responsibility it assumes—and awful the retribution it may justly apprehend.

Whatever may be thought of the opinion entertained by your memorialists—that war under any and every circumstance, is forbidden to the followers of Christ, they respectfully urge—what they apprehend few will deny—that if there be any one great and prominent principle clearly inferable from the example and precept of the Author of our holy religion—of Him, whose advent was announced by the heavenly anthem, "On earth peace, and good will towards men"—it is a principle of love and forbearance which would prevent war, except upon the supposed existence of a stern and imperious necessity.

If this be admitted as a sound view of christian doctrine, does it not present a strong inducement for the Representatives of the American people to pause, and deliberately to weigh the motives which prompt, and the consequence which may follow, the annexation of Texas to the states of this Union.

Signed by direction and on behalf of a meeting of representatives of the yearly meeting of the religious society of Friends aforesaid, held in the city of New-York the 26th day of 12th month, 1845.

HENRY HINSDALE, Clerk.

THE MEMORIAL OF THE SOCIETY OF FRIENDS.

We have given in this days' paper, the memorial of a Religious Society, in reference to the acquisition of Slave Territory by the Government of the United States.

The same argument which is urged in favor of annexing Texas to this Republic, may be urged with equal plausibility, in favor of all the Territory on the American Continent, not embraced within our limits. The memorial is an able document, and it comes from a right quarter. It is a deliberate act, and is its own witness of good.

ICE IN THE EAST AND NORTH RIVERS.

The floating ice has become abundant in the East and North Rivers. We noticed on Friday morning, in crossing the East river that great numbers of Crows were flying over the floating ice, and occasionally alighted upon the broken pieces, and were thus carried forward by the tide, and these birds appeared to enjoy the sport.

DESECRATION.

The venerable building in Nassau street, between Cedar and Liberty street, which was erected for a place of worship, and which has been occupied as such for a great number of years, has been transformed into a Post-Office.

DESTRUCTION OF FISH.

It is said that a great number of dead fish have been thrown upon the south shore of Long-Island by the surf, and a writer in one of the Southern papers, attributes the destruction of the fish, to the cold weather in December. The water of the Ocean, in our latitudes, was not affected by that cold, and if it had been frozen over, the fish would not have suffered in the least. In the Northern regions, fish are taken from the water and thrown upon the ice, and left exposed to the cold until frozen stiff, and then thrown back into cold water, and again become as active as before. Mankind are not such careful observers, as to understand all the phenomena of nature.

AZARIAH C. FLAGG.

Mr. Flagg has been re-appointed State Comptroller by the Legislature of this State. Mr. Flagg is a very popular public officer and deservedly so. The Citizens of the city of New-York of both political parties are gratified that Mr. Flagg retains the office which he has filled for years, with honor to himself and great advantage to the state.

VETO MESSAGE.

The Veto Message of Mayor Harper is a very satisfactory documont. That worthy public officer could have gone further in his objections by stating that whatever rent or income comes from the Rotunda, is solemnly pledged to the sinking fund, which fund is sacredly pledged for the redemption of the Public Debt, and His Honor is one of the Commissioners of that sinking fund, and the misapplication of it would be a contravention of that trust.

Among our most intelligent citizens of both political parties, we hear but one opinion of the Veto Message. We have met with some gentlemen who are great admirers of the plan of a public gallery of the Fine Arts, who equally admire the Veto.

Mayor Harper was waited upon by some of the gentlemen who are anxious to obtain the Rotunda for the gallery, and pressed hard to approve of the act of the Common Council, but these gentlemen on hearing him state his objections were frank and candid in admitting that the Mayor was right in these objections.

Taxes are continually increasing and it is the duty of the Common Council to reduce the expenses of the city and moreover faithfully to apply every dollar of the public funds pledged to the discharge of the public debt with the strictest exactitude.

THE MUNICIPAL GAZETTE.

No. 26 of the Municipal Gazette contains 52 pages. The last four pages of that number contains Diagrams, printed in colors, of ruinous Assessments. Number 26 will be put in a printed cover and stitched, and distributed in this form to those who have not received the sheets as they were issued weekly from the press. This course was preferred on account of the connection of the subject matter. No. 26, contains the opinion of the Supreme Court of this State, in General Striker's assessment case, as delivered by Mr. Justice Beardsley—and also a review of that opinion by the Editor of this paper. It also contains the opinion of Mr. Justice Bronson, in the same case, in which he dissents altogether from the opinion expressed by Mr. Justice Beardsley. The argument of the Hon. Daniel Webster, is also coupled with Judge Beardsley's opinion. The review is accompanied with extracts from the New-York State Constitution, of 1777, and of 1821, and also copious extracts from the New-York Statutes. It presents, we believe, a complete history of the Street question, as connected with the exercise of the *Highway* powers, by the Justices of the Supreme Court of this State. The Presidents of Colleges, who forward to us a list of the Professors of their Institutions, shall have forwarded free of expense, a copy for each Professor.—The subject is one of great importance, and besides, it illustrates the fluctuations of Judicial decisions to so great an extent, as to be alarming as well as admonitory.

JUDICIAL DESPOTISM.

The concentration of power in any one body of men, is dangerous in the greatest degree. It matters not what name they may be called by, the act is the same, whether it emanates from a Judge upon the bench, or a King upon the throne. Judicial Despotism is the most insinuating, and far the most dangerous exercise of arbitrary power, and much more so than that emanating from any other branch of Government.

Judges should be as learned in the science of the law, and able to decide according to its intent and meaning, and with as much accuracy as a Professor of Chemistry analyzes a substance and ascertains its parts —or a Professor of Astronomy calculates the motion of terrestrial bodies moving through space. It is not the opinions of professors that is to determine the result, but it is an examination of the subject matter by a competent mind.

NEW-YORK MUNICIPAL GAZETTE.

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TERRIFIC THUNDERBOLT.

I continue and conclude the memorandum of the operations of the "TERRIFIC THUNDERBOLT" *of August 2d, the commencement of the account of which is on page 432 of our last number:*

There are no lightning conductors within a quarter of a mile of Mr. Speck's house. About ten feet from his house, and from that part of it which the lightning first visited, is a small building from which a stove pipe projects within ten feet of the lightning's path, yet this pipe was not visited. About 100 feet from Mr. Speck's house is a building, on the chimney of which is a sheet iron Espie, which was not touched by the lightning. Mr. Clark's house, about 600 feet from Mr. Specks dwelling, was struck by the same electric discharge. The force of the thunderbolt came upon the rear of the house, and upon that part of the roof near the eaves—the shock broke in the plastering of the attic bed-room. Some children were in bed in the chamber next story below, and underneath this place, but were not injured. The lightning descended the tin leader to the cistern, broke the cistern pump, and escaped into an open lot. The cistern is made of cement. The same electric discharge from the clouds struck the dwelling of Dr. Henry, in Clinton Avenue, less than one mile distant from Mr. Speck's dwelling, and in the opposite direction from Mr. Clark's. Several of the bricks were knocked off the chimney, and a hole made through it near the roof, from which the lightning passed down to the tin leader, and down it to the cistern, breaking the cistern-pump. None of the tin leaders of the four houses were affected by the lightning, and in every instance proved to be good and sufficient conductors. The cisterns, four in number, were of cement, and the lightning did not enter either of them.

Professor *Olmstead*, of Yale College, in a letter to me, of July 25, 1843, says:

"The termination of your rod in the cesspool is well, unless the pool is made of Hydraulic Lime.—This being a worse conductor than the earth itself, presents an impediment to the *fluid* at its termination. *M. Argo* gives an instance of a rod terminating thus, which failed."

Those four cisterns are all of Hydraulic Lime, and are good witnesses in this case, to the accuracy of the suggestion of the great French Astronomer, M. Arago, as noticed by the learned Professor I have quoted, and the testimony of the lightning in all these four cases agree, and seem to be entirely conclusive.

Professor Olmstead, in a letter to me, dated Oct. 12, 1843, says:

"Lightning possesses greater power of *driscrimination*, selecting in its course the best conductors with great *precision*. Lightning does not exhibit its peculiar violence except when its passage is opposed by imperfect conductors."

Dr. Franklin stated, in a newspaper published in 1753, the particulars of a thunder-storm in Philadelphia, of June 12, of that year, as follows:

"Philadelphia, June 12.—On Sunday, early in the morning, a dwelling house and kitchen, on the western side of second street, were struck by lightning and considerably damaged; but being untenanted, no person was hurt. The great Fondness that the Matter of lightning has for Metals, was perhaps never more conspicuous. In its passage downwards, it went considerably out of its nearest Way to the Earth, for the sake of the Leads of the Windows, and Iron Hooks, Staples, &c., in the Window Frames, which were all in many places, much melted and stained thereby; several Panes of Glass were also a little melted and stained thereby in a beautiful Manner, round the edges, near where the Leads surrounded them, and those parts of the Leads being thin and not sufficient to conduct the whole of the Flash, were melted; but the thick parts of the Leads (which separate the panes from each other,) conducted it freely, and without being the least damaged."

I omitted to mention in my previous remarks that a miniature ship, with glass rigging, stood upon the parlor table, over the top of which the lightning passed on leaving the looking-glass in Mr. Speck's house, and was not injured in the least.

A milk-man coming into the city during the storm, saw the lightning passing along one of the iron rails of the railroad, as far as the road was within the reach of his vision. The rails extend between Mr. Speck's and Dr. Henry's dwellings. I am inclined to believe that buildings covered with a coat of metallic paint are not liable to such extensive injury as unpainted buildings.

The lightning in many of these operations which I have narrated in the former and present communication, has left a record of its unwillingness to travel over the same surface twice. This was demonstrated in the case of the metallic girandoles, the tin-pan upon the biscuit-jar, and the portait frames, and I have found the same testimony from the same witness, (the lightning) that it does not ascend. I have found no case, in my very extensive observations, of the lightning ascending any substance.

SWEET SLEEP.

Undisturbed sleep is a suspension of the exercise of the human mind.

The animal frame also reposes during quiet sleep, although the machinery of animal life is kept in motion notwithstanding the suspension of mental exercise.

This state of inactivity is not extraordinary—it is of daily experience with almost every human being who is regular in his hours of labor and rest—but it is mysterious and incomprehensible.

The human countenance often wears a peculiar expression during sleep, and this may be the offspring of a thought which possessed the mind when sleep came.

What a state of existence for a human being to contemplate—to meditate upon—to behold a fellow mortal locked in the embrace of quiet sleep wholly unconscious of what is passing in the wide world in which his body reposes—and yet how rarely do we call to mind a thought upon this subject.

The fond mother watches the countenance of her sweet babe while it sleeps, and dwells with delight upon its sweet expression, but she rarely thinks that she sees but the outward tabernacle—the mental occupant is not in view—and shall I say, has departed for a little time, or that it also sleeps? No—thought cannot sleep—we cannot conceive the materiality of a thought.

Thought cannot sleep—for thoughts are but temporary tenants of the mind, and leave it when sleep has obtained complete undisturbed possession and the last thought which occupied the mind when sleep came, is not in possession when the individual again awakes—but a new thought comes, or perhaps a former one is recalled.

Sleep is made necessary; it belongs to the harmonies of Natue and forms a part of its laws—to the violation of which is affixed a penalty.

The influence of refreshing sleep upon the animal frame is great, and more powerful than is generally considered, for in truth mankind consider very little upon the subject.

The quiet repose of the body after refreshing sleep qualifies the mind for profitable exercise, and the flow of thought when thus coming undisturbed into the chambers of the mind is of that freshness and originality, which is highly instructive to the inner man.

It is sometimes that thoughts which come into the mind at such periods, make but a short stay, and leave no permanent record of their visit. Could the hand be busy on such occasions to lithograph such thoughts they could be preserved in comparatively durable shape, but such an employment of the hand might sometimes drive away such thoughts, for they are the offspring of quiet.

The lightning sleeps, until awakened by the voice of the thunder—the wind sleeps until awakened by the heat or cold.

Vegetation sleeps, and its stated periods of repose, correspond with its periods of labor—it is heat which awakens vegetation from sleep, and it is light which awakens animal life to activity and energy.

Thought has an expression besides that conveyed by oral and written language—thought has a brightness which can oftimes be seen lightning up the human countenance with a glow—with a smile—and sometimes casts a shade, like that of the shade of the shadow of a cloud, which can be both seen and felt.

Sleep, sweet sleep, is one of the richest bounties of nature—one of the blessings of Heaven, and the gift of GOD.

VALENTINE'S DAY.

A snow storm began its work ere the sun had risen from behind the curtains of the eastern clouds, and near an hour before its arrival my winter birds came to see me in great numbers, full of cheer and activity. My ground Sparrows have increased in numbers. and I have seen four of these sweet vistors at one time — Their near resemblance to each other is so great that I am unable to discriminate so accurately as to determine whether there are not more than four. One of these birds is unlike all the rest, and is larger; this bird is comparatively an old acquaintance. One of the little snow birds comes to the window sill and eats his seed within eighteen inches of my pen, and has therefore the opportunity of inspecting this paragraph for I discover from its actions that its vision is of that kind which enables it to see through glass. I have never noticed a quarrel among these feathered visitors, they are therefore good instructors in this.

THE NEW-YORK FARMER AND MECHANIC.

This paper is published weekly on Thurs lays by Messrs. Fleet and Star, No. 135 Nassau Street, New-York. It is devoted to the interest of Agriculture and the Mechanic Arts and contains much reading matter of great value. The price of the paper is Two Dollars per annum. Parents will find in a file of that paper a fund of useful knowledge for their children, and the very care used in preserving the weekly papers for an annual file will be that practise that will tend to system, care and economy, three lessons in the school of human life which should be well learned and rigidly practised. Agriculture is an ancient science, and was the first which was brought into use, and the primitive husbandman, our great common ancestor, was a farmer, and one of his sons, a mechanic.

Man with all his knowledge has never yet produced or been able to originate a grain of sand, but he is vested with ability to search out and understand the ability of a grain of sand to contribute toward the support of his animal life by giving to that grain of sand a nourishment which this material atom will reciprocate. Newspapers which are devoted to such uses are more profitable to the reader than political journals, and besides, such newspapers, if preserved, form a useful library, and will afford instruction to succesive generations. The Farmer has more leisure to read, and more time to reflect and meditate upon what he reads than men of almost any other occupation, and besides this his bodily exercise qualifies him for the exercise of his mental powers in that calm deliberation which has a tendency to good. The farmer is a thinking man—he has new pages of the great volume of nature continually opening to his inspection which are instructing. The shepherds in ancient times were intelligent, for they read the pages of the Book of Nature with deliberate calmness.

The son's of Farmers will find the New-York Farmer and Mechanic a source of rational employment in winter, and so will the apprentice of the Mechanic. Farmers and Mechanics are among the most learned of our population; they are well learned, for their study is that of deliberate application, watching the results as the test of the well learning of the lesson.

From the leading Editorial of the Journal of Commerce of Saturday last.

GIVING AWAY THE CITY'S PROPERTY.

Is this the business for which our Common Council was elected? Is the city so free from debt, and the Treasury so flush, that there is no other way to dispose of accruing revenue, but to make a donation of it to individuals or associations? Are our taxes so light, that there is no need of husbanding our resources? If these questions can all be answered in the affirmative, then we say, begin with the most needy, who are also deserving. Do not begin with wealthy men who have each subscribed *one dollar* to the new Gallery of Fine Arts, and then call upon the city to give $3,000 or $4,000 *a year*, for an indefinite period. The Mayor expresses his belief that the Rotunda, if rented in a business way, will yield the above sum.—If we say $3,500, this is the interest, at 7 per cent., of $50,000. And it is well to understand, that if once the Rotunda is granted as proposed, it cannot be got back; or if it can, it will not. The way is, now that it is fairly in the city's possession, to keep it so. If it is right to tax the citizens (for this is the operation of the thing,) for busts and pictures, why not for libraries, public lectures, and all that? If the principle of giving away money for such purposes, is tolerated, where will it end?

Since Mayor Harper's Veto of the resolution leasing the Rotunda for a nominal sum to the Gallery of Fine Arts, the Board of Aldermen have again passed it, by the requisite majority of two-thirds.* It now rests with the Assistants to defeat or sanction this waste of the public money, which is so much needed for city purposes. We hope they will do themselves the honor to say decidedly, "It shall not be done. We were not sent here to give away the public revenue, but to expend it economically for objects strictly municipal: and we will act accordingly." Let them not be deterred by the string of respectable names which have been published as petitioners for the boon. They know how easy it is to get signatures to petitions. Probably half these gentlemen would not have gone across the street to sign the petition, and some of them very probably would be glad to see it rejected. But be this as it may, there is another set of men equally respectable, who have signed a remonstrance against such a use of the public money. Among them are such names as Stephen Allen, Jonathan Thompson, C. W. Lawrence, James Brown, James Boorman, Jonathan Goodhue, James G. King, Wm. B. Crosby, Walter Bowne, George Newbold, John Haggerty, and many others of the best names which the city can boast. The memorial was presented in the Board of Aldermen before the vote was taken and after being read a motion was made to lay it upon the TABLE, and the motion prevailed. Why do they remonstrate? Because they are insensible to the value of intellectual improvement? Far from it. Some of them are distinguished patrons of all such objects in a proper way. But they know that the city is burdened with an enormous debt,—that the taxes are heavy,—that there is need of the utmost economy of the public money, in order to meet existing engagements. Perhaps also they doubt the propriety, under any circumstances, of giving away the public money for objects not strictly municipal. Perhaps they think it a dangerous precedent. At any rate, we do.

When we united with 24,000 of our fellow citizens in putting the American Republicans into power, one leading motive which influenced our minds was—to stop the leaks in the Treasury. We know that the same motive influenced thousands of others. The American Republicans in the Common Council, by accepting the office, virtually pledged themselves to be economical, and to try to reduce the taxes and debt. We now hold them to their pledge. Mayor Harper has redeemed his,—we respectfully call upon the Assistants to redeem theirs. Shall we call in vain?

* A majority, repasses a proceeding, which the Mayor returns with objections.—ED.

ALMS HOUSE APPROPRIATION.

We have received a letter from John M. Bradhurst, Esq., in which he expresses an opinion that the Legislature ought not to authorise the raising of two hundred thousand dollars to build a palace on Randall's Island. We give the letter entire in another part of this paper. Mr. Bradhurst is right in this.

THE ROTUNDA.

We met with Jonathan I. Coddington, Esq., formerly Post Master of New-York, a man who possesses a great abundance of that intelligence called common sense and enquired of him in reference to the value of the Rotunda. He states that while he was Post Master he paid seventeen hundred dollars rent per annum for that building, and he considered it was a cheap rent. We enquired of him his opinion as to its present value, the tenant to make all repairs, and he replied: from $2000 to $2500, would be a fair price for it.

John M. Bradhurst, Esq., who is a large owner of real estate in the city of New-York, and well acquainted with the value of city property expresses the opinion that the Rotunda would bring four thousand dollars per annum on a long lease.

The establishment of a gallery is very generally approved, and the worthy gentlemen who have been active in the measure could easily procure a subscription from the public spirited citizens of New-York, sufficient to purchase that building or some other equally as good.

The worthy gentlemen who have urged the members of the Board of Aldermen to gainsay the Mayor's Veto Message, should have investigated the fact as to the value of this property to the city and as to the sacredness of *that trust* which appropriates this income to the sinking fund which is solemnly and sacredly pledged to the payment of the public debt.

The dollars and cents of the rent is not the question—it is the principle—it is diverting a fund appropriated to a *trust*—to a purpose which contravenes it. Some of the gentlemen who voted for the gift are commissioners of the sinking fund—how they can thus vote, is to us a mystery. The gallery is approved of by all who we heard speak of it—but the *right* of the Common Council to vote away public property does not exist.

Thousands on thousands of signatures could have been obtained to sustain his Honor the Mayor, in his course in this, but it was deemed unnecessary. Sound discriminating judgment is the offspring of intelligent minds, and not to be measured by the greater or lesser number of names on a petition. On page 425 is presented the names of men whose opinions cannot be outweighed in this community, and we here place the names of the worthy members of the Board of Aldermen, who voted away the Rotunda, notwithstanding the Mayor's objections.

Richard L. Schieffelin,	J. J. Dickinson,
William S. Miller,	Jabez Williams,
Wm. Gale,	David S. Jackson,
Wm. B. Cozzens,	Thomas Winship,
Elias G. Drake,	Stephen Hasbrouck,
John A. Bunting,	W. C. Seaman,
William Tucker,	Charles Devoe.

On Monday evning the 17th inst., the Board of Assistants took up the proceedings of the Board of Aldermen had at their previous meeting upon the Mayor's Message vetoing the Rotunda Resolution, and agreed to concur with the Board of Aldermen in passing the said resolutions, notwithstanding the Mayor's objections, by the following vote, viz:

Affirmative 10. Negative 7.

Assistant Alderman Charlick moved a reconsideration, which motion prevailed, and he then moved that the whole subject be referred to a special committee, which motion also prevailed, and the Chairman appointed Messrs. Blackstone, Bayles and Taylor, said Committee.

INDEPENDENCE.

THE ROTUNDA.

We copy the following communication from the New-York Eve. Post, of the 17th inst.

GALLERY OF FINE ARTS.

To the Editor of the Evening Post.

It is not of much consequence to the public, what I may or may not have signed, but as I myself admire consistency, I wish to give my reasons, why my name appeared first for and then against the request of the Gallery for Fine Arts from the Corporation. I was given to understand it was of no kind of use to the public, and would likely be pulled down. Under these views I lent my feeble aid in their behalf; but when I saw the Mayor's objections with his reasoning, I was convinced of my error and retracted by signing the memorial to the Corporation to sustain him.

SAUL ALLEY.

Feb. 17, 1845.

THUNDER STORM IN WINTER.

On last Sabbath morning, within a few minutes of one o'clock, a thunder storm passed over the cities of New-York and Brooklyn. I had, before retiring to rest on Saturday night, been engaged in correcting the proof sheet of the first form of our Gazette, upon the 425th page of which is the conclusion of my account of the thunderbolt which fell upon the house of Mr. Speck, in Brooklyn, on the morning of the first Sabbath in August last, which account had been commenced in our paper of Wednesday last, and which we sent to the Hon. Moses H. Grinnel, that day. The subject of the lightning, and that of the mystery of sleep, was one of the last subjects I had in my mind when retiring to rest, and in about three hours after I was awakened out of my sleep by a vivid blaze of lightning. I had been awake but a few moments, when I heard an explosion that was very loud, and accompanied by a great glow of vivid light. The explosion had no echo, or reverberation, that I could distinguish, and appeared in a direction exactly west from my place of observation. The concussion was so heavy that it shook the house, and seemed more like the explosion of an aerolite in the air, than like a thunderbolt. Mr. Grinnel's house is about the same distance from my place of observation to the north west that Mr. Speck's house is to the south east. The difference in these two electric discharges, which were a few days more than six months apart, was very great. That of August was a continuous crash, but that of February was an abrupt explosion, in its commencement and also in its termination. The latter sound came across the river, and also over a surface of snow more than a foot in depth, and the former came over solid ground. After remaining awake a short time, listening to the storm and watching the brilliant coruscations of the lightning, I arose to ascertain the hour, and found it to be twenty minutes past one o'clock. The thermometer at that time denoted a temperature of 40 deg. of Farenheit. At sunrise it was the same, and at 12 o'clock was at 42 degrees. On Monday morning at 5 o'clock, my thermometer denoted a temperature of 32 degrees. At 8 o'clock, three hours after, I dug a hole about a foot deep in a snow bank, placed the thermometer in this hole, wrapped in a paper cover, and filled the hole up with snow. After the lapse of an hour, I opened the snow-bank, took out the thermometer and found it denoted 32 degrees as the temperature of the snow. When the thunder storm occurred the ground was covered with snow to the depth of about one foot. On Monday morning I visited the house of the Hon. M. H. Grinnel, No. 6 College Place. It is a three story brick house, with a deep basement, and dormant windows in the roof, and is the middle house of a block of seven houses, all of about the same size.—

The house fronts the open grounds of Columbia College, which are extensive and surrounded by a massive iron fence, with points projecting upward every four or five inches. This fence is less than 100 feet from Mr. Grinnel's house. About 130 feet from Mr. Grinnel's house, and to the south, is a brick house, upon the chimney of which is a sheet iron Espie. I went upon the roof of Mr. Grinnel's house, and found a small perforation in one of the bricks of the chimney, but I could not get sufficiently near it to ascertain if it extended into the chimney's flues. Directly under this part of the roof and within ten feet of it are stowed away two large iron grates with brass mounting. This mass of metal the lightning first struck upon, and from thence descended into the attic bed room in which Mr. Grinnel's man servant was in bed: here it broke through the ceiling and plastering and got upon the bell wire, which is copper, as is evident for it left a smoky stain upon the plastering, with which it was in contact, and part of it appears to have left the bell-wire about three feet from the floor, as it made a track of smoke upon the plastering of several inches in length from which it passed to the under surface of a tin covering to a dormant window, which it tore up, at the same time bursting out the window, window frame and sash, and throwing some of the casings entire into the College yard more than 200 feet distant. I examined one entire piece of casing, which was uninjured and all the nails left in the board. I also found fragments of slate lying on the snow close to this piece of casing. I should think there were more than a hundred pieces of broken slate within the compass of a hundred feet, measuring north, south, east and west. The lightning appears to have gone from this dormant window to the gutter or eave trough, which is but a few inches distant, and which has a metallic lining and connects with the tin spout, of four inches in diameter, which descends to the pavement. The dressing table which was close by the dormant window had a looking glass upon it, which was thrown down, and also the window blinds inside were thrown upon the floor inward, while the casings were thrown outward more than two hundred feet. I noticed eight small holes in the plastering in the front part of the bed room. Six of these are in one row and the distance from one extreme to the other measured 14 inches. One hole was made seven inches below this line of perforations, and one hole about two inches above. These extended entirely through the plastering to the lath, and appear precisely like shot holes. The glass over the door, which opens into this bed room was broken.

The lightning left in this room a record which is very instructing. The bell wire passes down below the floor, near a right angle made by the plastering, and here I found a stain of the lightning on the wall on both surfaces, showing that the lightning did not follow an air line, but followed the surface of the wall, turning the corner, and making a right angle with the wall with the utmost precision, and here it came within 8 feet of the tin covering of the dormant window, to which it is reasonable to presume, from the knowledge we have of its habits, that it was attracted by that metal. The surface of this tin was equal to three square yards, and if we allow that a point to a lightning conductor will attract double the distance the rod projects above the surface of the roof it is designed to protect, we may, upon the same principle, account for its leaving the bell wire for a brighter surface, and one of greater extent. The glass in the basement windows were all broken, but the inside shutters which were closed, were not injured. This evidences that the destruction of the glass was by the concussion, and not by the immediate contact with the lightning. The looking-glass in the attic, which was a small dressing glass, was broken into fragments by the force of the explosion, which burst out the dormant window, for the lightning, however powerful the bolt, would pass over the surface of the silvering of a looking-glass without breaking it, and it is found of such surfaces, and will give these a preference, as was the case with several of Mr. Speck's looking-glasses, which I noticed in the last number of our paper. In 1843, a thunderbolt fell upon a house in Cranberry street, Brooklyn. I examined the premises a few minutes after the occurrence, for I was observing the storm, and within 30 rods of the building when it was struck. The lightning was very quiet until it met with resistance on the pavement after it had descended the tin leader to its termination, and there it exploded, bursting in the basement door, breaking the casing, and then leaped to the copper bell wire. The matter of lightning, when striking a hard and extensive surface, frequently explodes, like as many fulminating compounds are known to do. The area in front of Mr. Grinnel's house is provided with a heavy iron railing, and the marble door-steps have ornamental iron-mountings, of several feet in heighth. There is a vast quantity of iron in the railings, fences, &c., in front of this house, and it would seem to have had an influence upon the thunderbolt, for it did but little damage, notwithstanding it was so heavy as to shake dwellings two miles distant. The room in which the servant was sleeping, measures 9 feet high, 12 feet wide, and 18 feet long. The bed upon which the servant slept, is a straw palliaster, with a hair mattrass and feather bed on top. He was not injured, but rather amazed for a few momens. It would seem probable, from the fact that the window blinds were thrown inside, and the window casings thrown outside, that there was an explosion of lightning between the two. I cannot be mistaken in the route the lightning took, after it left the bell wire, for its track is as distinctly marked as any I have ever seen, and I have examined several of these records. The bell wire has a worsted tassel to the lower end of the wire, and this may have had an influence in causing the lightning to leave it. The bolt exploded in the air, (as I think), before it reached Mr. Grinnel's house, for the concussion was so great that, had the explosion all taken place with the dwelling, it would have rent it into atoms. The Journal of Commerce, in giving an account of the bolt, closes the paragraph in these words. "The house was filled from top to bottom with a strong smell of sulphur. The family, of course, were instantly up, but after a careful examination, Mr. Grinnel found that all his family were safe, and they retired to rest again, THANKFUL *that the bolt had been guided with such* MERCIFUL ACCURACY." Last summer, four members of one family were instantly killed by a thunderbolt, which fell upon the house. Thunder storms in winter are rare. I witnessed a terrific thunder storm in the month of January, 1814, in lat. 36 degs. I had left the cliffs of Cumberland, for a house three miles distant, at a little after sun set, on horseback and alone, the path was through a wood the whole distance, a black cloud overspread and made the darkness terrible, and my path was only made visible by the corruscations of the lightning, but every flash of fire was accompanied by a terrific peal of thunder, and these were so constant and so heavy, that I was kept in constant emotion. So severe was the storm, that I was three hours travelling three miles, but the lightning of the clouds was a lamp to my path, without which, I could not have found my way, with such a cloud suspended over me in the night, and in the wilderness.

A lightning rod of one-fourth of an inch iron wire, which can be purchased for one dollar, will protect a dwelling from damage by lightning, and it is a small tribute, but one which nature requires, although the requisition is mysterious, yet so it is. The declaration of the sacred text, is, that the Almighty made a way for the lightning of the thunder. The lightning, the fire from heaven, was the chosen witness to the delivery of the Statutes of Sinai. On pages 121 to 126, inclusive, of this volume, will be found a full account of lightning, both in this country and in Europe.

Since writing the foregoing remarks, I have re-visited Mr. Grinnel's house, to make further examination. The lightning left the bell wire about three feet from the floor of the attic bed-room, in which the man servant was sleeping—it traversed the surface of the plastered wall (which is painted,) 11 inches, leaving a stain of smoke a quarter of an inch wide, in a perfectly straight line, to where it reached an angle in the wall, which it turned with great accuracy, and proceeded 8 inches in the next corner, making a straight line of stain from smoke this distance. Here it left the corner of the wall, and proceeded diagonally across the room to the window, where it met with an obstruction in reaching the metallic gutter, which was on about the same level with the smoke line on the attic bed-room wall. Here an explosion took place. I have seen several such cases, but the explosive force was less than here. The tin spout is 4 inches in diameter, with two surfaces of about 12 inches each, in both 24 inches. The spout was disjointed by the explosion at its termination, which explosion broke *all* the glass of the basement windows. The solder of the joints of the spout was not fused. The windows in the front area are protected by window blinds outside, and window shutters inside. Nothing here was injured but the glass. The lightning here did not ignite any of the wood works or furniture of the house, and left no traces of heat, except the line of 19 inches on the wall, and the mark of a flash where the plastering came in contact with the bell wire.

HELPLESSNESS.

Statements have recently been made that the number of persons dependent on charity in the city of New York is immensely great. These statements are erroneous—the gentlemen who make them are mistaken in their estimate. The number of persons who are the objects of Charity are comparatively small.

In 1832 the Safety Fund Banks of the State of New York made returns to the Legislature of the amount of specie in their vaults which, was in all of them together about two millions and a half of dollars. We have not the returns before us, but we have a distinct recollection of this one extraordinary fact which was that the little Savings Bank in Chamber street made a return of the amount of the deposits of Savings in that Institution, and it exceeded the specie in all the Banks of the State by more than a million of dollars. Here is a most material demonstration. The books of that Institution in times of sickness and pinching cold show a great withdrawal of funds of the depositors. Here is substantial relief in a time of need.

"Necessity" is said to be the "mother of invention," and the maxim is true—the revolution of 1775 produced suffering which gave energy to human mind and the result of suffering made more statesmen and patriots which but for those trying scenes would have been almost unknown.

The infirm and sick need aid—but the healthy and the able bodied need only to be aided to help themselves.

It has been repeatedly stated (and never to our knowledge contradicted) that there is not a member of the society of Friends in any poor house.

If every religious society carried out their professions in practice in helping the needy a very different state of things would be seen in the great results which would be developed.

The fact speaks volumes.

While our Corporation license shops to make paupers, they will increase—if they plant the seed the harvest will come. Every year the Aldermen and assistant Aldermen of the various Wards spend days in granting licenses to men to sell poison and they issue a paper, licensing this mode of filling the poor house, and take pay for it, and this money is put into the public chest, and there it cankers every thing around it.

Ask the pauper where he first drank of the cup of misery, and he will point to the grog shop, and ask the keeper of the grog shop where he got authority to do the wrong, and he will show you a splendid paper license over the signature of a public functionary.

No money should be taken for a license, for none should be granted—it will not help the matter to raise the price of the liquor, but rather aggravate it, and make rum selling a monopoly. Take away the power from the Mayor and Aldermen to do this naughty thing. That would be making a right beginning.

The license system is repugnant to the doctrines of civil liberty, and should not be practised in a country which boasts of being the land of freedom.

To license a man to do an act which if he does it without a license subjects him to indictment and imprisonment, seems to argue that the sin is not in selling the drink which poisons both the body and the mind, but it is in not paying the Honorable, the Corporation. A FEE.

It is not long since that a plan was broached for to metamorphise the Corporation of the City into a body of public under writers, and the next thing we may hear of, is to turn the city into a mammoth grog shop. Then the whole city will be needed for an Alms House.

BOARD OF PERMANENT ASSESSORS.

The Legislature will be applied to for the passage of a law to create a permanent Board of Assessors whose duty it shall be to supervise the assessments made by the Ward Assessors, and to bring into the assessment rolls a greater amount of personal property.

THE DELUGE.

This extraordinary event took place in the year 1655, or 1656. The cause of the deluge is particularly stated, and its occurrence accomplished a special purpose of the Almighty.

On the 17th day of the 2d month, of the 600th year of the life of the Patriarch Noah, all the fountains of the great deep were broken up in the same day and the windows of Heaven were opened.

At the end of 40 days all the high hills were covered, and the mountains were also covered.

The waters were upon the earth 150 days, and a wind was made to pass over the earth, and the waters assuaged, and the fountains also of the deep, and the windows of heaven were stopped and rain from heaven was restrained. And the waters returned from off the earth continually, and on the 17th day of the seventh month, the ark rested upon the mountains of Ararat.

The waters decreased continually until the tenth month, on the first day of the tenth month, were the tops of the mountains seen.

In the 601st year, of the life of Noah, on the 1st day of the first month, Noah removed the covering of the ark and the ground was dry.

In the same year on the 27th day of the second month of that year, Noah and his family left the ark.

The day of the month on which the flood commenced, and the particular month, is stated, but the year is that of the life of Noah, it therefore becomes necessary to search the sacred volume to ascertain in what year Noah was born. Adam became an inhabitant of earth in the second solar day of the first solar year. Methusalah the grand-father of Noah, was born when Adam attained his 687th year. In the 874th year Lamech, the son of Methusaleh, and father of Noah was born, and when Lamech arrived at the age of 102, Noah was born and the flood took place in the 600th year of the life of Noah. Thus we arrive at the year in which the flood covered the face of the earth.

We need not look for any natural cause for this great event, for the plain reason that it was a special judgment upon the inhabitants of the earth, at that day, and the fact is plainly and clearly stated.

It was a judgment pronounced long before the event, and the day fixed on which it should be put in execution, and it was executed in the very time and in the very manner that it was purposed by God that it should be.

Noah lived three centuries and a half after the deluge, and his son Shem, who was with him in the ark, lived more than five centuries after that event to hand down to posterity an account of that mighty flood.

There was a period when a mist ascended from the earth, and watered the whole face of the ground.

Hills and mountains existed before the deluge took place, for within a few days after the flood had commenced the hills and the mountains were covered.

Rivers existed before the deluge, for Eden was watered by a river which resulted from a mist, which produced rain, and this rain was so extensive as to water the whole face of the ground.

From the commencement of the deluge to the day on which Noah and his family left the ark, was one year and ten days.

The change which this extraordinary body of water caused upon the surface of the earth must have been very great, and the wind which was caused to pass over the earth, added to this, must have produced changes which are not easily estimated by human calculations.

The knowledge of this event was preserved in the remembrance of one of the tenants of the ark, for about five hundred years, for Shem, one of the sons of Noah, was about 93 years of age when he was in the ark, and he lived to the age of 602 years. His life was prolonged to a greater length than that of any individual of whom we have any account who lived subsequent to the deluge except his father and he survived his father about 150 years.

The age of the world is regarded by some writers as greater than represented in Scripture, but such theories are without the shadow of a foundation. The Scripture history is the only true history extant, and as to the theory of some Geologists which gives to the earth a greater age than the Bible represents it, are entitled to no consideration whatever.

The falls of Niagara are computed to have been 10,000 years in reaching their present location. This calculation has nothing whatever to sustain it but the presumption that if a thousand feet is worn down in one year that in ten years, ten thousand feet will have worn away. The cliffs of Niagara were once in a soft state, and in that state a score of miles may have been worn off in a single week. I examined the Falls very minutely during the summer of 1844, and in a future number will give a description of them

Above the great cataract I saw a *memento* of the deluge. It was suspended in the air and presented the rich and brilliant tints of the solar pencil, painted in the bosom of a cloud. What a painting! and what a place to suspend it! what a testimony! A declaration of the Almighty to his creature man, that the world shall not be drowned. The painting is in the colors of the Rain Bow—it is the Bow in the cloud—a cloud formed by the falling of a mighty river over a gigantic precipice into the bosom of an unfathomed gulf boiling with unceasing commotion and like the heaving of a fearful tempest, and with a roar that shakes the very rocks on which the river breaks. What a place this for a human being to meditate, standing upon rocks shaken by the thunder of the waters—beholding at his feet the foaming billows of a crushed and mangled river, and above it, a painting of the most lovely and beauteous adorning, suspended in the air and which no human being can approach—a testimony of the Great Jehovah, written with the pen of celestial fire in the bosom of a cloud, and expressed in a language which is universal.

In the rocks which form these cliffs, and those which form the precipice over which the Niagara falls, repose in fossilized sleep myriads of animals which lived ere the deluge came, and here they present themselves as mute witnesses of that great event. The Scriptures, the Rain-bow, the fossils—all witnessing together, sustaining each the other—what conclusive testimony! These falls are the offspring of the Deluge—ere the Deluge came the Falls of Niagara had no existence.

FOSSILS.

In my examinations of the rock formations of the northern shore of Lake Ontario, in the summer of 1844, I found at Ogden Point, which is about equadistant between Toronto and Kingston, a bituminous fossiliferous lime stone formation, quite extensive, which underlaid the surface earth and extended into the waters of the lake. This rock formation has a surface some four feet or more above the present surface of Lake Ontario, and is washed by the surf.—The rock is intersected by both vertical and horizontal stratas, and this make it of easy excavation by the force of the surf of the lake, aided by the frost. This excavation is performed after this manner, the frost crystalizes the water of the lake on and near to the shore—which incrusts with it the rock which is in contact with the water; a heavy storm sets in which breaks up the ice into large pieces and these lift the rock which the ice adheres to and the whole are floated away together, and either driven by the force of the storm upon the fast rocks and broken to pieces or driven into the deep lake in which the ice melts and drops the rocks to the bottom. Thus an inroad is continually making on the shore. Before I was aware of the fretfulness of the lake, and while busily engaged some twenty feet or more from the water, excavating fossils, a heavy surf come and threw the water over me. This made me careful to watch the water and avoid the watering. I found in this bed of rock numerous fossils, and among the rest one which I have not been able to find any description of in any published geological works. I have carefully examined the transactions of the British Geological Society without finding any thing that is like this, and there is nothing in the geological collections of this State, at Albany, like it. This fossil lay imbedded in the rock in a strata inclined in the angle of about 30 degrees toward the lake, and the water had cut off one end of it, and left the residue projecting a little above the surface. The chissels which I used were of thick blades, and I broke the fossil in pieces in removing it. It is hard but brittle. The pieces which I have, measure 18 inches in length and weigh 3½ pounds. The width at the widest part is 6 inches and two inches in thickness.

On each side of this body were teeth near an inch long and near three quarters of an inch wide at the root running to a sharp point and coming to an edge in the centre on the upper surface. These teeth filled the sides from one extremity of this piece of fossil to the other and must have made a terrible weapon of attack or defence. At the large end this fossil was joined on to a body like the small part of a gourd to the swell of that vegetable, but the part of the body which remained was so brittle that I could get no piece of large size, I therefore dug it out in order to have a view of its bed, and thus ascertain its shape and form by the cavity its removal left in the rock.

In company with this fossil are numerous other fossils which have before been described, and therefore we must judge of this particular fossil by the company in which it was found, for it had with these a contemporaneous existence.

This is a wonderful witness of past ages otherwise buried and gone, a mute witness, but giving testimony which cannot be controverted—here it had its bed in a strata above the surface of the lake and which now forms one of the solid rock formations of the land, and itself, a rock—it is a writing laid in the rock and expressed in a language which is universal. When this mass in which it reposed for ages, was semi fluid, this fossil was in the flesh—what a change! The land in which this is found which forms a part of a great continent, was unknown to civilized man three centuries ago, but here is a witness of one of its inhabitants ere the flood came which deluged the whole surface of the earth.

I watched with care the machinery of this lake—in some places it kept the fragments of rocks in constant motion, and wearing the pieces into smooth shining pebbles. Numerous fossils which I examined had thus been worn. In other places, I found the fragments of rock in angular shapes, and rough, and in the state in which they came from the hands of the aqueous quarrier, and these in some places lay in piles along the shore, and looked much like the workshop of men who had been breaking rock for McAdamizing roads, for these fragments were about the size used for that work. At other places I found embankments of earth and stone several feet high thrown up against the mouth of a creek which effectually dammed up the creek and compelled its waters to seek another outlet. In one of these places I found an extensive woodland drowned by the water, and the trees killed.

When I surveyed the rock strata at Ogden's Point, and examined the numerous animals which there repose in one common bed, in a fossilized sleep, my thoughts travelled back in time to that period when they were in a state of activity. What a scene they must have presented—and now they possess an equal interest for they witness to the occurrence of that event which is recorded in the volume of inspiration of the destruction of all animal life, with the solitary exception of those preserved in the ark during a period of one year and ten days. I gathered at this point nearly half a bushel of fossils in a short time, and these are now my companions while I write—what company—what associations they kindle in the mind—they seem almost to guide my pen, for mind is impressed with that feeling or sensation which come from associations.

SMOKEY CHIMNEYS.

Chimneys which are constructed outside of a dwelling exposed to the cold damp air acquire a temperature that unfits them for conductors of smoke, and the same remark will apply to chimneys in the walls of brick buildings, where there is but a thin partition between the smoke and the atmosphere. Very high chimneys are subject to the same objection, unless the walls of such chimneys are thick.

Sometime since I received a letter from Doctor John Croghan, proprietor of the Mammoth Cave, of Kentucky, in which he says: "The great desideratum is to get rid of the smoke which collects about the chambers whenever the external and internal temperature is the same, 58 deg. Farenheit. The only certain means of getting rid of the annoyance, is to sink a shaft in the vicinity of the inner village. An orifice six inches in diameter, Professor Locke thinks, would act as a powerful ventilator."

The temperature of the earth through which this shaft should be made to pass, I think, would determine the ability of such a shaft to take away the smoke. The persons residing in the cave by the use of fires produce the smoke of which Doct. Croghan speaks.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MARCH 6, 1845. [VOL. I....No. 29.

THE ANNUAL TAX BILL.

We have delayed issuing this number for a whole week in order to present our readers with the proceedings of the Common Council, and of his Honor the Mayor, upon the annual Tax Bill. The Board of Aldermen passed this Bill on Monday night the 24th ult., and on Wednesday night the 26th ult. the Board of Assistants concurred with the Board of Aldermen in the passage of the Bill, and it was sent to His Honor Mayor Harper on Thursday morning, the 27th ult., for his approval. Up to Monday, March 3d, at 2 o'clock the Mayor had not signed this Bill, and we hope he will not, and that he will return it to the Common Council for reconsideration, and reduction. The appropriation Bill, which is to be found on page 445, was also passed, at the same time, with the annual Tax Bill, and also sent to His Honor Mayor Harper, for approval. On Saturday, we are informed, that the appropriation Bill was on the application of the City Comptroller, *approved* by the President of the Board of Aldermen in the capacity of acting Mayor. This may be in accordance with the letter of the provisions of the City Charter, but not with its spirit. The Mayor was not absent from the city, nor was he prevented by sickness, from attending to the duties of his office, and we regret that so excellent, and so worthy a citizen, as the President of the Board of Aldermen, should have thus established a bad precedent. This appropriation is a premature measure, altogether. The tax had not yet been authorised by the Legislature, which is to provide the means to meet this wholesale appropriation.

The Veto power is an important check upon hasty or arbitrary legislation, but it was never intended to be exercised by a member of the same body who had already given his vote upon the measure to be approved, or disapproved, unless in ap articular contingency. The exercise of the two powers, under ordinary circumstances, by the same individual, involves an absurdity.

CITY COMPTROLLER'S REPORT.

We are in possession of a printed copy of the City Comptrollers Report, for the fiscal year ending December 31, 1844. This Report covers 87 pages. We shall reprint this document entire, in order that we may have a complete key to the expenditures for public printing, and at the same time present our readers with a copy of the Report and of the Bill for Printing, Paper and Stationary, in order that they may compare the prices paid for public printing, by the Anti-Assessment Committee, with the prices paid for the same work by the Corporation functionaries. The Comptroller's Report illustrates a fact that amounts to a mathematical demonstration and which is to be found on numerous pages of the Report, which is, that bills are kept back until after the balancing day. In Philadelphia, these things are managed differently, as will appear by the following quotation from the Report of the City Commissioners of that City:

From Philadelphia City Commissioners Report.

1841.

Feb. 1.	John B. Kenney, pay of watch and police, January, 1841,	$3,657.00
Feb. 27.	Do. pay of watch and police, February 1841,	3,391.57
Mar. 31,	Do. do. do. March, 1841,	3,820,00
Jan. 5,	T. W. Morgan, & Co., 4560 gallons winter oil, $1,01½, deducting one cent per gallon for casks returned	4,582.79
Mar. 2.	T. W. Morgan, & Co., 2757 gallons winter sperm oil, at $1,01½, deducting for return casks one cent per gallon,	2,770.79
Mar. 19,	T. W. Morgan, & Co., 514 gallons winter sperm oil $1,01½, deducting for return casks one cent per gallon, and adding premium on draft on New-York, 23.24.	539.81
May 11.	T. W. Morgan, & Co. 2574 galls. spring strained sperm oil, 91½ cts. per gall. less one cent for casks returned,	2,329.47
Jan. 13,	Robert Paton, cleansing south district by contract, 2 weeks,	180.00
	John McIntire, cleansing north district 2 weeks by contract,	190.00
June 9,	Henry Buckley, cleansing city 2 weeks by contract,	275.00
Nov. 2.	Charles Miller, 5 tons coal, S. E. Watch-house, 6.50,	32.50
April 6.	M. Weaver & Son, 311lb flam wick at 16cts, 50½ lbs. lamp wick at 22 cts. and Porterage,	62.37

This system of stating disbursements of public money shows the dates, the prices, the quantity, and the names of the persons furnishing, and these accounts are stated in semi-monthly payments so that tax paying citizens can see what use is made of their money.

NEW TAX BILL.

The ANTI-ASSESSMENT COMMITTEE call public attention to a very important bill which has been reported to the House of Assembly in this State, which makes an entire change in the mode of assessing Taxes upon personal property, and which will have the effect to drive business and capital away from the city. The Bill is here given in full, and also the sections of the Statutes which it seeks to repeal.

An alteration in the mode of assessing the Croton, the Watch, cleaning Streets, Lamp and Police Taxes is needed, but this bill as it now stands, is altogether out of the question. A delegation will be sent to Albany to oppose the passage of this Bill and to propose such amendments as will give to the city a permanent Board of Assessors, and extend the time of making the assessments and provide an adequate notice to the persons assessed.

You will see by the first section of this Bill that all balances, or funds in the hands of Bankers, or Commercial Houses, belonging to their correspondents abroad or elsewhere, are assessable, and Merchandize, Produce, &c., arriving for sale, is also assessable, and the proceeds thereof, if the same shall have been sold.

The citizens interested are requested to scrutinize this Bill.

Extracts from the Statutes referred to in Section 1 and Section 7 of the Bill, and sought to be repealed by this bill.—[Title 1, Part 1, Chapter 13.

"§ 4. The following property shall be exempt from taxation:

"1. All property, real or personal, exempted from taxation by the constitution of this state, or under the constitution of the United States:

"2. All lands belonging to this state, or the United States:

"3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them:

"4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same:

"5. The real and personal property of every public library:

"6. All stocks owned by the state, or by literary or charitable institutions:

"7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth Title of this Chapter:

"8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars: and,

"9. All property exempted by law from execution.

"§ 5. If the real and personal estate or either of them, of any minister or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

"§ 6. Lands sold by the state, though not granted, or conveyed, shall be assessed in the same manner as if actually conveyed.

"§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.—Title 1.

"§ 3. The terms "personal estate," and "personal property," whenever they occur in this Chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.—Title 2, Art. 1.

"§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all such personal estate in his possession, or under his control as trustee, guardian, executor, or administrator; and in no case shall property so held, under either of those trusts be assessed against any other person.—Title 2, Art. 1.

"§ 8. Between the first day of May and July, in each year, they shall proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants in their respective towns or wards, and also the taxable property, real or personal, within the same."—Title 2, Art. 2, Chap. 13.

IMPORTANT TAX BILL.

We republish, in order to again lay before our readers, the following important Bill, in relation to the assessment of Taxes. This bill is objected to by the owners of real estate, and gentlemen engaged in Commerce, abominate its provisions. See page 442.

[Document No. 128.]

IN ASSEMBLY,

February 11, 1845.

Reported by Mr. Wheeler, from the committee on the judiciary—read twice, and committed to the committee on the whole.

An Act relative to taxes and jurors in the city of New-York.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. All lands situated in the city of New-York, and all personal property within said city, whether owned by individuals, corporations, monied or stock associations, shall be assessed for taxes now or hereafter to be imposed or authorized by law to be raised or collected in said city, subject to the exemptions specified in title first, part first, and chapter thirteenth, of the Revised Statutes.

§ 2. Every person residing in the city of New-York, shall be assessed in the ward where he resides or does business, at the time such assessment is made, for all personal estate owned by him *or in his possession, or under his control, or held by him in any representative or other capacity*, and the temporary residence of such person in any other ward or place, or the temporary absence of such person from said ward or city at the time the assessment is made, shall not free such personal estate from taxation.

§ 3. The real estate of all incorporated companies, and of all monied or stock associations in the city of New-York liable to taxation, shall be assessed in the ward where it is situated, and all the personal estate, including surplus moneys or funds, of every incorporated company, and of every monied or stock association liable to taxation, shall be assessed in the ward where the principal office or place of business of said company, monied or stock association is, and any individual or company owning a bridge, shall be assessed for it in the ward where the tolls of said bridge are collected.

§ 4. The persons elected assessors in the city and county of New-York, shall be sworn into office on the second Monday of May in each year, and immediately thereafter commence their duties as such assessors; and it shall be lawful for the said assessors, at any time before they shall have delivered the assessment roll as required by the Revised Statutes and of the board of supervisors of the city and county of New-York, at any time after said assessment roe shall have been delivered to them, to correct the samll by adding thereto the name of, and assessing any person or persons, body corporate or monied or stock, association, that said assessors shall have omitted to assess to such an amount as to said assessors or said board of supervisors shall seem just and proper, the same being subject to be corrected by those thus assessed, as now provided by law.

§ 5. It shall be the duty of the assessors in each ward, when they have made out a list of the person, in their respective wards qualified to serve as jurors to notify such persons to be and appear before them, at a day and place certain in the ward, to show cause (if any they have) why they should not be returned as jurors. Such notice shall be served at least five days before the day of showing cause, by delivering the same to the person so selected or by leaving it at his dwelling house with a person of suitable age and discretion, and if the person so notified does not appear, or if he appears and does not show good cause, he shall be returned as a juror, and the person showing good cause shall not be so returned.

§ 6. The assessors are hereby authorized to administer an oath to the persons appearing and claiming exemption from jury duty, and to examine them as to their excuse. In case of the death or inability to act, of one of the assessors in any ward, the other assessor may perform such duties, and in case of the death or inability of both assessors to act, the aldermen and assistant alderman of such ward shall perform such duties, and the return of jurors shall be made under oath.

§ 7. The provisions of the third section, of title one, the fifth section of title two, article one, and the eighth section of the last mentioned title, article two, chapter thirteen, of the Revised Statutes, so far as the same are inconsistent with the provisions of this act, are hereby declared inapplicable to the city and county of New-York.

§ 8. This act shall take effect immediately.

To the Honorable the Legislature of the State of New-York:

The undersigned, citizens of the city of New-York, and owners of real estate in said city and county, Remonstrate against certain provisions contained in the bill known as Assembly Bill No. 128, and those provisions which authorize the taxing of Funds, Merchandize, Produce, &c., belonging to persons residing without the bounds of the County, State and United States.

The undersigned represent that real estate in the city of New-York is valuable on account of the Commerce and Trade of the said city and port, and the more the Commerce and Trade is increased, the more valuable real estate will become.

The undersigned ask that their memorials and Remonstrances heretofore presented in the Legislature in relation to Taxes and Assessments may be acted upon at the present session of the Legislature.

The undersigned ask that a Permanent Board of Assessors may be created by law for the more equal assessment of Taxes, and that persons assessed may have due notice of Assessments when imposed, and that the Board of Permanent Assessors may have power to correct erroneous Taxes.

And your Memorialists, &c.

New-York, Feb. 27th, 1845.

Jonathan Thompson,	Stephen Allen,
James Boorman,	Saul Alley,
Robert C. Cornell,	Wm. B. Crosby,
James Brown,	James G. King,
Peter Schermerhorn,	Jonathan Goodhue,
Phillip Hone,	Gulian C. Verplanck,
William B. Astor,	Samuel Ward,
Samuel S. Howland,	George Griswold,
Edward Prime,	George Ireland,
Stewart Brown,	Peter Embury,
Charles H. Russell,	Thomas T. Woodruff,
Peter Lorrilard, jr.,	John Morss,
Abraham G. Thompson,	Burtis Skidmore,
Maturin Livingston,	Anson G. Phelps,
John I. Palmer,	John D. Wolfe,
Najah Taylor,	John Haggerty,
John H. Talman,	James McCall,
David S. Kenedy,	Wm. H. Smith,
Nevins, Townsend, & Co.	Wm. H. Russell,
Grinnell, Minturn, & Co.	Andrew Foster,
Prime, Ward, & King,	Peter Cooper,
Brown, Brothers, & Co.	James Lenox,
Henry & Daniel Parish,	James I. Jones,
Daniel Parish,	Henry Young,
Howlands & Aspinwall,	John Anthon,
David Hadden, & Son,	Francis Griffin,
Eben. Stevens' Sons,	James Roosevelt,
N. L. & G. Griswold,	Wm. W. Fox,
Silas Wood,	Nathaniel Richards,

P. Harmony Nephews, & Co.

[From the Journal of Commerce.]

PAYMENT OF JURORS.

A good deal has been lately said favoring the payment of Jurors in our State Courts. It is not apparently known to the citizens of this county, that the practice of allowing to all Jurors attending the county and Circuit Courts a compensation of from 75 cents to 1.50 per diem, exclusive of mileage, is *universal* throughout the State, with the solitary exception of this county, and perhaps two others. The Revised Statutes leave the amount of compensation, within certain limitations, to the several boards of supervisors; but for some unexplained reason, those of the county of New-York are excluded from giving to their citizens any compensation for services rendered upon a Jury panel. When this fact was stated to the Assembly in 1841, an amendment in these words was attached, at the instance of a delegate from the city, to an appropriate bill then on its passage:

"So much of Sec. 38, of Title 3, of Chapter 10, of part 3, of the Revised Statutes, as excepts the city of New-York from the provisions thereof, is hereby repealed"

After a hasty explanation from the mover, it received nearly the unanimous approval of the House. In the Senate, however, the "wire pullers" from the city contrived to convince Messrs. Varian and Scott that this was too great a discretion to be placed in the power of the Supervisors of the city, although it was granted to their brethren of nearly every other county,—and at the instigation of the Senators from *this* district, this salutary amendment was quashed.—It is obvious that with the power given to our Board of Supervisors, which is now withheld for no apparently satisfactory reason, the whole difficulty can at their option be obviated: and I hope the gentlemen who have moved in this matter in the present Legislature, will, by a simple enactment, of the nature here suggested, place the question at rest, believing, with your other correspondents, and persons experienced on juries, that the respectability and intelligence of juries will not be diminished, from the fact of their receiving a partial remuneration for their services.

A MERCHANT.

DISCONTINUANCE OF ONE-HALF OF THE MILL TAX.

The law of 1842 imposing the Mill Tax, provided that one-half of it should cease when the Canal revenue, without aid from the Tax, should exceed one-third the anuual interest on the Canal Debt. That contingency has now happened, and the fact has been duly certified by the Commissioners of the Canal Fund. The Comptroller has accordingly issued a Circular to the County Treasurers, notifying them that hereafter only one half of the Mill Tax will be assessed. The Tax assessed in 1844, which was for a whole Mill, and which falls due this day (1st March) is to be collected in full. A half Mill Tax is still to be assesed, in aid of the General Fund for the support of government. There is also to be assessed, under a law of 1844, one-tenth of a Mill for the use of the Canal Fund, making a total, hereafter, of *six-tenths* of a Mill on the dollar of taxable property.—*Journal of Commerce, March 1st*, 1845.

BANKS, &c.—TAXATION.

We have been furnished with the following statement of the taxes this year by the Banks and the other principal money corporations in this city:

Albany City Bank, $5,844.32; Mechanics' and Farmer's Bank, $4,355.05; Exchange Bank, $3,900.96; State Bank, $4,047.54; Canal Bank, $3.765.89; Commercial Bank, $3,384.49; Bank of Albany, $2,730,68; Albany Insurance Company, $3,225.62; Merchant's Insurance Company, $1,622·88; Fireman's Insurance Company, $1,387,02; Albany Water Works, $982.67; Total, $35,359.12.

The entire tax levied on the city this year for State, County, and City purposes, is $142,257.74. It thus appears that the Corporations above named, pay about one-fourth part of our whole tax, on both real and personal estate.

Money corporations are taxed on their entire capital at its full amount, while real and personal estate, generally is not taxed at more than about fifty per cent. of its estimated value. The consequence is that the burden of taxation falls more heavily on banking and insurance capital than on other property. It is believed that the whole banking capital of the city has not for several years past paid on the average more than about six per cent. dividends, and as two institutions have lately suspended dividends, the average now is less than six per cent.—*Albany Argus.*

The Banks and Incorporated Companies, in the City of New-York are assessed in Taxes for 1845, the large sum of $249,094,81, which is a fraction short of a quarter of a million, which is equal to the whole amount of the Tax levied in the city of New-York, for the year 1820. The increase of Taxes is not the mere dollars and cents involved in the largeness of the Tax, but it is the very germ of corruption. The lavish expenditure of public money is indirectly finding its way into the fountains of Justice in the administration of the different branches of the Government.

The greater the amount of Taxes the more corrupt the government and the less trust worthy the public functionaries; and it is now high time that a calm, deliberate, persevering and successful effort should be made in the city of New-York to stay the desolation that is making such ruinous strides in this great metropolis. The State is reducing its tax burdens, and the city is increasing these impositions. The fault is in the Citizens. The intelligent, well informed citizens have it in their power to correct this glaring evil. A Committee of good men of all parties should be chosen to investigate the state of public affairs, and application should be made to the Legislature to vest such Committee with ample powers in the premises.

DESTRUCTIVE TAXATION.

We present the Report of the Finance Committee of the Board of Aldermen, and Board of Assistants, upon the proposed application to the Legislature for authority to raise money by tax. Their financial reports are generally very unsatisfactory documents.—The taxes are being continually increased, and yet they talk of reform and retrenchment.

This report proposes a tax for: (1845.)

Contingent expenses,	$940,987.00
Watch,	248,500,00
Lamps,	150,000.00
	$1,3339,487.00

In 1844 the Tax Bill was as follows:

Contingent expenses,	912,034,85
Watch,	266,000.00
Lamps,	120,887.36
	$1,298,922.21

In 1843, the Tax Bill was as follows:

Contingent Expenses,	668,000.00
Watch,	212.000,00
Lamp,	110,000.00
	$990,000.00

It will be seen by comparing these three statements together, that the Tax to be asked for, in 1845, exceeds that of 1843, by the large sum of $349,487.00. This is a large increase, and wholly unnecessary.—The financial reports of the city of New-York, as compared with the financial reports of the city of Philadelphia are sadly defective. We have both reports before us, and the difference is immense. The Philadelphia Reports are methodical, simple, plain, and intelligible to every man of common understanding. The New-York Reports are vague, obscure and misshapen, and require to be journalized and posted before they can be understood at all, and even then but imperfectly, for the accounts are stated so general as to afford no means of determining the extra prices, which are paid.

The Report concludes with the following extraordinary resolution:

"*Resolved*, That the Counsel prepare a suitable memorial and draft of law, and the *Mayor* and the Clerk be authorized to authenticate the same for presentation to the Legislature."

The Mayor is an independent executive officer, and derives his power from the Statute, and not from the Common Council, and if he should disapprove of the *big tax*, he has the right, and it is his duty to return the proceeding to the Common Council for their reconsideration.

A Committee composed of such men as SAUL ALLEY, JOHN M. BRADHURST, and ABRAHAM G. THOMPSON, should be appointed by the Legislature to examine into the accounts, and past disbursements of the City Treasury for the last ten years, and report the amount of deficiencies, and this amount should be funded, redeemable $50,000 per annum, payable by tax.

The Financial Committee, in their report say, that the Alms House buildings are not to come into the tax, but that a DEBT is to be created! The City debt should be decreased, instead of increased.

The Committee say that the per centage of the Tax will be less in 1845, than 1844. This proposed application for the annual Tax bill shows an increase. This is a mathematical demonstration against the decrease of per centage.

The Mill Tax will be lessened one half of that decimal part of a cent, but this not to be credited to the City Finance department, nor should such a system of increase of per cent. be excused under this contingency.

The expenses of the City Watch in 1843, was limited by law to $212,000.

A new Municipal Police is now added, and still the Financial Committee want $36,500.00 more for City Watch, than in 1843, besides the expenses of the City Police. It is no argument to say that the Police cost so much in a previous year, unless the Watch expense is also stated in connection with that of the Police.

The Lamps in 1843 were limited to $110,000.00, and now $40,000 increase is wanted. This is a "*per cent*" which comes up with railroad speed.

The item for Printing and Stationery is put in the Schedule at $20,000. On referring to the Tax Document of the Board of Aldermen of Feb. 13th, 1843, and to page 57, of that Report, it will be seen that all that was asked for that year for "Printing and Stationery," was $20,000.

Some of our good friends have said to us that we were in error, in relation to Public Printing. We replied—wait until the estimate of the Tax Bill comes, and compare the items of the present with the past.

Here are two financial documents, viz. of 1843, and of 1845, now on the table before us, and the estimate for Printing and Stationary are identical, each for $20,000. Where is the difference? Why have not the Finance Committee to whom the subject of contracting for the Public Printing in May, 1844, made a report? These things are not creditable to the Finance Committee, and although these Committees have good men in them, yet notwithstanding, in this they have erred, and greatly erred. We had supposed that the economy and system of the city of Boston would have been introduced here, but in this we are wholly disappointed. The City Comptroller and two members of the Financial Committee made a journey to Boston, as we understood, for that purpose. These gentlemen took the Tuesday evening boat for Albany, and arrived opposite that city in time to take the Wednesday morning cars of the Western Railroad and arrived in Boston that evening. They remained in Boston that night, and the next day, Thursday and Thursday night, and left on Friday morning, via Long Island Railroad, &c., and reached New-York Friday evening. They were absent three days and three nights, travelled over an extent of about 600 miles, and no doubt had a very pleasant journey, but the brief stay they made in the city of Boston, afforded them but little opportunity to learn economy in public business, at least we infer as much, for we have since then looked diligently for the fruits of the lesson without being able to find even a trace of such a result.

The great difficulty in the management of city affairs for years has been that the public functionaries were looking to the succession of the party in power, and the energies of the public chest have uniformly been directed to that result. Hence the sad picture which the public finances present. Contrast the management of the City Fiscal's, with that of the State Fiscal department, and the difference is immense. It may be read by the citizens on the face of their Tax Bills.

Mayor Harper in the management of city affairs has entitled himself to the thanks of the good men of all parties.

The Common Council, taken together as a body, are a better class of men than we had in that body before for years, but they have not economized the city expenditures to the extent they should have done.—They have, like their predecessors, been party men instead of Anti-Politicians. It is true they were elected as such, and here is the error. Men independent of all parties should have been elected.

We hope that Mayor Harper before he gives countenance to this application to the Legislature will scrutinize this Report and return it to the Common Council for reconsideration. We shall pursue this subject in our next number. We here give the report in full, as follows:

Document No. 54.

BOARD OF ALDERMEN,

February 17, 1845.

The Finance Committee, to whom was referred the Communication of the Comptroller, with an Estimate of the Annual Appropriations and Tax Levy for the year 1845, *presented the following Report and Draft of an Ordinance in relation thereto; which was laid on the table, and directed to be printed for the use of the members.*

CHARLES A. WHITNEY, *Clerk.*

The Committees on Finance, to whom was referred a communication from the Comptroller, with schedules of the amount required for taxation for 1845, also the appropriations for the same time, respectfully

REPORT:

That they have entered fully into this matter, they have examined in detail, the statement of the Comptroller, with the estimates submitted to him by the Departments, and will take up the schedule by which the amount of tax is to be asked for.

1. Aqueduct Repairs by State Commissioners, $10,000. This amount cannot be altered, as they are the judges of what will be wanted on the works.

2. Alms House, Penitentiary, &c. This estimate is much less than it cost last year, and as the Commissioners appear to be of opinion that they will be able to support the establishment under their charge with this amount, your Committee will not ask its increase, $196,950, less receipts $30,200.

3. Buildings, &c., at Randall's Island. This amount is merged in the application to the Legislature for a loan, and no tax required therefor at present.

4. Board of Health, $450. This will cover all the expenses under the present system.

5. Coroner's Fees The Comptroller proposed $4,500. The Board of Supervisors have reduced the compensation of the Coroner for taking an inquest, from $5.00 to $3.00, consequently this item is reduced $1,000.

6. Cleaning Corporation Docks and Slips. The Street Commissioner proposes $7,500. Your Committee are of opinion that this amount will be wanted; the accommodations for vessels must be kept up, although we receive a small income on the outlay.

7. County Contingencies. The Comptroller proposes $35,000. In looking over the account of last year it will be seen that from 14th May, to Jan. 1st, 1845, the amount expended by the present Common Council, taking out the amount paid to perfect the title to Blackwell's Island, and the amount paid late Counsel of the Board, was about $10,000, and your Committee have therefore set this down at $20,000.

8. Contingent expenses of Common Council. The Comptroller proposes $5,000, to cover the expenses of books, stationery, &c., for the members, carriage hire and expenses of committees out of the city, hospitalities of the city to distinguished strangers, and the celebration of national holidays. Your Committee have no doubt that this is sufficient, refreshments at the City Hall being entirely done away with.

9. Cleaning Streets. The Comptroller proposes the amount of the contracts, $45,437. This is right, and your Committee proposes a further sum of $5,000, to meet any contingencies that may occur in the non-

performance of said contracts. This is a saving of $1,000.

10. Donations, $8,000. This is predicated on the resolutions of the Common Council and requirements under the law of the State.

11. Docks and Slips, Extending and Repairing.—The Street Commissioner estimates for this account $30,000; and your Committee are under the impression that this sum will be required to make new piers and repair those already made.

12. Elections. $10,000. This amount cannot be diminished, as the actual cost of the same is fixed by ordinance, with the exception of extra officers.

13. Fire Department. The Comptroller proposes $27,500; your Committee proposes $18,000. The Department, since the coming in of the present Common Council, to the 1st of January, has cost only $12,388, and a spirit of economy will keep the expenditure within $18,000.

14. Intestate Estates. A judgment has been recovered against the city for an estate paid into the treasury in 1836, amounting to $16,859. Less the estimated returns for the year, and will require about $15,700 by way of tax.

15. Lands and Places. The Street Commissioner has estimated $2,750, for labor, trees, &c., which your Committee believe will be required.

16. Officers' Fees. The Comptroller estimated $173,100, in which he includes the Municipal Day and Night Police, just established, this your Committee think best to place as an item by itself. $55,570, was expended for this account last year, and they propose to put it down to $50,000, as the amount paid to officers attending boats, &c., amounted last year to $6,000, which duty is now to be done by the Municipal Police.

17. Printing and Stationery. The Comptroller proposes $20,000. The amount last year was over $25,000: as he gets the work now done at reduced prices, this amount will be sufficient to meet the expenditures.

18. Repairs and Supplies. The Comptroller proposes $40,000. Expenditure in 1840 was $51.000. Your Committee think that the removal of the public yard to a more central position, and having the repairs to public buildings done by contract, will, or ought to, lessen this cost to $40,000.

19. Rents. The sum of $1,250, is required for this purpose, by the leases of the premises taken.

20. Roads and Avenues. The Street Commissioner proposes $20,000. Your Committee are in favor of getting much of the work on the roads, particularly breaking stone, &c., for 3d Avenue and other roads, done by the convicts from Blackwell's Island. It will lessen the expense, be good for their health, and $16,000, will be enough to spend on the roads.

21. Real Estate, (assessments on.) This account comprises a variety of items; and generally averages about the sum proposed by the Comptroller, $5,000.

22. Street Expenses. The Street Commissioner estimates $30,000, and gives as a reason, that by the present mode of doing the work, and also in consequence of the Corporation assuming the repairs of all the streets, as they have done, it will amount to $80,000. Your Committee are opposed to the present mode of doing the work. They are in favor of having the same done by contract, at so much the square yard, and no work to be done except by the direction of the Alderman and Assistant, the details of which are now before the Board in an ordinance offered for adoption; and it is believed if that plan can be carried out, the expense can be kept down to $30,000, which is the sum your Committee ask a tax for.

23. Sewers. Repairing and Cleaning. This account has been heretofore merged in the expenditures for Repairs of Streets, and paid from the Street Commissioner's office, under general account. Your Committee think with the Comptroller and Street Commissioner, that it should be a separate account. The sum wanted is estimated at $5,000, which is about the mark for this expenditure.

24. Salaries of all Department. The sum expended last year was $217,332. The amount paid Sunday Officers, Day Police Officers, Keepers of Public Places, and Superintendent of Stages, the last year amounted to $17,975, and was in this account; consequently this expenditure can be set down at $200,000, if these officers are dispensed with, as they now are, and the duty performed by the Municipal Police.

25. Water Pipes. In this account is included the whole expense of the city part of the Water Department, including pipes, laying down, digging trenches, proving pipes, &c., every thing except the salaries of the officers. Your Committee are of opinion that, there need not be so many pipes purchased this year as the President of the Water Board estimates; and if the pipes are not purchased, there will not be the amount required from labor and others. They have therefore determined to bring this sum down from $72,650, to $50,000, for the reasons above stated; and the expenditure will of course be kept within this limit.

The amount estimated for Interest on Bonds, charges on Arrears of Taxes, Errors and Delinquencies, and Markets, are founded on actual necessities, and cannot be safely reduced.

The last item of Contingent Account, is the Municipal Police, This account is entirely new, and your Committee think, although at an outlay of considerable money, if properly managed it will be a great protection to our citizens from the depredations of the swarms of foreign rogues, thieves, &c., daily cast upon our shores, as well as against the more depraved portion of our native population.

The Expense in Salaries to this Police force, is for one Superintendent of Police,.....		$1,250.00
Eight Captains, ...	$700	5,600.00
Eight Assistant Captains, ...	600	4,800.00
Sixteen Sergeants,.....	550	8,360.00
Two hundred Men,.....	500	100,00.00
		$120,510.00
From which deduct amount paid to Sunday Officers, Day Police, Officers, Keepers of Public Places, and Sup. of Stages, which has been deducted from salaries,	$17,975.25	
Officers to attend Steamboats, &c. which has been deducted from Officers fees	6,171.13	
Also, 100 men discharged from the Watch, and the Municipal Police put in their stead, equal to 50 each night in the year.....22,812.50		46,968.98
		$73,541.02
As the Comptroller understood the law, and so he made his calculation for the Watch Department, that 100 men each night were to be taken from the Watch, which would have made the expense, by deducting their pay,.....		22,812.02
For the Municipal Police only.....		$50,728.52

At all events your Committee understood that 100 men were to be taken from the Watch, which is 50 each night; consequently the sum of $120,000 is to be added to the list of contingent expenses of the city for the year 1845. Your Committee would here remark that from the accounts exhibited by the Comptroller for 1844, the expenses of the present Common Council have considerably decreased, except where it was unavoidable, either by the acts of our predecessors, or the necessity of cases springing up by debt contracted by acts of former Common Council.

The aggregate of these sums is $940,987 (see schedule,) and is only $28,942.15 more than was asked for last year from the Legislature on account of contingent expenses of the city, and we have an efficient Day and Night Police in addition, for the protection of the persons and property of our fellow-citizens.

WATCH DISTRICT.

The Comptroller's calculation for this was	$225,581.76
But it was under the impression that 100 men each night was to be taken from the number directed by ordinances, but as only 50 men each night are to be taken from the Watch Department. an additional sum is required of.....	$22,812.50
Making.....$248,394.26	

to be asked for the tax in the Watch District; which is $17,705.74 less than was asked for last year. The amount expended last year was $4,329.76 above the tax asked for, and was principally incurred in the upper District of the city.

LAMP DISTRICT.

The estimate for this account, from the Superintendent of Lamps and Gas, is $152,820. and is a large increase on last year's expenditures and taxation.—Our extending city, and the citizens asking for the protection of Light and Watch has been carefully considered. The extension of the District is the consequence—the high price of oil, and the necessity of using gas where mains are laid, make an outlay for gas posts necessary, and consequently a large item of this account, say $15,000, for the year. The tax for this account last year was $120,887.36, the expenditure $129,021.87. The large number of streets directed by the Common Council to be lighted with gas, on petition of the citizens, has made the amount to be asked for, very large. They have concluded to recommend that $150,000 be asked for, for this item of account for 1845.

This is the whole amount which is to be asked for from the Legislature for taxation. The other accounts, authority, now exists to levy the amounts that have to be taxed for, viz: Common Schools, interest on City Debt, and Floating debt Redemption, while on the Trust Accounts the appropriations are only to provide for the payment from the Treasury of moneys raised by loan or from assessments, and does not affect the taxation for the year. Your Committee have also framed an Appropriation Bill, in accordance with the foregoing Report and recommendation of the Comptroller. They think they can safely say to their fellow-citizens, that the per centage for taxes will be less for the year 1845, than in 1844; that no just and proper means or manner will be withheld to prevent the lavish expediture of the public moneys; that economy in every way shall be their rule of action.

It must be borne in mind, however, that the financial affairs of this city are of more magnitude than four or five of our small States; that this is a growing city, both in wealth and population; and it is impossible to keep certain expenses within the amounts of former years from these very causes.

The following Resolutions are offered for consideration:

Resolved, That application be made to the Legislature for authority to raise by tax on the real and personal estate of the inhabitants of the city and county of New-York, for the contingent expenses of said city, the sum of $940,987 for the year 1845.

Resolved, That application be made to the Legislature for authority to raise by tax on the real and personal estate of the inhabitants of said city within the Watch District, the sum of $248,500, for the purpose of watching and guarding the property in said District.

Resolved, That application be made to the Legislature for the authority to raise by tax on the real and personal estate of the inhabitants of the city and county of New-York, within the Lamp District the sum of $150,000, for the purpose of lighting the streets in said District.

Resolved, That the Counsel prepare a suitable memorial and draft of law, and the Mayor and the Clerk be authorised to authenticate the same for presentation to the Legislature.

They also recommend the adoption of the ordinances making appropriations on all accounts for the year 1845. Respectfully submitted.

ELIAS G. DRAKE,	*Committee on Finance Board of Ald.*
WM. S. MILLER,	
WM. GALE.	
DAVID S. JACKSON,	
MOSES TUCKER,	*Finance Com. Board of Assistants.*
WILLIAM TAYLOR,	
JAMES HORN,	

REMARKS.

The amount proposed to be raised by Tax for the City Watch is,.....	$248,394.26
Lamps and Gas,.....	150,000.00
Contingencies,.....	940,987.00
	$1,339,381.26

In addition to these sums are as follows:

Croton Tax,.....	$
School Tax,.....	
Floating Debt Tax, ...	
State Tax,.....	

The new Police and the Watch together are put down as will be seen by examination at $368.894.26

We give on this page the schedule of the Finance Committee showing what items constitute the Contingent Tax.

SCHEDULE

Of Amounts estimated for Appropriations, also the Receipts from corresponding sources, and the Balance to be raised by Tax, for support of City Government.

On account of	Estimated Appropriation.	Estimated Receipts.	Balance to be raised by Tax.
Aqueduct Repairs,	$10,000		$10,000
Alms House,	196,950	$30,200	166,750
Board of Health,	450		450
Coroner's Fees,	3,500		3,500
Cleaning Corporation Docks and Slips	7,500		7,500
County Contingencies	20,000		20,000
Contingent Expenses of Com. Council,	5,000		5,000
Cleaning Streets (as per contract,)	45,437		45,437
CleaningStreets (contingent),	5,000		5,000
Donations,	8,000		8,000
Docks and Slips,	30,000		30,000
Elections,	10,000		10,000
Fire Department,	18,000		18,000
Intestate Estates,	18,000	2,000	18,000
Lands and Places,	2,750		2,750
Printing and Posting Licenses,	100		100
Officers' Fees,	50,000		50,000
Printing and Stationery,	20,000		20,000
Repairs and Supplies,	40,000		40,000
Rents,	1,250		1,250
Roads and Avenues,	16,000		16,000
Real Estate,	5,000		5,000
Street Expenses,	30,000		30,000
Sewers, repairing and cleaning,	5,000		5,000
Salaries of all Departments,	200,000		200,000
Water Pipes,	50,000		50,000
Interest on Bonds for Tax,	48,000		48,000
Charges on arrears of Taxes,	1,500		1,500
Errors and delinquencies,	5,000		5,000
Markets,	250		250
Municipal Police,	120,500		120,500
Balance to be raised by Tax for support of city Government			$940,987

AN ORDINANCE.

The Mayor, Aldermen and Commonalty of the City of New-York, in Common Council convened, do ordain as follows:

That the following sums be and the same are hereby appropriated for the support of the City Government, for the year from January 1st to December 31st, 1845, less whatever sums may have been paid on account of the following accounts, by virtue of an Ordinance making temporary appropriations for the year 1845, passed December 26th, 1844.

Aqueduct Repairs by State Commissioners,	$10,000 00
Alms House,	196,950 00
Board of Health,	450 00
Coroner's Fees,	3,500 00
Cleaning Corporation Docks and Slips,	7,500 00
County Contingencies,	20,000 00
Contingent Expenses of Common Council,	5,000 00
Cleaning Streets (as per contract,)	45,437 00
Cleaning Streets (contingent),	5,000 00
Donations,	8,000 00
Docks and Slips,	30,000 00
Elections,	10,000 00
Fire Department,	18,000 00
Intestate Estates,	18,000 00
Lands and Places,	2,750 00
Printing and Posting Licences,	100 00
Officers' Fees,	50,000 00
Printing and Stationery,	20,000 00
Repairs and Supplies,	40,000 00
Rents,	1,250 00
Roads and Avenues,	16,000 00
Real Estate,	5,000 00
Street Expenses,	30,000 00
Sewers, Repairing and Cleaning,	5,000 00
Salaries of all Departments,	200,000 00
Water Pipes,	50,000 00
Interest on Bonds *in anticipation of Tax!!*	48,000 00
Charges on Arrears of Taxes,	1,500 00
Errors and Delinquencies,	5,000 00
Markets,	250 00
Municipal Police,	120,500 00
Watch,	248,394 26
Lamps and Gas,	150,000 00
Common Schools,	180,884 73
Interest on City Debt,	388,804 40
Floating Debt Redemption,	50,000 00

AN ORDINANCE

The Mayor, Aldermen and Commonalty of the City of New-York, in Common Council convened, do ordain as follows:

That the following sums be and the same are hereby appropriated for the payment of Claims on Trust Accounts, for the year from January 1st to December 31st, 1845, less whatever sums may have been paid on account of the following accounts, by virtue of an Ordinance making temporary appropriations for the year 1845, passed December 26th, 1844.

Water Commissioners,	$150,000
Buildings on Randall's Island,	40,923
Redemption of Temporary Water Loan,	387,121
Redemption of Revenue Bonds,	600,700
Street Opening, Awards, &c	15,000
Street Paving, Regulating, &c	100,000
Wells and Pumps,	750
Fencing Lots,	1,500
Interest on Assessments,	14,000
Liens on Lots,	12,000
Charges on Arrears of Assessments,	2,000

From the Brooklyn Star.

GREAT FERRY MEETING.

Pursuant to a public notice, a meeting was held on Monday evening, February 24th, 1845, at Hall's Exchange Buildings, Brooklyn, to hear the Report of Committee of Citizens heretofore appointed, and to take such other measures as might be necessary to establish the rights of Brooklyn and Long-Island, in relation to the Ferries between Brooklyn and New-York.

On motion, Henry Young was called to the chair, George Hall and Adrian Hegeman chosen Vice Presidents, and William M. Harris and J. A. Perry, Secretaries.

Hon. John Greenwood being called upon by the meeting, made a full report of the transactions of the committee of citizens, since their appointment.

Alden J. Spooner, Secretary of the Committee, being called upon, read the Memorial prepared by the Committee, and sent by them to the Legislature, with the Resolutions of the meeting of May 8th, 1844, thereto appended.

On motion, the report of the Committee was accepted and adopted, and the thanks of the meeting returned to the committee.

On motion, the Committee was requested by the meeting to continue their duties.

J. M. Van Cott, Esq., offered the following resolutions, which were unanimously adopted:

Resolved, That the act of residing in the city of Brooklyn, instead of the City of New-York, violates no one of the Ten Commandments, and is innocent in law and in morals; and is not, therefore, a crime which the municipal authorities of the city of New-York, should be allowed to visit with a fine and penalty of twenty-five thousand dollars per annum, or any other fine or penalty whatsoever.

Resolved, That the city of Brooklyn, holds no right of the city of New-York, on a feudal or other tenure which should subject her, as a vassal, to the payment of an annual tribute.

Resolved, That the river flowing between Brooklyn and New-York, is an arm of the sea; not constructed by the skill or pecuniary resources of New-York, but by the skill and bounty of the Great Creator.

Resolved, That such river is a great natural highway, created for the free use and enjoyment of all good people who have occasion to pass over it to the territories whose shores are washed by its waves, and not for the purpose of enriching the Corporation of a very small portion of such territories.

Resolved, That the power conferred by charter, and otherwise, upon the Corporation of New-York to regulate Ferries across the East River, is a political and not a private franchise; created for public and not for private purposes; to be exercised for the benefit of all persons having occasion to use such Ferries, and not as a source of private revenue; and that the use of such power as a means of retarding the growth of the city of Brooklyn, and levying a tax upon its citizens, is illegitimate and oppressive, and such a palpable and gross perversion of the purpose for which the franchise was granted, as to render it manifest that the power can no longer remain with, and will not be justly exercised by such Corporation.

Resolved, That the Corporation of New-York ought to have exercised such power as it would have been exercised if it had remained in the Legislature,—beneficiently, and not oppressively; that is revocable in its nature, and ought to be revoked; and that to secure it from abuse, it should hereafter be exercisad by the Legislature, or by a competent Board of Commissioners, to be constituted for the purpose.

Resolved, That we appeal to and rely upon the justice of the supreme legislative power of the State, to relieve the city and the citizens of Brooklyn from the exactions and oppressions which they have so long suffered.

Resolved, That our members of Assembly, and the Senators from the First Senate District, be requested to lay these resolutions before the Senate and Assembly, and urge upon the Legislature some measure to secure to us speedy relief and justice in the premises.

Resolved, That a Finance Committee of six be appointed by the chair to raise the necessary funds for effecting the objects of this meeting.

William M. Harris, Adrian Hegeman, Geo. Hall, D. A. Wesson, J. A. Perry, and J. M. Van Cott, were appointed such committee.

The following resolutions were then offered, and unanimously adopted:

Resolved, That we the citizens of Brooklyn adopt the memorial presented to the Legislature and reiterate the sentiments and views of the meeting of May 8th 1844 in relation to the Ferries between Long Island and New-York, and rely upon the Legislature of the State at its present session to carry out those views.

Resolved, That our Representatives in the Senate and Assembly of this State, be requested to use their utmost exertions to procure the passage of an act during the present session vesting the control of the Ferries in an independent Board of Commissioners or some other impartial tribunal.

Resolved, That our Representatives in the Senate and Assembly of the State be also requested to oppose the principle embraced in a bill at present before the Legislature on behalf of the city of New-York which seeks to tax the personal property of non-residents which said bill is entitled "An Act relative to taxes and jurors in the city of New-York."

On motion it was unanimously resolved that Judge Greenwood be solicited by this meeting to proceed to Albany, to use his influence in forwarding the application to the Legislature.

The meeting then adjourned.

HENRY YOUNG, Chairman.

GEORGE HALL, ADRIAN HEGEMAN, } Vice Presidents.

William M. Harris, J. A. Perry. } Secretaries.

STATE TAX.

The Receiver of Taxes should be required by law to deposit money collected by him for the State Tax, to the credit of the State Treasurer. Of the quarter of a million State Tax levied in the county of New-York, much of which was collected prior to the first of January, and was used to balance the City Fiscals account of 1844, *but about* $39,000, *has been deposited to the credit of the State Treasurer, and this was paid about the middle of February, and this is all that has been paid up to the time of our going to press. The City Treasury is represented as flush, but this shows a lack.*

AN ANCIENT COPY OF THE BIBLE.

During a visit to Upper Canada, in the summer of 1844, a beloved daughter was presented by a relative with a copy of the Bible printed in 1599, two hundred and forty-six years ago. The paper is of good quality and the typographical execution is good. The Volume is imperfect as some of the pages at the commencement, and also some of the conclusion of the Volume, are gone, but the residue is in good condition. This copy is of a translation prior to that which was made by order of King James, in 1607, eight years after the date of the imprint of this copy. On the title page of the New Testament is the following:

"THE NEW TESTAMENT of our LORD JESUS CHRIST, Translated out of Greeke, by *Theo. Beza*, with briefe Summaries and expositions upon the hard places by the said Authour, *Isaac Camer*, and P. Laseler Villenius.

"Englished by L. TOMSON. *Together with Annotations of Fr. Iunius upon the revelations of S IOHN* IMPRINTED AT LONDON by the Deputies of Christopher Barker, Printer to the Queenes most excellent majestie, 1599."

This copy originally cost 50 guineas. At that time 50 guineas was a large sum of money, and would purchase in London as much corn as one thousand guineas would command at the present time. The Bible has not decreased in value since then, although the great multiplication of copies have lessened the price to a few cents per volume.

At the time this copy was printed the city of New-York was not in exisence, nor had the thought of founding this city entered in the mind of any human being. The Island of New-York was then covered by a dense forest, and inhabited by a nation of people, not a drop of whose blood probably now runs in any human veins. What a change—and in a short period of time compared with that which the pages of this volume covers. The language of this copy of the Bible is peculiar and that of the particular time in which it was written.

We brought this ancient volume across the gulf into which the Niagara falls from the giant precipices which form the greatest cataract on earth, It was a fit companion for that brief and thrilling voyage. When this Bible was imprinted in the city of London, the Falls of Niagara were unknown to civilized man.—They were then in the bosom of a Forest.

Above the cataract of this extraordinary river is the *memento* recorded in this sacred Volume of the promise to all flesh that the world shall no more be drowned The Bow of the cloud is suspended above the mighty vortex into which a mangled river is precipitated from the top of gigantic walls, and is beautiful to behold. It is painted with all the rich colors of the solar pencil, and is brilliant in appearance as well as lovely and sublime in testimony. What a witnessing together of the eternal truths of the Bible—this ancient volume, and this painted cloud! What a place to contemplate the picture! Seated in a frail boat, tossed upon the foaming and agitated waters of an unfathomed gulf, amid the roar of the thunder of the waters of a broken river, the echo of which shakes its adamantine banks. Yes, what a place to meditate—to contemplate—a fit place to pay the tribute of the homage of adoration to the fountain of all good.

SIX THUNDERBOLTS IN ONE HOUR.

The Barque Ann Louisa, bound from Vera Cruz, in Mexico to the Port of New-York, in latitude 38° 30′, longitude 72 W., on the 11th February instant, at 10 o'clock in the morning encountered a thunder storm. The vessel was loaded with dry hides, cochineal, and some ten thousand dollars in silver. On Saturday last I went on board this vessel in the harbor of New-York, and copied the following from her log-book:

"Feb. 11th, 10 o'clock A.M., the ship was struck by lightning and knocked down nearly all hands, raised the deck around the main-mast, tipped the partners, and took the top sail sheet bits up. One man burnt in the leg, and nearly all hands knocked down six times."

The copper plating around the main-mast, near the deck which is covered with a coat of green paint was partially fused and six small globules of copper which had been melted, hung pendant like drops of crystallized water from the lower edge of the copper plate, which is one fourth of an inch in thickness. Some of the iron work near the mast-head which is bound around with leather, is also partially fused and perforations like those made by shot are now numerous in the leather. I had a conversation with the mate. He informed me that he was knocked down and remained insensible some minutes and subsequently he was three times knocked down upon his knees by as many successive bolts. His pantaloons were scorched on both legs on that part which covers the ankles, and his stockings were also scorched. The first shock, I have no doubt, affected his knee joints and made him fall each successive shock. The ship was filled with smoke, which the mate states had the smell of wet gunpowder burning. The heat, which the copper and iron bear indisputable testimony of, I think was owing to the paint and to the leather. Had these surfaces been bright, no heat would have been experienced. Mr. Grinnel's house has a tin spout, the out side of which is painted and the inside left bright. The lightning descended the inside, and I have noticed the same selection made by the thunder-bolt, in every tin-spout which I have examined. Here then is the testimony of the lightning, left upon record which cannot be disputed. The solder has not been fused in any case which I have ever met with, where the lightning descended a tin spout. I came to the conclusion therefore, that tin tubes are the best lightning conductors which can be used, for these present two surfaces of great comparative extent, one of which is always bright. Bright surfaces reflect heat, and dark surfaces absorb the heat. All buildings furnished with tin spouts should have a metalic connection with the termination of the spout, entering several feet in the ground, and should also have a strip of tin leading from the comb of the roof to the top of the spout.

THUNDER IN WINTER.

On the fourth Sabbath in February, (the 23d,) thunder was heard occasionally during the day. The temperature of the weather, as denoted by my thermometer, was 44°. At 4 o'clock in the afternoon, 43°, and at 7 o'clock in the evening, it rose to 44°. Rain fell abundantly, and the drapery of the clouds rested a part of the time upon the ground.

THUNDER STORM IN WINTER.

"This city was visited by a regular thunder storm yesterday afternoon, the 23d inst., a rather unusual occurrence for the season of the year. There were a number of vivid flashes of lightning, accompanied by loud and sharp claps of thunder. A cloud, very heavily charged with the electric fluid, passed over the district of Southwark, along the Washington Stree t railroad and Second and Front Street, abreast of the Navy Yard. The school house, in Newton Street, was struck and set on fire in the roof, the earth was torn up for several yards between the rails on the rail road, opposite Merrick & Towne's Foundry, a row of small brick dwellings, in Second Street, below Marion, was struck, and the roof and gable end of one of them, which was occupied by a barber, were considerably damaged; the large shears in the Navy Yard were also struck, but not injured. Many persons were shocked, and some badly stunned. The electricity played some singular freaks. In one house a stove was twisted completely around, and in another a frying pan was knocked out of the hand of a woman who was cooking. The rain at the time of these occurrences poured down in torrents."—[*Journal of Commerce, Feb.* 25.

[From the Journal of Commerce.]

A CURIOUS SPRING.

There is a great natural curiosity in Delaware co., Ohio. The manner of discovery is thus related:—Some time about the year 1818, two men, by the names of Davis and Richards, salt boilers by profession, commenced boring for salt water in the bed of the Scioto river, near the place mentioned. After having bored about 20 feet through a solid rock, they came upon a stream of white sulphur water of the strongest kind. The augur with which they were boring suddenly sunk something like two feet, which is probably the depth of the stream—but such was the pressure of the water that the auger was forced up again and large weights had to be attached to it in order to keep it to its place and enable them to bore further. They continued to bore on, however, until they got about 400 feet below the sulphur stream, when they struck upon salt water. The size of the augur was about 2¼ inches in diameter. When they took it out, the jet of sulphur water rose up to the height of 20 feet above the surface of the river. In order to obtain access to the salt water beneath, they procured a strong copper pipe and attempted to force it down to the place where it was to be found. But whenever it reached the sulphur stream, such was its force and pressure, that the pipe was completely flattened, so as entirely to prevent the passage of water through it. All subsequent attempts to insert a pipe proved abortive, and after prosecuting the work at intervals for several years, the project was entirely abandoned. After enlarging the orifice made by the augur at the top, a wooden stock 20 feet in height was inserted—yet even at the top of this, such was the force of the stream, that it required the strength of two or three men to put a plug in it.—From this stock a pipe conveys the water to the spring house, on one of the bluff banks of the river. The stream has been running for 26 years, yet its strength and force are unabated. Those who have recently examined it, say, that it is capable of throwing up a stream ten inches in diameter from 80 to 90 feet high; and that water can be thus obtained to turn a large mill.

The place in which it is situated is a fine healthy region, and the country round about is beautiful and rolling, and admirably adapted to fishing and hunting; and will, no doubt, become a fashionable resort.

THE HUDSON RIVER.

The following table shows the date of the opening and closing of the Hudson River at Albany, and the number of days that navigation was suspended for a series of years from 1831 to the present time:

Winters.	River closed.	River opened.	Days closed.
1831-2	Dec. 5, 1831	Mar. 25, 1832	111 days.
1832-3	21, 1832	21, 1833	83 "
1833-4	13, 1833	Feb. 24, 1834	73 "
1834-5	15, 1834	Mar. 25, 1835	100 "
1835-6	Nov. 30, 1835	April 4, 1836	125 "
1836-7	Dec. 7, 1836	Mar. 28, 1837	111 "
1837-8	14, 1837	19, 1838	94 "
1838-9	Nov. 25, 1838	21, 1839	116 "
1839-40	Dec. 18, 1839	Feb. 21, 1840	65 "
1840-1	5, 1840	Mar. 24, 1841	109 "
1841-2	19, 1841	Feb. 4, 1842	47 "
1842-3	Nov. 28, 1842	April 13, 1843	135 "
1843-4	Dec. 10, 1843	Mar. 18, 1844	98 "
1844-5	17, 1844	Feb. 24, 1845	68 "

THE FAITHFUL DOG.

The Dog is the emblem of Fidelity—a demonstration of Nature itself—of the supremacy of its laws—and of the harmony of all its attributes. The Dog yields to the corrections of his master, with a humility that would in the human character be a gem of great adorning.

I have noticed a little Dog in my neighborhood who has no master, and no permanent home, and I feel inclined to notice him in order that the friends of his master may make provision for him. His master was a young man who was recently found dead, with his gun lying beside him, and the little dog was with the corpse watching over it with unyielding constancy, and when the Coroner's Jury held an inquest over the body the dog was still present watching the cold body of his master. The young man is supposed to have been killed by the accidental discharge of his own gun, while on a hunting excursion. A gentleman admiring the fidelity of the little dog purchased the little creature at the price of ten dollars. The dog is unwilling to stay with him and seems to be still looking for his master. The dog manifests gratitude for kindness and retains a remembrance of injury. This little animal of which I have here spoken is admired by all who see him and who are informed of his history.

What a demonstration of fidelity—worthy of being copied by the King upon the throne—a virtue which when possessed by a human being would be one of the brightest adornings of his mind, one of the excellencies of his character, and a treasure of untold and incomputable value.

GRASSHOPPERS

Capt. Hagar, of the bark Marcella, brought home a preserved grasshopper, of the size of a man's thumb, as a sample of an immense field through which he sailed for five days. He fell in with the field off the Western Islands, and the presumption was, that they were blown off from Africa. The water was heavily crusted with them; the grasshoppers filling the surface to the depth of some inches, and extending in the course of the bark for four hundred miles. Such an army must be worse than the Goths and Vandals to contend with. They would eat up every green thing for breakfast, and change the most beautiful fields to a desolation in one hour. We regret that there are no newspapers in Africa, to relate the line of march of this terrible army, until, by some strong wind or some want of geographic knowledge in their leaders, they were drowned in the broad blue sea.—[Journal of Commerce, Jan. 21st 1845.

Extract from a letter dated Fayal, Azores, Dec. 8.

"A singular phenomenon occurred here about the middle of last month; during a strong southerly wind an innumerable quantity of large red insects, resembling grasshoppers, fell on the island, and on the sea around. On examining them, they were found to correspond exactly with the descriptions of the Egyptian locusts. All the other islands were visited in a like manner, and a vessel which arrived a few days since, reports having sailed through them during six days, such vast quantities having fallen and perished. They must have come from Africa. They are fast disappearing.—[Boston Courier.

We have an account of Locusts in early times.—The Egyptians were visited by these insects more than forty three centuries ago as one of the judgements upon the people of that nation for holding their fellow men in cruel bondage. The expression of the sacred record is in these words:

"If thou refuse to let my people go, behold tomorrow I will send the locusts into thy coasts." And they shall cover the face of the earth, that one cannot be able to see the earth, and they shall eat the residue of that is escaped, which remaineth unto you from the hail, and shall eat every tree that groweth unto you out of the field. And they shall fill thy houses, and the houses of thy country, and the houses of all the Egyptians; which neither thy Fathers, or the fathers fathers have seen, since the day they were upon the earth, unto this day."

It appears from this account that locusts were numerous before they came in the execution of a judgment, but not to the extent or any thing like it that was witnessed in that day.

The abundance of these insects as described by the two newspaper accounts we have quoted,—show what an immensity of animal life can be at once embodied in a locality, at the same time setting all human estimate at defiance, and presenting a page in nature of its great Volume that excites both wonder and surprise—but the fact is demonstrated, and we need not go to form any new theory to account for an operation of nature, which is beyond our reach.

The Western Islands stretch along a line of about 300 miles between North latitude 35° 50′ and 39° 44′ and 31° 7′ and 25° 10′ West longitude. These locusts, if from the African Continent, must have traversed the atmosphere for several hundred miles, and come from the regions of the Great Desert. In 1457, the Western Islands were entirely uninhabited and covered with forests. It is almost as reasonable to suppose that these myriads of Locusts came from some other quarter as to suppose they came from the coast of Africa. The resources of nature are vast, beyond all human conception.

Near thirty years ago I travelled in a forest path through an army of locusts in the Western wilds.—The district which they occupied was about half a mile wide and was soft ground, how far they extended to the right and left I had no means of ascertaining, but every leaf seemed to have a tenant, and the air was filled with the music of their voices.

LIGHT.

The rays of Light pass in straight lines in every direction, when unobstructed. If obstructed by a bright surface, the light is reflected, and even by dark surfaces, for we find that when a fire takes place in a cloudy night, the light of the fire is greatly increased by the reflection of its rays from the surface of the clouds.—Light from terrestrial fires during cloudless nights is dimmed by the solar light which remains in the midst of the surrounding atmosphere, and by that which is reflected from the planets, and also by that which is sent forth by the stars of the firmament. There is but little economy practised in the use of what is termed artificial light. The lamps which are placed in the public streets to give light upon the pavements, are miserable contrivances for the purposes intended, and instead of lighting the Streets, illuminate, to a small extent, the higher atmosphere. A lighted taper placed on the point of a holder, made in the shape of the letter A, would be free from the shade of such holder, but reverse the holder made in the shape of the letter A, and give it the figure of the letter V, placing the taper in the centre and it will cast two shadows upon the surface upon which the holder is fixed, or above which it is suspended, hence a wide mouth lamp prevents the light from illuminating the surface on which it stands. The City Lamps are placed double the height above the pavement which is necessary, or useful, and one-half the lamps at one half the elevation from the pavement would give greater light than those now in use, at a saving of one-half the expense. Compare the lamp posts on the corner of Centre and Pearl Streets. with those in Broadway, and you will have an illustration. Place a printed page of varlous sized letters upon the pavement under these lamp posts and you obtain an accurate photometer for measuring this light.

It is said that if lamps are placed low they will be more frequently broken. This has not been the case with the lamps on the corner of Centre and Pearl Street, and here the Street was raised about four feet after the lamp posts were placed in the ground. The lamp posts in New-York are placed a certain number of feet apart without regard to other circumstances.—This is a great error and shows conclusively that no science is displayed in reference to this great expenditure of public money, which for the coming year is estimated at about 1-13th the entire tax to be assessed on the real and personal property of the inhabitants and freeholders of the county of New-York. All the rays of light which pass from a lamp in an upward direction afford no illumination to the pavement whatever, and it is only those which are thrown upon the pavement and reflected which gives light in the Street. If the lamp has a broad bottom, that bottom shades the street surface below it to a greater or lesser extent, and this extent corresponds with the height of the lamp post. An illustration which demonstrates most satisfactorily may be had by placing a flat bottom candlestick upon the table with a lighted candle in it—raise the candlestick and candle six inches and then measure the diameter of the shadow—again raise it 18 inches, and measure the increased diameter of the shadow, and you have a convincing demonstration.

ACCIDENT BY LIGHTNING.

The Nashville Gazette states, that during the thunder storm, on Wednesday night, February 19th, the driver of the Murfreesboro' stage, was stunned and knocked from his seat by lightning. The horses being alarmed, randown an embankment, upsetting the stage and severely wounding several of the passengers. Mr. George W. Lillard, was seriously wounded, and his shoulder dislocated, and his body crushed. Messrs. J. W. Leiper, George W. Bacton, and J. W. McElroy, were badly hurt, the latter only being able to proceed to Murfreesboro. Mr. Barkley, the driver, after remaining some time insensible, recovered from the shock.—*Journal of Commerce, March*, 3, 1843.

MISSIONARIES.

It was remarked by an aged clergyman at the annual meeting of the American Bible Society some years since, that our sailors made the best of missionaries to foreign and unenlightened countries. Give to the sailor the precepts of the bible, and his life and conduct wherever he goes will make him a preacher in every language and in every tongue where his good conduct and good examples are seen. The ignorant Asiatic can better understand the influence of the Bible as seen in the life and walk of a christian than he can understand its doctrines from the lips of a preacher educated in the schools of learning.

From the Brooklyn Star.

POST OFFICE REFORM.

At a large and respectable meeting of the citizens of Brooklyn, held at Hall's Buildings, on the evening of the 24th February, 1845, on the subject of Post Office Reform, HENRY YOUNG, Esq. was appointed President, ADRIAN HEGEMAN and GEORGE HALL, Vice Presidents, Joseph A. Perry and William M. Harris, Secretaries.

Alderman T. G. Talmadge, after a few remarks explanatory of the objects of the meeting, presented the following preamble and resolutions, which were seconded, and ably and eloquently sustained by Barnabas Bates and John Greenwood, Esq.

Whereas, the present exhorbitant and burdensome rates of postage have long been a source of complaint to the inhabitants of the United States; and whereas, petitions in great numbers have been addressed to Congress, asking for a reduction of these rates, without any success; and whereas, several of the State Legislatures have passed resolutions unanimously in favor of reducing the same and the abolition of the franking privilege; and whereas, the Senate of the United States has passed a bill highly liberal in its provisions and satisfactory to the people; and whereas, this bill has been some time before the House of Representatives without any action having been taken upon it, except to substitute the House bill in lieu of the same; and whereas, it is highly probable that at this late period of the session, if the Senate bill is not adopted without alteration or amendment, the measure of cheap postage will inevitably fail at this session: therefore,

Resolved, That we are in favor of the immediate reduction of the present rates of postage and the abolition of the franking privilege, which has been so much abused in years past, and thus burdened the mails so as to impair their speed and injure the department.

Resolved, That the experiment of Cheap Postage has been successfully tried in Great Britain, so that there can be no doubt any longer of its being as well adapted to this country as to Great Britain, and that the increase of the revenue of the Post Office has been so great as to encourage the belief that its adoption will be highly beneficial to the people of the United States.

Resolved that we respectfully recommend to the members of the House of Representatives, to the Post Office Committee, and especially to our Representatives in Congress, the Hon. Mr. Murphy, to use their exertions to effect the immediate passage of the bill passed by the Senate, for the reduction of the rates of postage to a uniform rate of *five cents*, without alteration or amendment, believing that should it be returned to the Senate, the shortness of the session would defeat the passage of the bill at the present session.

Resolved, That the information just received by the mails from England, showing an increase of the revenue of the Post Office of nearly $400,000 in 1844, over that of 1843, when, after paying the expenses of its management, it yielded a surplus of upwards of three millions of dollars, furnishes snfficient reason to satisfy us of the beneficial effects of cheap postage in the United States.

Resolved, That our thanks are due and are hereby tendered to the Senate of the United States, for the passage of a bill for reducing the rates of postage to an uniform rate of five cents upon single letters, and we are satisfied that this rate will yield a larger income than is now collected by the Post Office department. We cordially accept this boon as the harbinger of a more perfect measure, calculated to remove the oppressive tax upon our correspondence—a boon that will essentially advance the interest and happiness of all classes of our citizens throughout the United States.

Resolved, That a copy of the proceedings of this meeting and the resolutions be signed by the Chairman and Secretary, and forwarded to each of the members of Congress.

HENRY YOUNG, Ch'n.

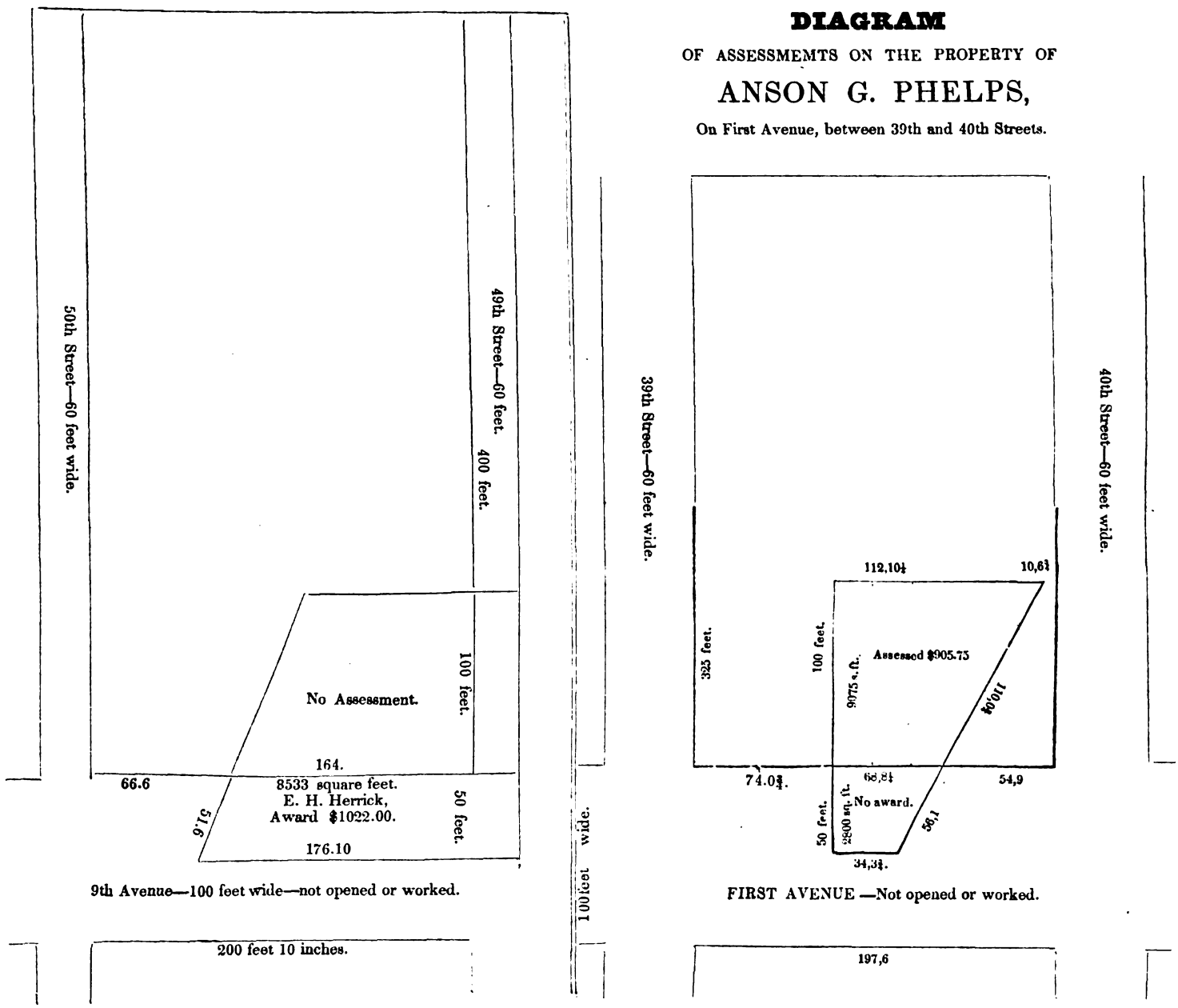
JOSEPH A. PERRY, Sect.

NOMINATION FOR MAYOR.

MAPOR HARPER has been renominated to the Mayoralty by the Native Americans by a unanimous vote.

Mayor Harper is a most eficient public officer and has given satisfation to all parties, and he has accepted the nomination, and will no doubt be elected by a large majority.

RUINOUS ASSESSMENTS ILLUSTRATED BY DIAGRAMS.



The award for the Land taken from Mr. E. H. Herrick in the Ninth Avenue, for that road, compared with the assessments upon the land of Anson G. Phelps, for his land in the First Avenue, taken for that road, presents an illustration which demonstrates abuses of a serious character. The land taken from Mr. Phelps for the First Avenue in proportion to what is left, is about in the same ratio as that taken from Herrick for the Ninth Avenue in comparison with what is left, and shows the total absence of all system, rule, equity or justice, in making assessments and awards. Mr. Herricks award, compared with the assessment on the land of Assistant Alderman Townsend, taken for the Seventh Avenue, presents another illustration. The land extending back to a line running half way between the Eight and Ninth Avenue should have been assessed a small sum for the land taken from Mr. Herrick, and Mr. Herrick should have been awarded say $50 or $100. Mr. Phelps whose land is situated precisely as that of Mr. Herrick, should have been awarded for what was taken, instead of being assessed on what was left, and the same as to Mr. Townsend's land. The difference between paying an assessment instead of receiving an award, is very great. Whether a person receives $1000. or has that sum to pay is a difference to such person of $2000. The land of Mr. Herrick was assessed for opening 50th Street $10. Mr. Phelp's land was assessed for opening 40th Street $575. That such proceedings as these should be corrected, is a matter of such common sense propriety, that we doubt if there could be found an intelligent man in the world who would oppose such a proceeding, and that Courts of Justice should have their legal vision so obscured as not to be able to see these matters in their proper light, is a sad commentary upon the Judiciary department of the State Government. The 9075 feet contained in Mr. Phelps's land is valued by the Ward Assessors at $450.00, which is not much more than the interest of the assessment, and but a trifle more than half the assessment imposed upon it, thus it is an absolute confiscation of the land, or taking private property without just compensation. A pretty proceeding—"*a judicial power exercised in a judicial way.*"

The fees of Counsel, Commissioners, and Surveyors, for street openings in the city of New-York, confirmed by a justice of the Supreme Court in 1839, amounted to the sum of $100,131.26, and these diagrams show how these fees were assessed, viz. Counsel $31,196 47; Commissioners $39,143.79; Surveyors $22.517.00; Collectors $7,274.00.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MARCH 17, 1845. [VOL. I....No. 30

STATE TAX.

(DOCUMENT No. 64.)

IN ASSEMBLY—February 7, 1845.

REPORT

Of the Comptroller in answer to a resolution of the Assembly, respecting the valuation of Real Estate, and the amount of State Tax.

COMPTROLLER'S OFFICE, }
ALBANY. Feb. 7, 1845. }

TO THE ASSEMBLY.

The Comptroller, in answer to a resolution of the Assembly, a copy of which was received on the 5th inst., requesting him to furnish the amount of real estate, as assessed in the different counties of this State, for the years 1841, 1842, 1843 and 1844, respectively; also, the amount of State tax assessed on each county for said years, submits in the annexed table, marked A, full answers to the requirements of the resolution.

The total valuations of real estate, and of the state tax for the years referred to, are as follows:

Years.	Total valuations of real estate.	Total tax.
1841,.....	$531,987,886.....	none
1842,.....	504,254,029.....	$616,693 81
1843,.....	476,999,430.....	592,008 57
1844,.....	471,127,327.....	645,909 17
		* $1,857,611 55

A. C. FLAGG.

*Or $1,854,611 55.—[ED.

REMARKS.

The State Tax assessed in the city of New-York in 1844, *was* $259,556 05. *This is about two-fifths of the Tax of the State.*

BANK TAX.

JUDGE PORTER presented in the Senate of this State, on the 20th of February, a Memorial of the Presidents of New-York Banks, in relation to the Tax upon Bank Capital, which was referred to the Finance Committee, which Committee the next day made the following

REPORT.

(DOCUMENT No. 95.)

IN SENATE—February 21, 1845.

Reported by Mr. Bockee, from the committee of Finance.

AN ACT

To amend the Revised Statutes in relation to the exemption of incorporated companies from taxation, and for other purposes.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section nine of title four, of chapter thirteen, of part one of the Revised Statutes, which authorizes the exemption of incorporated companies in certain cases from taxation, is hereby repealed.

§ 2. All banks established under the act entitled "An act to authorize the business of Banking," passed April 18, 1838, shall be subject to taxation on the amount of capital paid in or secured to be paid in, in the same manner as incorporated banks; and the proper officer or officers of such banks shall make an annual statement to the Comptroller and the assessors, in the manner provided by the second section of title four, chapter thirteen, of the first part of the Revised Statutes.

§ 3. The provisions of the fifteenth section of the second title of the thirteenth chapter of the first part of the Revised Statutes, shall be extended to all incorporated companies and other associations subject to taxation, and the affidavit in such case may be made by the president, cashier, secretary, or treasurer thereof; and such companies and associations shall be assessed on the actual value of their real and personal estate at the time of making such assessment.

THE NATIVE PARTY.

The Natives abolished the Banqueting Hall—for this they deserve credit. They retained General Kiersted, a worthy and faithful public officer, in office, and for this they deserve credit. They retained Mr. Dikeman, the worthy Bond Clerk in the City Comptrollers Office, and for this they deserve credit. They did not frolic on the 4th of July, and for this they deserve credit. They abolished the booths, for this they deserve credit. They corrected the nuisances at the Steamboat landings, and for this they deserve credit, and they repealed the Street Patching Ordinance, and for this deserve credit.

AUCTION DUTIES.

By the returns of Auctioneers it appears that the amount of fees they have paid to the State on goods sold at auction, amount to $172,500.00.

The number of auctioneers are sixty-one.

6	Auctioneers paid	$128,082.00, or	$22.338.00, each.
8	do.	do. 34,879.00, "	4.983.00, "
10	do.	do. 9,101.00, "	910,00, "
37	do.	do. 912.00, average less than	$25

The Mock Auctions should be abolished, and the City Treasury should have the benefit of the fees, instead of the State. The Mock Auctions are a nuisance.

POSTAGE REFORM.

Congress have made some progress toward reform in the mail establishment of the United States. An act has been passed which reduces the rate of Postage on single letters or letters weighing less than half an ounce, for distances less than 300 miles, to five cents, and letters for places beyond 300 miles are to be charged ten cents. It would be better for letters under a certain weight to go free, and newspapers also. Government is not an organization for the transaction of business to obtain compensation therefor, but is an organization designed for the good of the people, and for their protection.

CLERK OF THE BOARD OF SUPERVISORS.

The Clerk of the Board of Supervisors receives a salary of two hundred dollars a year. It is an *ex officio* duty and is performed by the Clerk of the Common Council, who receives as such clerk a large salary. The Records of that office should be kept with the utmost care.

LAMPS.

In 1841 the appropriation for lamps was but $120,000. It will be seen that in January and February, 1841, the City Commissioners of Philadelphia paid one dollar and one and a half cents per gallon for oil. The Common Council now ask for an appropriation of $150.000 for lamps. Better remove every other lamp-post, and lower the lamps of those which remain one-half, and keep the lamp glass clean. This is the way to both increase the light and reduce the tax.

MOUNTED WATCHMEN.

Twenty-five mounted Watchmen with trumpets, to patrole the streets, two and two, would be equal to five hundred footmen, and besides, if they found one of the *Charley's* asleep they could blow a trumpet and rouse him to action. The expense of a mounted man would be less per annum than that of two Watchmen, and as affective as twenty.

TAXATION.

The great question is, how shall the public expenditures be economised to avoid ruinous taxation? and not, how shall property be found between the arctic and antartic to collect a tax to defray profligate expenditures?

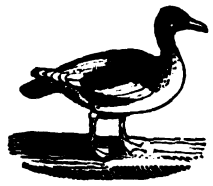
The most ancient Tax of which we have record was that of Egypt, which was to the extent of one fifth of the product of the corn. This although apparently a heavy burden, was light compared with the Taxes of this Metropolis, and it was an equitable tax for it was imposed on the actual product, was in equal proportion thereto, and was in exact proportion with the ability of the Tax payer.

It is the office holders who are manufacturers of Taxes. They use this as a means of bestowing the gift of public patronage to increase or maintain political power of retaining office, and it is like the old mode of killing bees for the sake of the honey that these industrious insects had made, and without any regard for the destruction of their future industry.

STENOGRAPHIC REPLY

To an article in the American Republican of the 18th ult.

"JUSTICE"



is a

THE OFFICE OF ALDERMEN OF NEW-YORK.

An Alderman of a city Ward is a member of the Common Council, ex-officio Judge of the Court of Oyer and Terminer, County Court, and Court of Sessions, member of the Board of Health, and also a member of the Board of Supervisors, &c. &c. It is evident that all these various duties cannot be well performed by one individual, and the same remark that was made by the Chief Justice and Associate Justices of the Supreme Court of the United States, in a letter addressed to GEORGE WASHINGTON, President of the United States, as to Judicial Officers exercising the powers pertaining to more than one office, will apply equally to a New-York Alderman. The learned Judges quoted Bacon, with approbation, in which he says that, "*Offices are said to be incompatible and inconsistent, so as to be executed by one person, when from the multiplicity of business in them, they cannot be executed with care and ability; or when their being subordinate and interfering with each other they cannot be executed with impartiality and this my Lord Coke says, is of that importance, that in all offices, civil and ecclesiastical, &c., were only executed, each by different persons, it would be for the good of the Commonwealth and advancement of Justice, and preferment of deserving men.*" Those who penned these sentiments have long since gone to rest, and those who thus reiterated them, also sleep; but their thoughts have found a place upon record and should endure throughout all time.

TAXATION IN SOUTH CAROLINA.

A friend has sent us the law of assessing and collecting Taxes in Charleston, S. C. Our friend approves of many of the provisions of this law. We cannot coincide with him in opinion in this, believing that such a law would be most unpopular in our City, and most injurious as well as disastrous and ruinous to its trade and commerce. It is a little singular that while the sovereign Government of South Carolina are advocating the doctrines of FREE TRADE that they should in this Tax act present the very converse of that doctrine. It is our purpose to present in the columns of the Municipal Gazette the system of Taxation in the various cities of the United States that the objectionable features of the one may be contrasted with the unobjectionable features of the others.

State of South-Carolina. }
City of Charleston. }

AN ORDINANCE,

To regulate the collection of the City Taxes, prescribing the duties of certain City Officers, and for other purposes.

Taxes how to be paid.—To be rated by the City Assessor,

1. Be it ordained by the Mayor and Aldermen of Charleston, in City Council assembled, and it is hereby ordained by the authority of the same, That taxes and Assessments for the use and service of the city, shall be paid in specie or the notes of the specie paying Banks, established in the City of Charleston, and shall be ascertained and rated by the City Assesser, according to the best of his knowledge and information.

By whom to be payable.—Horses taxable if used within the city during the year.—Coaches, &c. taxable if used for one month.

2. The taxes on landed or personal estate, declared now to be or which may hereafter be rendered liable to a city tax, and assessment, by an Ordinance of the City Council, in the present year, or at any time or times hereafter to be passed, shall be payable by the persons, who on the first day of January in each and every year, were the respective owners or representatives thereof; and the taxes and assessments on buildings, houses, and improvements, owned, erected or held under lease, from any religious, charitable, or literary Society, shall be payable by the persons, who on the first day of January in each and every year, were the lessees thereof. And every horse shall be liable to the tax imposed by any Ordinance of the City Council to be passed as aforesaid, that shall be owned, used, or kept in the city, at any time during the year in which such Ordinance shall be ratified; and every coach, or other carriage used within the city, for one month, except in cases of coaches and carriages employed for hire, by virtue of licenses ob. tained from the City Treasurer, shall be liable to the tax imposed upon such objects, in any such Ordinance; and if not returned by the owner or person using the same, shall be liable to a treble tax, one-half of the extra tax to go to the informer.

Returns for property taxable when to be made.—Form of Oath. Slaves to be named and described on back of return.—No return to be made of property of another, unless his legal agent.

3. Any person owning or possessing any property or income, liable to the payment of a City Tax, as aforesaid, as well as on his own account, or as executor, administrator, guardian, trustee, attorney, agent, or otherwise. having the charge or management of any taxable property within the city, or of any person deceased, absent, or under age, or otherwise, shall, on or before the twentieth day of April, in each and every year, deliver a true and just return of all such property, with a correct description of lands and tenements, the numbers, situation, and dimensions thereof, to the City Assessor, at his office, and then and there to take the following oath before the City Assessor, or a Magistrate duly qualified to administer such oath—"I, A. B., do solemnly swear, (or affirm, as the case may be,) that the return which I now give in, contains a just and true account, and correct representation of all the real, leasehold, and personal estate subject to taxation, which on the first day of January, in the then current year, was or were in my possession, for or on my own account, or on account of any other person or persons whomsoever, either as executor, administrator, guardian, trustee, attorney, agent or otherwise; and that no more of said property than is represented, is in anywise belonging to any persons resident in a foreign country.—So help me God." And every person taking such oath, shall subscribe the same on each return, made by him or her, and deliver the same to the City Assessor. Every slave liable to taxation under any Ordinance hereafter to be passed, to raise supplies for the present or any future year, shall be named on the back of each return, with the age, sex, and complexion, whether black or colored. And no return shall be received from any one, of the property of another person, except in the character of executor, administrator, guardian, trustee, attorney, or agent, and the return be made conformably with this Ordinance.

Double Tax on all who make no return or a false one.

4. If any person being the owner, or having the charge of, or holding any taxable property within the City aforesaid, and who may, or shall be required by this or any ordinance hereafter to be passed, to make a return thereof, on failure or neglect to make such a return at the time, and in the manner therein prescribed; or if any person shall, in any return to be made as aforesaid, omit any house, building, lot or wharf, landed or leasehold estate, slave or slaves, with the names of such slaves; coach or other carriage, horse or horses, profit, income, or other property liable to a tax, as may be prescribed in such Ordinance as aforesaid; or shall by a false return, prevent a full assessment to which such property, or profit, or income, if duly and fairly returned would have been liable; every such person shall be doubly taxed. The City Assessor on the fifteenth day of August, in each and every year, shall make out and deliver to the City Treasurer, a list of all persons liable to be double taxed under this clause; and the City Treasurer shall forthwith issue an execution against the goods, chattels, and other property of said persons, to be executed in the same manner, as is herein provided for the recovery of other assessments.

Taxes to be paid by 1st Jan.; in default executions how to issue.

5. All assessments made on real, leasehold, or personal property, sales and income or other property, rendered taxable under this Ordinance, or any Ordinance hereafter to be passed by the City Council, to raise supplies for the present or any future year, (except when otherwise provided) shall be paid to the City Treasurer, at his office, on or before the first day of June, in each and every year; and if any person shall fail or neglect to pay his, or her assessment, when due as aforesaid, an execution shall forthwith be issued against any goods or chattels, to such persons belonging, and the same shall be seized and publicly sold by the City Sheriff, and so much deducted from the amount of such sale or sales, as may be requisite to pay the amount of such assessment, and other legal charges; and the overplus, if any be left, shall be paid to the person whose goods and chattels have been so seized and sold, or to such other person as may have lawful claim thereto: but if no goods or chattels can be found, belonging to any such person, or if such as have been found be insufficient to defray the whole amount of the assessment and charges, the Sheriff shall levy upon, and sell at public auction, any of the landed or leasehold property of such person, within the limits of the city, on a lease not exceeding five years, for the purpose of discharging what may be due as aforesaid, and shall dispose of the surplus, if any be left, in the same manner as above directed. And if any person failing, or neglecting to pay his or her assessment, should have neither landed nor leasehold property, nor goods and chattels, within the city, or if the proceeds of the sales of such as may belong to him or her, should not be adequate to the full payment of what is due by him or her, as aforesaid, then the City Sheriff shall enforce the execution against the body of such person, and commit the same to the jail of Charleston District, there to be detained until full payment be made, or until discharged according to law.

Country residents allowed further time to make returns and pay taxes.

6. Every inhabitant of this State, owning or possessing any taxable property within the City, but residing therein at no other time than between the months of June and November in any year, or residing altogether in the country, shall be at liberty to make his or her return, on or before the 20th day of June, in each and every year, and to pay his or her assessment on or before the 20th day of July, then next ensuing, subject, however, to the regulations and penalties herein before prescribed and imposed in every other respect, except as to the time of making returns, and paying such assessments; and with the foregoing exceptions, in point of time, the City Assessor, the City Treasurer, and City Sheriff, shall be bound to observe, in regard to every such person, the same rules and proceedings respectively, as above prescribed in other cases.

A person residing three months in the city deemed an inhabitant thereof.

7. Every inhabitant of this State, residing within the City for three months in the year, shall be considered and deemed an inhabitant thereof, and all such of his or her personal property, held, possessed, used, or enjoyed in the city, as may come under the description of taxable property, specified in any of the Ordinances, shall be liable to assessment, and be proceeded with agreeably to the foregoing provisions of this Ordinance, if brought into and used within the city, during such residence, although not within the city on the first day of January preceding.

Slaves brought into the city after 1st January, in each year and held for three months taxable.—How to be returned and paid for.

8. All slaves brought into the city after the first day of January in each and every year, and held and possessed therein for three months in the year, shall be liable to the same assessment and tax, as if within the city on the first day of January preceding; and the owner or possessor of such slaves, if not included in his annual return, shall at the expiration of the said three months, return the same under oath to the City Assessor, and pay the Assessment and Tax thereon to the City Treasurer, within ten days after making the return; and on default of such return or payment, the owner or possessor of such slaves shall be subject to the same penalty and execution, and be proceeded against in the same manner, as provided for by Ordinance, for the return and collection of city assessments and taxes.

Property owned in the city, by residents out of the United States liable to a double tax.

9. All such taxable property within the city, as may belong to any person residing without the United States, shall be liable to a double tax; but this clause shall not be construed to extend to the property of any person or persons, sent or gone abroad, in the employment of the State, or of the United States, until one year after the expiration of his or their mission.

Taxes constitute liens for one year.

10. The taxes which in the present year, or at any time or times hereafter, may be imposed by any Tax Ordinance of the City Council on any lands, slaves, or other goods and chattels, shall respectively constitute specific liens on the said lands, slaves, goods and chattels, for one year from the time, when the liability for the said taxes attaches upon the owner or proprietor thereof; and the said lands, slaves, goods and chattels, may be levied on within the period aforesaid, and sold for satisfaction respectively of such taxes, notwithstanding any alteration of the same by the owner in possession thereof, subsequently to the time when the liability for the said taxes attached upon the said owner or proprietor, and the proceeds of the sale of such lands, slaves, goods and chattels, shall be applied to the payment of such taxes thereon respectively, prior to and in preference of all judgments, mortgages, debts, or other liens on the same, but nothing herein contained, shall be construed to affect or impair the ordinary general lien of executions for taxes duly lodged in the office of the city Sheriff.

Sales of lands and negroes after 1st Jan. annually to be reported to Assessor.

11. It shall be the duty of every taxable inhabitant of this city, who shall, since the first day of January in the year past, have sold any lands or negroes, liable to city tax, to give information thereof at the time of making such return, and the name of the person to whom sold, to the City Assessor.

Assessor to enter all such sales in a book.

12. It shall be the duty of the City Assessor, to inquire of every person making a tax return, whether he, or she, or the person they may represent, have sold any taxable property since the last return of taxes, and he shall enter the same in a book kept for

that purpose, with the name of the person to whom such sales have been made, and shall take the proper measures to collect the taxes on all such property.

Assessor to make diligent inquiry and secure accurate returns.

13. It shall further be the duty of the City Assessor to make diligent enquiry as to all property liable to taxation—to put the necessary questions, and make the required explanations and take all proper measures for the purpose of obtaining full and accurate returns, and to make the assessment on a scale that will bear equally on all, and to collect the taxes according to the true intent and meaning of the Ordinance in such case made and provided.

To return an alphabetical list of tax payers and amount of taxes

14. The City Assessor shall so soon as the returns are completed, make out an alphabetical list of all the persons making such returns, or liable to pay taxes in the city, with the amount of their respective assessments under the proper heads; and shall forthwith report the same to Council, to be published whenever Council shall direct.

Tax on dogs.—Collars to be worn by dogs.—Dogs going at large to be killed.

15. On every dog kept by any white person, or on his premises, there shall be paid a tax of three dollars to the city, in each and every year; and any dog or dogs kept as aforesaid, shall be included in the tax return of the owner and keeper thereof, or the head of the family or keeper of the house, where such dog is kept or harbored. And on the payment of the said tax, the owner or keeper of such dog or dogs, shall be entitled to receive from the City Treasurer a license for such dog to run at large for one year. Provided a collar shall be constantly worn by such dog, having the name of the owner legibly written, stamped, or engraved thereon; and provided also, that if at any time it shall be deemed unsafe to permit dogs to go at large, it shall be the duty of the Mayor to issue a proclamation forbidding the same. And any dog found going at large, after such notice and until such proclamation is revoked, shall be killed, and the keeper or owner thereof, shall be moreover liable to a fine of ten dollars. And any dog found in any lot or going at large, contrary to this ordinance may be lawfully killed. Any person keeping a dog contrary to this ordinance shall be liable to a fine of ten dollars, for every such offence; and for failing to make a return of every dog liable to a double tax, as in other cases.

Oath in tax returns as to dogs.—Penalty for keeping dogs when tax is not paid.

16. The following oath, in addition to the oaths now prescribed by Law, shall be taken by all persons making a return of taxable property in the city, viz: "And I, A.B., do further swear, that there is no dog kept by me, or on my premises;" to which shall be added the following, where a dog or dogs may have been returned, "except such as have been duly returned,—so help me God." And it is hereby ordained, that any dog brought into the city, shall be immediately reported to the City Treasurer and the tax paid, and a license taken out for the remainder of the year, under a penalty of ten dollars, on the owner or keeper of said dog, or the person on whose premises the said dog may be found; and any dog at any time found in the city, shall be deemed and taken to be kept therein, and liable to the tax aforesaid. And it shall be the duty of the City Marshals to ascertain all such persons as have failed to make their returns required by this clause; for which the said Marshals shall be entitled to one half of the penalties herein mentioned.

Slaves, &c. prohibited from keeping dogs.

17. No slave or free person of color, shall be permitted to keep any dog in the City of Charleston, under the penalty of five dollars for every such offence; and every slave or free person of color charged with keeping any dog or dogs, contrary to this ordinance, shall be brought before the Mayor, at the Police Court, and on failing to pay such fine, shall be committed to the Work-House for a period not exceeding one week, or flogged, not exceeding twenty lashes, at the discretion of the Mayor; and any slave or free person of color residing on any lot where no white person resides, shall be deemed and taken to be the keeper of any dog found on the premises, unless he or she can show who is the owner or keeper of the same; and any white person residing on any lot where slaves, or person of color also reside, shall be deemed and taken to be the owner of any dog, found on the premises, unless he or she, when called upon for that purpose, shall show who is the owner and keeper of the same.

Penalty on owners of lots not having pumps and wells, or cisterns in their lotss.

18. Every owner of a lot, sub-divided lot, or piece of ground within the city, enclosed and occupied, and which has not a good and sufficient well or cistern, capable of containing at least three hundred gallons of water, and built of brick or stone, with a pump to the same, fit for use, shall be liable to a penalty of forty dollars, for every such lot, sub-divided lot, or piece of ground, found without such sufficient well or cistern, and pump, to be recovered in the City Court, in the name of the City Council of Charleston, (their assent being first obtained,) one half to the use of the informer, and the remainder to the use of the City; and it shall be the duty of the City Assessor, to enforce the provision of this clause.

Masters, supercargoes, &c. not permitted to vend goods from vessels at wharves without paying a tax and a license to City Treasurer.

19. That it shall not be lawful for any master, supercargo, or other person attached to any vessel in the Port of Charleston, to vend on board any such vessel, or on the wharves, any goods, wares, merchandize, or produce, either on his, or their own account, or as agent or consignee, until he or they shall have obtained from the City Treasury, a license to sell such goods, wares, merchandize, or produce as aforesaid, for which license he or they shall respectively pay to the City Treasurer the sum of hundred dollars, together with the aforesaid tax upon the amount of his or their sales, the said license to continue of force for one year; and if any master and supercargo, or any other person, attached to any vessel in the Port of Charleston, shall sell on board of any vessel, or on any of the wharves, any goods, wares, merchandize, or produce, without a license, contrary to this ordinance, he or they shall forfeit and pay for each and every such offence, the sum of two hundred dollars, to be recovered by suit in the City Court, in the name of the City Council of Charleston, one half thereof for the use of the city; and it is hereby made the duty of the Marshals to enforce the provisions of this ordinance.

Punishment on free negroes for not paying city taxes.

20. If any free negro or person of color, shall neglect to pay his, or her tax to the city, as imposed by any ordinance hereafter to be passed, to raise supplies for the present or any future year, an execution shall be issued against the property and person of such free person of color, directed to the City Sheriff, requiring him to seize and sell the property of any such free negro or free persons of color, and deduct so much from the sale thereof as shall be sufficient to pay the tax due by him or her as aforesaid, as also the cost and charges of such seizure and sale; but if no property can be found belonging to such free negro or free person of color, then it shall be the duty of the City Sheriff forthwith, by virtue of the same execution, to seize and take the body of any such free negro or free person of color, and bring the same before the Mayor, at the Police Court, whose duty it shall be to inquire into the cause of neglect, or refusal to pay the said tax; and the Mayor, is hereby authorised and empowered, if he, after the said inquiry shall deem fit, to order and direct such free person or persons to be confined in the Work-House, and placed on the Tread Mill for any time not exceeding one month, unless his or her tax due as aforesaid, with costs and charges shall be sooner paid. And every free negro or free person of color, as aforesaid, shall, on or before the 15th day of May, in each and every year, make a return of his or her name and age, of the name and age of his or her child, or children, and of his or her place of abode and occupation, to the City Assessor, who shall enter the same in a register; and if any free negro or free person of color shall neglect or refuse to make such return within the time and in the manner before prescribed, or shall give a wrong name or names, with intent to deceive the City Assessor, he or she shall, in either case, be doubly taxed, and proceeded against in the same manner as above directed, with regard to free negroes or free persons of color, whose tax is not duly paid as aforesaid.

Ratified in City Council, this twelfth day of March, in the year of our Lord one thousand eight hundred and forty-four, and in the sixty-eighth year of American Independence.

JOHN SCHNIERLE, *Mayor.*

By the Mayor,
JOHN R. RODGERS, *Clerk of Council.*

BOARD OF ASSISTANTS.

The following is a copy of the Report of the majority of the Committee to whom the Rotunda proceedings were referred.

REPORTS IN RELATION TO THE ROTUNDA.

The Committee to whom was referred a Resolution in relation to the Rotunda, RESPECTFULLY REPORT—That they have examined the accounts of the Comptroller's Reports against this building, made since the year 1830 and in that year there was paid fifteen hundred dollars for fitting it up for a Court of Sessions. That in 1831, there was paid to the creditors of John Vanderlin, for amounts due them for materials and labor, etc., three thousand five hundred and eighty-eight 44-100ths dollars. That in 1834, another amount of four hundred and one 4-100ths dollars, was paid for work done on the building while in possession of the said Vanderlin, the Lessee. That in 1836, the building was let to the United States for a Post Office, at fifteen hundred dollars per year, and an expenditure of three thousand five hundred and forty-five dollars was needed for alterations, etc.; and in 1837, a further sum for repairs and fitting up of twenty-five hundred and eighty-four 13-100ths dollars, also, a gratuity in lieu of the lease; and in 1838 a further sum of fifteen hundred dollars was paid Vanderlin, or his creditors. And for additonal repairs and alterations, five hundred and four 71-100ths dollars; and in 1839, there was three hundred and ninety dollars paid for additional repairs, making in all fifteen thousand five hundred and thirteen 23-100 dollars, to January 1, 1840. Since which time, all the repairs and alterations have been charged to the general account of public buildings, without being particularly designated. On the credit side there has been received for rent, from the first of April, 1836, to January 1st, 1845, eight years and nine months, at fifteen hundred dollars per year, which is thirteen thousand seventy-five dollars; leaving it now indebted, (with a dilapidated building on hand) in the sum of twenty-four hundred and thirty-eight dollars.

Signed. J. C. BAYLES, } Committee.
WM. TAYLOR, }

The vote, upon passing the resolution bestowing the use of the Rotunda upon the Academy, notwithstanding the objections of His Honor MAYOR HARPER, was 10 to 3.

The gentlemen, who sustained His Honor MAYOR HARPER, are
MOSES TUCKER,
J. C. BAYLES,
WM. TAYLOR,

Mr. Tucker has been renominated to the Common Council, but he refuses absolutely. His place in the Board cannot be filled. He is a most worthy and most excellent citizen, and an independent public officer.

We heard a distinguished citizen who is a prominent member of the democratic party, remark yesterday, that the Natives will loose the Common Council at the approaching election, in consequence of not sustaining His Honor the Mayor in his care of the public property.

LIGHT.

When I write by morning candle-light, I use two tapers of unequal elevation, and thus obtain a union of the rays of each, and I find by this means an increased illumination upon the page upon which my pen is discharging from the fountain of thought.

I have examined the rays of light far beneath the earth's common surface, and far remote from the light of the solar orb. About thirteen miles from the entrance from the earth's surface to the Mammoth Cave, I have, in the gigantic Halls of that nether palace, stood motionless, with the exception of that of the pulsation of the heart, and the respiring of air, holding in my hand a flaming torch, waiting for its rays of light to reach the roof of the apartment in sufficient numbers to enable me to discover the surface. Light travels with immense velocity, but not in that abundance which enables a person entering a field of darkness, instantly to illuminate that darkness. I have stood waiting for minutes to see the upper surface of a dome in the cave of near 300 feet elevation. An illustration may be had by entering a large church edifice in the night with a lighted candle. A light at a great distance ahead may be seen instantaneously, for darkness through which it is seen is transparent, but it requires time for a light of limited dimensions to illuminate a large area of surface covered by darkness. Darkness in the distant apartments of the Mammoth Cave, is profound and awfully impressive—it may be seen—it may be felt, for the laws of ——— here are supreme. The reader will find an account of the cave, covering eight entire pages of this volume, from pg. 317 to pg. 324, inclusive, and I think it probable that we may attach a few maps of that wonderful cavern to this volume, to go along with the Assessment Diagrams, that the preservation of the one may be an aid to that of the others.

Solar light is peculiar, and is accompanied by heat. A few years since, I filled a globular flint glass lamp with clear water, and placed it in the window at about nine o'clock of a summer morning, exposed to the rays of the sun, and through this water and glass I brought the suns rays to a focus, and ignited a piece of black silk. It was a nice and pretty experiment, and very instructing. With the same fixture I made another experiment. I placed several glass beads of different colors upon a string, and suspended these in the water, and thus brought the different colors upon a sheet of white paper placed on the side of the glass opposite the sun. The paper should be so placed as to present a surface at an inclination of about 30 degrees. In a wilderness I have found in the night, a blazed tree to give sufficient light to discover the path, when the blaze, as it is termed, is a fresh cut, and what is termed light-wood is frequently met with in forests, which is sometimes very bright, giving a white light. This is light without heat, and I have noticed the same species of light in the body of a dead fish. I have taken fossils which are very ancient, and exposed them to intense heat, and afterwards saturated the calcined animal remains with a carbonated alkali, then evaporated the moisture, and afterwards placed this preparation at the termination, of a funnel-shaped tube, through which the suns' rays were made to pass, and thus obtained a glow of light too intensely bright to look upon. It is a very difficult experiment, but is such a corruscation, that I felt when beholding this illumination that I was awakening that light which had shone upon earth ere the flood had deluged its surface. The color of light in the use which is to be made of that mysterious property, is a matter of great importance, and but little attended to. Nature has blended with the light of the summer sun abundance of green, and with that of winter, the white of the snow, both upon the surface and in the atmosphere. The influence of light upon numerous substances is various, hence, we find the Cricket in the Mammoth Cave, of flesh color. These Crickets when exposed to the rays of the sun and the atmosphere air, become black. In the high northern latitudes, the Weasel which is red in summer, is white in winter, and I believe I have seen this change as far south as 44 deg. I once possessed a bird which had a beautiful green plumage in summer, but one of a dull grey in winter. Light, is made subservient to the organs of sight where it is needed—hence we find eyeless fish in the waters of the Mammoth Cave, and the same has been noticed in the fish which come up in the water of the Artesian Well at Paris, which, from its great depth, is quite warm.

TAXATION ON INSURANCE.

We give entire the report of the Committee of the House of Assembly, on Banks and Insurance Companies with the tables annexed. Also the Report of the minority of the Committee. These are important documents, and we have felt it to be our duty to present them entire.

These Reports are full, and able, and with the tables, will be found useful to the Insurer, as well as the insured. It would be well for the people of this State, if every important subject presented to the consideration of the Legislature could receive as careful an examination and as elaborate a discussion of the subject matters as is here presented in relation to the Tax upon Insurance.

Document No, 80.

IN ASSEMBLY,—February 11, 1845.

REPORT

Of the Committee on Banks and Insurance Companies on the Memorial of INSURANCE COMPANIES of the Cities of New-York and Brooklyn.

The Committee on Banks and Insurance Companies, to whom was referred the memorial of seventeen insurance companies of the cities of New-York and Brooklyn, praying for an increase of the existing tax on premiums for insurance, received by the agents of companies not chartered by this State, doing business in the counties of New-York and Kings; and also remonstrances from the city of New-York against granting the prayer of said memorial,

REPORT:

The ground on which the application of the memorialists is urged, is that the insurance companies of other States have advantages over those of New-York and Brooklyn, on account of their being subject to less taxation; and that therefore they can afford to take risks for less premiums, and thus obtain an equal portion of the business of insurance.

Until the year 1814, this business was left entirely open to all who chose to undertake it, whether citizens of this State, or other States of the Union, or foreigners. About that time, the Phœnix Fire Insurance Company of the city of London established an agency in the city of New-York. The United States and Great Britain being then at war, a bill was introduced into the Legislature of this State, entitled "An Act to suppress *foreign influence* in this State," which, after an amendment of its title so as to indicate the real object of the bill, was passed, excluding entirely the agencies of foreign insurers, on the ground that contracts with alien enemies could not be enforced. (Sen. Journal, 1814, p. 99. Assem. Journal, 1814, p. 295. Laws, 1814, p. 52,) Chancellor Kent dissented from the bill in the council of revision. This law passed when the feeling of the people and the Legislature was highly exasperated against England; was the foundation of all our subsequent legislation on the subject of foreign insurance; but it was not designed to reach the agencies of companies chartered by other States of this Union.

This is further evident from the circumstance that in 1824, and while the law of 1814 was still in force, Mr. Warren of Rensselaer, introduced a bill into the Assembly, on notice, to lay a tax of *ten per cent.* on all premiums received by the agents of fire insurance companies of other States, doing business in this State. The bill appears to have excited no particular attention, not having been referred to any standing or special committee in the house; and having been simply reported to the Senate, without amendment, by the committee on finance. (Assem. Journal, 1824, p. 653. Sen. Journal, 1824. p. 336.) This reference to the committee on finance, however, may be regarded as an indication that the measure was considered rather in connection with revenue than in relation to the effect it was likely to have in preventing competition in a matter so important to the community as the business of insurance.

The provisions of these two acts, with some modifications, were subsequently incorporated into the Revised Statutes. (I R. S. 714.)

Afterwards, in 1837, a bill was introduced into the Senate, and unanimously passed, (Sen. Journal, 1837, p. 111,) the object of which was to *reduce* the tax on premiums, imposed by the act of 1824, from *ten per cent* to *two per cent.* It went to the Assembly, and was there referred, as a measure concerning the revenue, to the committee of ways and means. The great fire in the city of New-York having occurred but a year or two previously, and having prostrated the fire insurance companies of that city, the impoli cy of throwing obstacles in the way of securing the property of our citizens against a recurrence of the great losses caused by that conflagration, was probably the more palpable; and the committee of ways and means reported strongly in favor of the passage of the bill, not only as a measure of good public policy, but as likely to increase the revenue derived from foreign insurances effected in this State. (Assem. Doc. 1837, No. 177.)

In 1841, the fire insurance companies of New-York, applied to the Legislature to *increase* the tax on foreign insurance to seven per cent. Their petition was referred to the committee on banks and insurance companies, which reported against it in strong terms, and it was denied. (Assem. Doc., 1841, No. 221.)

The course of the Legislature in 1837 and 1841, evinced a determination to remove all unreasonable impediments in the way of the insurance Companies of other States, and at the same time indicated a disposition to subject them to equal burthens with our own.

The tax of 1837 was fixed *at two per cent.* because that appeared, from official information, to be an equivalent, and a little more than an equivalent, to the rate of taxation alleged to be imposed on the New-York Companies, and yet not so onerous as to be prohibitory or exclusive as to the foreign insurer, and was supposed to place both on a just footing for fair competition.

The application now before the committee seeks an increase of the tax to *ten per cent.*, but confines it to the agencies of companies of other States *doing business in the cities of New-York and Brooklyn.* It seeks a *local* advantage only; and it seeks it on the ground that the home companies in those two cities, actually pay, *with reference to their income*, a larger tax than the other companies referred to pay on theirs.

At this particular time, considering the New-York companies aggregately, this is true, although in 1841, the same allegation was not true, and it may not be true five years hence. In order, therefore, fully to meet the difficulty complained of, it is evident that legislation must ebb and flow continually, or it will from year to year be very unequal.

Although the memorial itself prays for a tax of *ten per cent.*, yet the persons representing the memorialists before the committee avow their only object to be a *fair equalization* of burthens between the home and foreign companies. This seems to be reasonable; and the only question that can perplex the committee is, How to *equalize* them!

The fundamental difficulty in adjusting a tax to the satisfaction of all effected by it, (and the whole community is affected by it as well as the insurance companies,) consists in the circumstance that the home companies are taxed on their capital, and the companies of other States on their *income* or *premiums.*—Capital is fixed; income is fluctuating. It is obvious, therefore that a tax on the premiums of the foreign insurer can in no way be adjusted so as to be always an exact equivalent for a tax on the capital or property of the home insurer. In some cases, it is more; in some less. The evidence of this is afforded, most abundantly and in every variety, with regard to the business of insurance, by the various statements, compiled from official returns, submitted to the committee and hereto annexed. From these it appears that the New-York fire insurance companies (not including the mutuals) are taxed at *different rates* at the *same time*, on their capital, varying according to the assessments made in different wards of the city, (Statement B.); that their taxation bears no general relation to their earnings, good management, or prosperity; (Statement A.); that it varies from year to year, (Statement C.); and that while income for various assignable causes, is, on the average, *decreasing*, taxes are, on the average, *increasing.* This decrease of income depends somewhat, probably, upon foreign competition; but vastly more upon the rapidly extending business of the mutual companies of New-York, which seem likely to swallow up, at no distant day, the main insurance business of the city, and perhaps of the interior.

It is an anomaly in our legislation to lay a tax on *income* as distinguished from *capital* or *property.*—

We do not tax the income of individuals; but we tax their property, whether productive or unproductive. A man without property may have an income; and a man without income may have property.—The one escapes taxation, while the other has to bear its burthens. A thousand dollars' worth of wild lands, yielding nothing, pays just as much tax in proportion to its assessed value, as a thousand dollars worth of stock in an insurance company which divides ten or fifteen per cent per annum. The capital of the home companies is taxed at the usual rate of taxation, as *property;* just like any other property of the same assessed value; just as the same amount of money or lands, distributed amongst the several owners of the capital, would be taxed as their individual property. It is more conveniently taxed in gross, than in detail, and is therefore taxed in gross. But the *income* of it, as such, pays no tax. It may go to swell estates, and thus fall into the ordinary channel of taxation, but not as *income*. The only absolute infraction, that occurs to the committee, of this general principle which pervades our legislation, is this very case of taxing the income of insurance companies not chartered by ourselves, as *income*, in a different ratio from that which is applied to *capital*. An uncertain standard of taxation has thus been resorted to, instead of the fixed and equal one otherwise invariably recognized by our laws, and by the feelings of the people.

The impossibility of adjusting the tax on the principle of the law of 1837, will be evident from an examination of the statements accompanying this report. From these it clearly appears,

1. That insurance companies of equal capitals, paying equal taxes, receive very unequal incomes; so that, as between those companies, income or premiums as compared with capital, would be an unequal basis of taxation. (Statement A.)

2. That the New-York companies, considered separately, have as much need of protection against each other, as, considered aggregately, they have against foreign insurers; for greater inequalities exist among them, separately, than between them aggregately and foreign insurers. (Statement B.)

3. That the New-York companies received *one-third* of their gross annual income from *investments* and not from *insurance;* so that it is fallacious to assume premiums *alone* for the purpose of comparison with the foreign insurer. (Statement A.)

4. That to proportion a tax according to the *average* of income taking all the New-York companies together, would operate unjustly, by casting a *greater* proportional tax on companies having small receipts, and a *less* upon those having large receipts. (Statement A.)

5. That while *some* of the companies pay a tax on *capital* more than equivalent to a tax of *two per cent* on *premiums*, *others* pay a tax about equal to, or less than that amount. (Statements A. and B.)

6. That the *average* per cent of taxes on the nominal capital for the year 1843 was about 69 cents per $100, and on the *actual valuation* about 78 cents per $100; being equivalent to an *average* tax on income of about $4 per $100. (Statement B.)

7. That the average tax upon property in the city of New-York for the years 1840, 1841, 1842 and 1843, was 67½ cents per $100; being equivalent to an average tax, on the income in 1843 of the companies referred to, of about $2.80 per $100. (Statement C.)

8. That the average of dividends of the same companies, in the year 1843, was upwards of *eleven per cent.* (Statement B.)

9. That the mutual insurance companies of New-York, so far as their returns have been obtained, pay a trifling tax compared with the other companies, and in some cases, no tax at all; the highest being equivalent to less than 50 cents per $100, on the premiums received; and that they make an average dividend of about *thirty per cent.* (Statement D.)

10. That the average dividend of *all* the fire insurance companies of the city of New-York, including mutuals taking fire risks, which have made returns or published statements for the year 1844, is upwards of *fifteen per cent.* (Statement F.)

If we analyze the Abstract of Returns made by *eleven* fire insurance companies in New-York for the year 1843, (being the only companies which have filed complete returns for that year, and the returns for 1844 not having all come in,) a strong light will be thrown on some of the positions above taken. (Statement A.)

The Merchant's Fire Insurance Company has a capital of	$500,000.00
The Howard Insurance Company of.... or *two-fifths less* than the Merchants'.	300,000.00
The Merchants *capital* pays a tax of....	$3,426.78
The Howard's,	1,758.44
The Merchant's *more* than the Howard's,	$1,668.34
The premiums received by the Merchant's during that year were,	$30,373.34
By the Howard, or more than *three* times as much as the Merchant's.	93,869.54

So the Howard, paying a tax on *two-fifths less* capital than the Merchants', has more than *three* times the income, from premiums, than the Merchant's has.

Now if the tax were imposed on *premiums*, the Howard would pay three times more tax than the Merchant's, with *two-fifths less* capital.

The very same reason which demands a tax on foreign insurers to protect the New-York companies against them, demands also that the Howard Company should pay a heavier tax to protect the Merchant's.

The tax on *capital* paid by the Merchant's Company is equivalent to about $11 per $100 on its premiums; and the tax paid by the Howard is equivalent to about $1.90 per $100 on its premiums.

So that while a tax of *two per cent.* on foreign insurers abundantly protects the Howard, it would require a tax of more than eleven per cent to protect the Merchant's.

But to apply taxation on this basis would be simply to declare that the more an insurer extends his business, cheapens his rates, and conducts his affairs with thrift and skill, the more severely he should be taxed.—Then it is no longer *property* which is burthened, but *skill, good management and success.*

It is a point deserving of consideration, that the law makes no distinction of locality in favor of the foreign insurer. His premiums may be received wholly in the interior where the rate of taxation is low, and yet they bear the same burthen as if they were all received in New-York, where the rate is high. The present standard is fixed on the New-York ratio of 1837; and while it is sought to be raised as to premiums received there, it would seem reasonable that it should be lowered elsewhere; a consideration which involves the adjustment of the tax in fresh difficulties.

By a statement annexed to this report, submitted to the committee in behalf of the memorialists, it appears that the whole amount of capital employed in the business of insurance by the New-York companies exclusive of the Mutuals, is less than six millions of dollars. (Statement G.) It appears by Statement A. that the companies therein named, with a nominal capital of $2,760.000 covered risks, during the year 1843, to the amount of nearly fifty-one millions of dollars. It may therefore be fairly assumed that all the companies together, exclusive of the Mutuals, cover risks to the amount of one hundred millions; an amount vastly disproportionate to the capital employed, and intimating very strongly the good policy of allowing a free competition for the purpose of dividing the hazard. Taking the returns to the Comptroller, made by the agents of foreign insurers, as an index of the amount of foreign insurers, as an index of the amount of foreign insurance in the whole State, (Statement E,) it appears that the companies of other States cover only about twenty millions of property, or one-fifth of the amount covered by the home companies. Good policy, and the security of our property, would seem to require that so slight a competition as this should not be checked by adverse legislation, nor does it appear to the committee that any reasonable complaint can be made of it as seriously affecting the home companies. The whole amount of premiums received by the foreign insurers averages annually about one hundred and sixty thousand dollars. This is less than the receipts of *three* of the city companies which took the most risks in the year 1843; *three* companies out of *twenty-one*. It is equal to an average of about thirteen thousand dollars of premiums received by each of the twelve foreign agencies in the city of New-York, which is less than the lowest receipts of any New-York company which filed a report for the same year.

With regard to the mutual companies which join in the memorial, it is evident from their annual statements that the existing tax on foreign insurance is abundant protection for them. Their own tax is less than one-half of one per cent on their income, and most of them pay no tax at all. (Statements D. and F.) It is against the attractions of these companies, with their average dividends of thirty per cent, that the other New-York companies most need to be guarded. An utter exclusion of foreign agencies would not prevent most of the latter companies from ultimately falling before the rapid advances of the Mutuals of this city, which have such superior advantages and such inferior burthens.

The measure of increasing the tax, as prayed for, deserves also to be seriously regarded with reference to its effect upon the revenue of the State; and the more so, because past legislation indicates that an increase of revenue has been heretofore considered as an important point. A statement (E.) submitted to the examination of the committee, and hereto annexed, compiled from the treasurer's books, shows that the State has received an average of over $800 per annum more under the two per cent tax than it did for the same number of years under the ten per cent tax. It also shows, as an inference from this fact, that about nineteen millions more of the property of the people of this State is covered by insurance companies of other States, than there was under the ten per cent tax; a larger amount by ten or twelve millions than the united capitals of the New-York city companies could pay in case of loss. It also shows, as another inference, that all this property is covered at less expense and with greater security; at less expense, by the difference of at least eight per cent on the premiums; and with greater security, in consequence of the distribution of risks amongst more competitors. To increase the tax would, therefore, not only injuriously affect the revenue, but also the interests of all our citizens who are concerned in the cheapness and safety of insurance. It is better that they generally should enjoy the benefit of low rates, than that a few stockholders of insurance companies should have the benefit of high ones. A tax on foreign insurance, is in effect, and not very indirectly a tax not only upon those who insure with foreign companies, but upon all who insure with any.

The obvious predeliction of our citizens, all other things being equal, will be in favor of the home companies; and if they are not well supported voluntarily, legislation will use its restrictive and compulsory powers in vain. It might as well tax the bank notes or coin of other States and countries circulating here, for the protection of the local banks; or the income of those who sell foreign goods on commission, for the protection of the home merchant. An eastern pedlar can dispose of his untaxed wares in this State as freely as any citizen of it in the same vocation; each pays the same fee for his license; but the citizen is frequently compelled to be content with very small profits by the superior bargaining powers, activity and thrift of his foreign competitor; and might ask that his rival's income should be taxed sufficiently to equalize the results of the competition, with as much apparent reason as the memorialists have for asking the Legislature to tax the income of the foreign insurer. The cotton mills of this State are subject to heavier local burthens than those of Lowell, and are obliged to compete with the latter in the New-York market; but a legislator would hardly think it expedient or politic to impose a tax on Lowell goods in that market to benefit our own manufacturers.

The committee, therefore, conclude, that upon the principle assumed in the memorial, no standard of taxation can be fixed which shall protect all the memorialists,, without being so high as to amount to an exclusion of the companies of other States, and which would infringe upon the proper liberty of our citizens to effect insurance with such insurers as they may prefer.

For these and various other considerations, heretofore stated, the committee have come to the conclusion that it would be unwise and inexpedient to increase the tax upon the income of foreign insurance companies, and in accordance, offer the following resolution:

Resolved, That the prayer of the memorialists should not be granted.

ALEXANDER H. BUELL,
ANDREW BILLINGS,
JOHN PIERCE, 2d,

(A.)

AN ABSTRACT

Of the Annual Reports made to the Comptroller by incorporated Fire Insurance Companies of the city of New-York for the year 1843, embracing all the returns on file for that year, excepting from the Equitable Insurance Company, whose return is defective.

Name of Company.	Capital.	Amount insured.	Dividends.	Premiums received,	Other rec'pts (interest. &c)	Total rec'pts.	Valuation of property.	Tax assess'd
New-York Fire Insurance Company,	$200,000	$3,587,095.00	7 per cent.	$23,544.80	$12,971.66	$36,516.46	$164,202.57	$1,200.60
City do	210,000	4,793,817.99	18 do	34,792.20	18,140.29	52,932.49	134,815.00	1,067.73
Merchants' do	500,000	5,507,242.00	8 do	30,373.34	25,392.72	55,766.06	436,412.01	3,426.78
Greenwich do	200,000	3,000,000.00	10 do	20,141.90	13,468.08	33,609.98	197,500.00	1,580.00
Etna do	200,000	4,715,810.00	13 do	29,078.99	19,036.57	48,115.56	186,000.00	1,473.12
National do	150,000	1,917,745.00	none.	14,714.64	.....	14,714.64	104,377.00	822.05
Bowery do	300,000	10,605,775.00	20 do	55,159.48	22,723.76	77,883.24	279,105.88	4,939.36
Guardian do	300,000	6,880,085.05	11 do	42,254.12	22,680,05	64,934.17	289,600.00	2,293.63
Jefferson do	200,010	7,377,121.67	18 do	61,423.15	15,350.13	76,773.28	266,710.00	2,112.56
East River do	200,000	2,239,080.00	7 do	13,787.40	.....	13,787.40	154,105.00	1,250.33
Howard do	300,000	.....	12 do	93,869.54	17,704.88	111,574.42	222,025.82	1,758.44
Totals,	$2,760,010	$50,628,771.71	.....	$419,139.56	$167,468.14	$586,607.70	$2,434,853.28	$21,924.60
Deduct Tax overcharged Bowery Company,								2,149.10
								$19,775.50

(B.)

STATEMENT

Showing the taxes paid in 1843, by New-York Fire Insurance Companies, which reported to the Comptroller, and their relative proportion to capital, valuation of property, premiums received, and total income, during the same year.

Name of Company.	Capital.	Valuation.	Tax.	Per cent of tax on nominal capital.	Per cent. of tax on valuation.	Per cent. of tax on premiums.	Per cent of tax on total income.	Dividends.
New-York Fire Insurance Company,	$200,000	$164,202.57	$1,200.60	0.60 per $100	0.73 per $100	$5.10 per $100	$3.05 per $100	7 per cent.
City do	210,000	134,815.00	1,067.73	0.50 do	0.79.2 do	3.05 do	2.05 do	18 do
Merchants, do	500.000	436,412.01	3,426.78	0.68 4-10 do	0.79 do	11.00 do	6.10 do	8 do
Greenwich do	200,000	197,500.00	1,580.00	0.79 do	0.79.2 do	7.90 do	4.70 do	10 do
Etna do	200,000	186,000 00	1,473.12	0.73 do	0.77 do	5.10 do	3.05 do	13 do
National do	150,000	104.377.00	822.05	0,55 do	0.78 do	5.60 do	5.60 do	none.
Bowery do	300,000	279,105.88	*4,939.36	1.66 do	1.90 do	8.95 do	6.35 do	20 per cent.
Guardian do	300,000	289,600.00	2,293.63	0.76 do	0.79.2 do	5.40 do	3.50 do	11 do
Jefferson do	200,010	266,710.00	2,112.56	1.05½ do	0.79.1 do	3.50 do	2.80 do	18 do
East River do	200,000	154,105.00	1,250.33	0.62 do	0.81 do	9,00 do	9.00 do	7 do
Howard do	300,000	222,025.82	1,758.44	0.58 do	0.79 do	1.90 do	1.60 do	12 do
Totals,	$2,760,010	$2,434,853.28	$21,294.60	8.52 9-10 do	9.73 7-10 do	$66.50 do	$47.80 do	124 do
Averages,	$250,910	221,350.29	$1,993.14	0.77½ do	0.88½ do	$6.04 do	$4.34 do	11 3-11 do
* So returned, but should be about $2,149.10, which makes the True averages,	$250,910	$221,350.29	$1,797.77	0.68 9-10 do	0.78 2-10 do	$5.59 do	$4.02 do	11 3-11 do

(D.)

STATEMENT

Showing the valuation of property of Mutual Insurance Companies of the City of New-York, therein named, and the tax thereon for the year 1843; also the premiums, profits, assets, dividends, &c. of said companies for the year 1844, compiled from official statements and their own returns.

Name of Company.	Valuation of 1843.	Tax of 1843.	Earned premiums of 1844.	Proportion of premiums on fire risks.	Nett profits of 1844.	Assets of 1844	Dividends of 1844.	Prop. of nett profits to premiums.	Prop. of tax to premiums.	Prop of tax to fire premiums.
Alliance,	$50,000	$396	$217.657.73	$15,703.97	$59,296.64	$291,010.62	20 per cent.	27¼ per cent.	18 c. per $100	$2.50 per $100
Atlantic,	68,940	546	1,208,543.78	.....	261,120.00	1,206,543.78	40 do	21 7-10 do	4½ do	.....
Mutual Safety,	400,000	3,163	751,013.00	135,774.00	159,650.00	1,005,289.00	23½ do	20 37-100 do	42 do	2.40 do
Merchants' Mutual,	.....	.....	252,376.76	13,447.48	92,445.44	262,656.49	36½ do	39 1-20 do	.....	.....
American Mutual,	.....	.....	136,353.08	21,259.92	46,017.36	268,676,25	24½ do	28 do	.....	.....
Totals,	$518,940	$4,110	$2,615.944.35	$185,185,37	$618,529,44	$3,034 376.14	144½ do	.....	64½ do	$4.90 do
Averages,	.....	.....	$523,188.27	$46,296.34	$123,705.32	$606,875.23	28 2-10 do	.....	12 9-10 do	$2.98 do

(E.)

Compiled from the Treasurer's books, showing the amount paid into the Treasury by the Agents of Foreign Insurance Companies, during sixteen successive years.

Tax 10 per cent.

1829	$621.24
1830	1,779.30
1831	2,567.16
1832	3,212.94
1833	3,142.94
1834	3,753.25
1835	2,443.48
1836	2,419.53
	$18,959.84
Average per annum for above years,	$2,369.98
Average amount of premiums received during above years, to yield the average tax at ten per cent	$23,699.80
Amount of risks required to pay $23,699.80 premiums, at an average rate, throughout the State of $7 per $1,000	$3,385,685.71

N. B. The rate of premiums was higher during the above years in consequence of the greater tax and the amount covered therefore less.

Tax 2 per cent.

1837	$3,204.73
1838	3,926.57
1839	2,121.25
1840	3,235,01
1841	3,776.96
1842	3.335.35
1843	3,332.46
1844	2,407.15
Add, since paid, for 1844,	126.00
	$25,464.78
	18,959.84
Difference in favor of 2 per cent.	$6,504.94
Average tax per annum for above years,	$3,183.09
	2,369,98
Average annual difference in favor of 2 per cent.	$813.11
Average amount of premiums received during above years, to yield the average tax at 2 per cent	$159,154.50
	23,699.80
	$135,354.70
Average amount of risks required to pay $159,-154.50 premiums, at an average rate, throughout the State, of $7 per $1,000,	$22,736,357.14
	3.385,685.71
Increase of risks,	$19,350,670.43

(F.)

STATEMENT

Showing the capital, premiums and other income, valuation of property, taxes, dividends, proportion of tax to income, &c. of the several Fire Insurance Companies therein named, located in the city of New-York, compiled from returns made to the Comptroller, and from published official statements for the year 1844.

Company.	Capital.	Premiums.	Other income.	Total income.	Assets.	Valuation of property by assessors.	Tax.	Dividends.	Prop. of tax to total income.
National,	$150,000.00	$22,367.91	.....	$22,367.91	.....	$80,544.08	$689.10	none.	$3.10 per $100
Etna,	200,000.00	23,913.88	$14,205.33	38,119.21	.....	186.000.00	1,602.57	10 per cent.	4.20 do
New-York Fire,	200,000.00	23,871.66	15,465.32	39,336.98	.....	146,579.29	1,260,12	9 do	3.20 do
Greenwich,	200,000.00	15,345.98	9,249.46	24,595.44	.....	205,500.00	1,766.88	10 do	7.10 do
Bowery,	300,000.00	44,668.42	20,871.92	65,540.34	.....	296,545.49	2,520.38	20 do	3.80 do
City Fire,	210,000.00	30,048.11	17,797.73	47,845.84	.....	151,415.00	1,304.59	20 do	2.78 do
East River,	200,675.73	17,192.90	.....	17,192.90	.....	160,765.00	1,381.61	7 do	8.00 do
Guardian,	300,000.00	42,694.90	20,891.45	63.586 35	.....	295,000.00	2,451.72	10 do	4.00 do
Jefferson,	200.010.00	59,488.27	13,738.20	73,226.47	.....	164,610.00	1,417.85	20 do	1.96 do
Howard,	300,000.00	.....	.....	.....	.....	241,025.82	2,076.14	.....	.....
Merchants',	500,000.00	.....	.....	.....	.....	456,092.46	3,928.36	.....	.....
Mutual,	.....	.....	.....	.....	.....	350,970.00	3,009.53	.....	.....
Mutual Safety,	.....	751,013.00	.....	.....	$1,005,289.00	320,594.00	2,762.23	21 do	0.37 do
Sun Mutual,	.....	.....	.....	.....	.....	148,401.55	1,278.62	.....	.....
Alliance,	.....	217,657.73	.....	217,657.73	291,010.62	nothing.	none.	20 do	nothing.
Merchants' Mutual,	.....	252,376.76	.....	252,376.76	262,856.49	nothing.	none.	36½ do	nothing.
Totals,	.....	1,500,639.52	112,219.41	$861,845.93	.....	$3,204,042.69	$27.449.70	183½ do	38.51 do
Averages, (according to number of companies appearing in each column,)	.....	125,053.29	.....	$78,349.63	.....	$200,252.67	$1,715.60	15.3 do	3.21 do

NOTE.—*The return of valuations from the city of New-York for* 1844, *states that the following Mutual Companies are returned as not having any property liable to axation, viz : American Mutual, Alliance, Croton, Mercantile, Mutual, Merchants' Mutual, and Mutual Life Insurance Company.*

(G.)

STATEMENT

Capitals of the Fire insurance Companies in the City of New-York, and the amount of premiums received by each for 1844.

	Capitals.	Premiums for 1844.
Mutual Insurance Company,	$350,000	$26,000
Eagle do	500,000	50,000
Merchants' do	500,000	30,000
Manhattan do	200,000	51,000
North River do	350,000	28,000
Equitable do	300,000	59,000
Contributionship do	300,000	31,000
Jefferson do	200,000	59,000
United States do	250,000	31,000
Etna do	200,000	24,000
Firemen's do	300,000	43,000
Howard do	300,000	96,000
New-York Fire do	200,000	24,000
City do	210,000	30,000
Bowery do	300,000	44,000
Greenwich do	200,000	*18,000
East River do	200,000	18,000
North American do	250,000	45,500
Trust do	150,000	24,000
Guardian do	300,000	42,000
National do	150,000	23,000
	$5,710,00	837,000

* Estimate.

I certify that I received the above statistics from the officers of the companies, and believe the same to be correct. NEIL GRAY.

New-York, Feb. 3, 1845.

(C.)

A TABLE.

Compiled from returns to the Comptroller, showing the amount per cent of taxation in the several Wards of the City of New-York, during the years 1840, 1841, 1842 *and* 1843.

Wards.	1840. Tax pr. $100.	1841. Tax pr. $100.	1842. Tax pr. $100.	1843. Tax pr. $100	Av'ge of 4 years.
First,	$0,53.1	0.56.7	0,86.4	0,79.2	0,68-9
Second,	0.53.6	0,55.7	0,86.1	0,79.4	0.68.7
Third,	0.54.7	0,56.1	0,86.0	0,80.4	0.69.3
Fourth,	0,53.4	0,57.6	0,85.1	0,80.5	0,69.2
Fifth,	0,53.3	0,56.7	0,87.2	0,79.8	0,69.2
Sixth,	0,55.7	0,56.7	0.91.1	0,79.3	0,72.9
Seventh,	0,53.1	0,58.9	0,85.6	0,80.3	0,71.7
Eighth,	0,52.5	0,56.1	0,87.0	0.80.1	0,68.9
Ninth,	0,53.3	0,56.9	0,85.7	0,80.0	0,71.2
Tenth,	0,52.7	0,54.1	0,86.3	0,80.2	0,70.6
Eleventh,	0,55.2	0,58.2	0,82.9	0.75.6	0,67.9
Twelfth,	0.48.6	0,50.2	0,76.1	0,10.0	0,46.2
Thirteenth,	0,53.0	0.52.5	0,85.0	0,80.4	0,67.7
Fourteenth,	0,54.2	0,59.0	0,86.0	0,79.8	0,69.7
Fifteenth,	0,52.7	0,57.2	0,84.8	0,80.0	0,68.7
Sixteenth,	0,53.6	0,55.7	0,74.8	0,54.3	0,59.6
Seventeenth,	0,60.5	0,44.3	0,87.4	0,77.8	0,67.5
Totals,	$9,13.0	9,40.6	14,43.5	12,57.1	11.47.9
Averages,	0,53.7	0,55.9	0,84.9	0,73.9	0,67.5

IN ASSEMBLY—February 27, 1845

REPORT

of the minority of the committee on banks and insurance companies, in favor of INCREASING THE TAX ON FOREIGN AGENCIES.

The undersigned, minority of the committee on banks and insurance companies, to whom was referred the petition of officers of insurance companies in the cities of New-York and Brooklyn, to increase the tax upon foreign insurance companies doing business in said cities, being obliged to differ with the majority of the said committee, and believing that the tax upon foreign insurance companies ought to be increased, so as, at least, to make it equal with that imposed upon our own companies, begs leave to present his views upon the subject, and some of the reasons which have led him to this conclusion.

When Great Britain and other commercial countries began to emerge from a barbarous state, and direct their attention to trade and commerce, the business of insurance first began to be practised. "The first underwriters were individuals doing business on their own account, and not in a corporate capacity; and, consequently, many frauds were practiced upon the insured by irresponsible persons, who received large sums as premiums, by representing themselves to be possessed of means sufficient to discharge any claims upon them for losses which might arise. This evil grew to such a magnitude that the Legislature of England interfered, to protect a business which they saw was intimately connected with the welfare of the country, in respect to the extension of its commerce, and accordingly in the preamble to the acts incorporating the first insurance companies in England, passed in the year 1720, the above reasons were set forth at length."

"The utility of this description of business is now abundantly confirmed. To enter upon a detail of the various advantages which mankind have derived from this species of contract would be a waste of time, because they are obvious to every understanding; the great help which they afford to individuals who conduct business on their own account, by dividing a loss in case of a fire, or shipwreck among many persons, is sufficiently demonstrated by experience. The benefit rendered by it to commerce was well understood, even in early times, as may be seen by the following extract from a preamble to an act of Parliament, passed in the 43d year of the reign of Queen Elizabeth:"

"By means of which policies of assurance it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many, than heavy upon few, and rather upon them that adventure not, than upon those who do adventure; whereby all merchants, especially those of the younger sort, are allowed to adventure more willingly and more freely."

The benefit marine insurance renders to trade and commerce, by protecting the merchant when his property is on the water, will, with equal force, apply to fire insurance upon the land. "It also gives greater security to the fortunes of private people, and by dividing, among many, that loss which would ruin an individual, makes it fall light and easy upon the whole society." (*Judge Park on insurance.*)

Our own Legislature, as well as the English Parliament, have always been fully awake to the importance of encouraging this important aid to commerce and means of security of private property; and from the granting of the first charter to the present time, they have also guarded with scrupulous care the interests of those who might become insured. In every charter of a stock insurance company, granted by this State, the amount of capital, the number of directors, mode of their election, the manner in which the capital shall be secured, an affidavit of the officers to be filed, stating that all the terms of the charter has been complied with; are all provided for by the Legislature, and, after business is commenced, the directors must cause to be filed annually with the Comptroller, a statement signed and sworn to, showing the amount of the capital stock, how it is invested and secured, how much has been consumed and expended in the payment of losses, and how much is safe and unimpaired, the amount of premiums received and surplus on hand, and many more items of information of like character.

The interest of the companies, also, is to have their affairs conducted by men who have the confidence of the community; and, by looking over the names of their directors, it will be seen that they consist, with hardly an exception, of men who have a high standing as merchants, men of wealth, who have retired from business, or citizens who, having filled important public trusts, and withdrawn from public life, occupy their time and talents in judiciously managing the property and interests of those who have committed it to them.

There is one fact which the undersigned begs leave to call the attention of the House to, which is conclusive proof, in his opinion, of the upright manner in which the fire insurance companies of New-York city have heretofore been conducted. It is, that, in the whole history of these institutions, not a cent has been lost by the insured through fraud, or mismanagement of their directors, or from any other cause, if you except the losses sustained by some of the insured whose property was consumed by the great fire of 1835. This occurrence which, according to all probability, will not take place again in centuries, caused some of the companies to be unable to pay in full the entire amount of their policies, but no man will urge this as an argument against their ability to meet casualties which, in the ordinary course of things, are likely to occur.

If we go back to the history of the period of that fire, we will see much to admire in the conduct of the stockholders of those institutions. We would see them cheerfully giving up not only the capital, but surplus profits which they happened to have on hand, and also dividends which had been previously declared.

The undersigned has been led into this statement of the manner of their organization, and defence of the character of the New-York insurance companies, because it has been boldly stated by those who oppose the laying of an equal tax, that the reason why companies from other States received an undue share of this business, was on account of their superior character, and soundness, and the honorable manner in which they conduct their business.

This libel upon the character of our State institutions, and the honorable men who conduct them, led us to inquire whether what they stated was true respecting themselves, and as the Connecticut insurance companies are the ones which principally interfere with ours, and as their agents only appeared before the committee, and cast these reflections upon New-York, we had recourse to the statutes of Connecticut to ascertain what kind of security was required by their several charters for the safe investment of their capitals, and, to the great surprise of the undersigned, instead of finding a requirement in their laws that their capitals should be paid in and safely secured, as is required of every company chartered by this State, they are without exception allowed to engage in the business of insurance by paying into the treasury of the company a sum varying from 5 to 10 per cent. in cash, and for the balance they are permitted to receive *promissory notes*, which shall meet the approval of their own officers. We refer the House to the local laws of Connecticut, which can be found in our State Library.

This developement, which was new to the minority of this committee, is doubtless equally new to the members of this House and to the community generally, and we would respectfully suggest the propriety of passing a law which will prohibit the agents of companies of this character, from receiving the money of the people of this State, under the pretence that that they are willing and able to indemnify them against loss in case of fire.

All that was asked for by the New-York and Brooklyn companies, of the committee, was, that the tax might be equal, and the request was deemed so reasonable, that when we separated, it was understood that the only thing that remained to be done, was to procure the necessary information to ascertain the precise amount of tax. The first intimation had, that the minds of the majority of the committee had undergone a change, was the reading of the report adverse to the prayer of the petitioners by the chairman.

The minority of this committee have not been put in possession of any facts, nor have they heard any arguments to cause them to deviate from the opinion at one time so unanimously held, but, upon more mature reflection, they are convinced that the citizens of this State should be permitted to participate in all lawful business, upon at least equal terms with the citizens of other States, and if any difference is made, it should be in favor of those we represent, but as the petitioners ask for no preference, but only desire *equal rights* and *free trade*, there ought, in the opinion of the undersigned, to be no objection on the part of any one to granting their prayer.

The majority, in their report, have given a history of this tax from an early period, and by that report it appears that for a series of years down to 1837, the tax upon foreign agencies was ten per cent. upon the amount of premiums received. Then, as appears by said report, an act was passed rducing the tax to two per cent., and. as is therein confessed, impliedly at least, not because our State institutions were monopolizing the business and fleecing the public, but because, as that report states, the great fire in New-York swept away a large amount of capital, and left not enough behind to do the business. There were no remonstrances against the passage of that law by individuals or companies, but all were in favor of it at that time, because it was rendered necessary by the peculiar exigency of affairs. We have every reason to believe that the law was passed for a temporary purpose, and that it was expected by the Legislature it would be repealed, when the causes which procured its passage should have passed away.

The companies which are chartered by this State are taxed upon the capital in the county where they are located, in the same manner and to the same amount as real estate or other taxable property; and this tax is paid by the stockholders for the privilege of doing the business of insurance, for while by the incorporation of one of these companies not a single dollar of wealth is added to the State, yet the taxable property is increased to the amount of the capital of the company. Why, then, do persons who engage in this business consent to pay an additional tax when their property is not increased? Because they are permitted to engage in the business of insurance, and this is a bonus given to the State and county for this privilege. How can we ascertain then the amount of tax paid by the New-York fire insurance companies for this privilege? Why simply by adding together the total amount of their receipts for insurance, and the total amount of their taxes, and by a simple arithmetical process the per cent. of tax paid by them will be shown. By a statement appended to the report of the majority, it appears that there are in the city of New-York twenty-one fire insurance companies, with a fixed capital amounting in the aggregate to $5,710,000, upon which they pay a tax to the city and State of 86 cents on the 100 dollars, which amounts to $49,106. The amount of premiums received by the said companies during the year 1844, was $837,000; hence their tax amounts to 5⅞ per cent. on their receipts for premiums, and this it should be borne in mind is nearly 6 per cent. on the *total* amount of their premiums, whether received in this State or out of it. Now as they are obliged to pay into the treasury of other States a tax upon the business they do there, and as we only lay a tax on the premiums received by foreign insurance companies in this State; therefore, in calculating the amount of tax paid by our own institutions, their premiums received for insurance in this State only should be taken into the calculation, and when this is done we shall find that, to make the amount paid by each equal, more than 6 per cent will be required, but as the information called for by a resolution of the House has not yet been furnished, the undersigned have not at present the means of ascertaining how much more than 6 per cent. the agents of foreign insurance companies should pay to make their tax equal with that paid by our own institutions.

There is one other statement made by the majority, "that by the withdrawal of these agencies the State would lose a revenue which it now receives." A very simple illustration will show the incorrectness of this statement. There is in the city of New-York one agent who received last year $40,000 for premiums, on which he pays a tax to the State of $800. That amount of premiums would be considered a handsome business for a company with $300,000 capital, which would pay to the city and State together a tax of $2,580 at the present rate of taxation; being a difference in favor of encouraging our own capital of $1,780.

The majority also state, that to increase the tax would have the effect of driving away these agencies. The undersigned cannot see how it would, were it made equal, as their burdens would be no heavier than those borne by the institutions of this State.

The undersigned, therefore, begs leave to present the following bill, and recommend its passage.

EDWARD EDWARDS.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MARCH 27, 1845. [VOL. I....No. 31

MAYOR HARPER.

James Harper is again a candidate for the Mayoralty. On this occasion it is proper to refer to his public acts as chief magistrate of the most populous and most wealthy city upon the face of the American continent—a city second to none upon the face of the habitable globe in its prospective importance. In the administration of the executive department of the city government Mayor Harper combines those qualities which constitute a good officer. Where persuasion was better than coercion, he has had recourse to the former, and where firmness of purpose and energy of action were required, he has been prompt and determined. Mild and conciliatory in his manners, he has won the good will of those with whom business or opportunity has brought him in contact, and having been educated to active employment in an extensive business house, he had acquired that business knowledge which enables him to despatch a great amount of public business in a brief space of time.

The ordinance for repealing the Street Patching nuisance, was approved by Mayor HARPER immediately upon its passage, at his residence, at a late hour in the evening and a short time before retiring to rest, and with a promptness which gave great satisfaction to our citizens and relieved the city government from a great scandal in at once stopping the shameful abuses which had been practised in Street Patching depredation for years.

The resolution passed by the Common Council for working that portion of the Ninth Avenue for the opening of which a worthy family are threatened with ruin by a shameful assessment, was promptly VETOED by Mayor Harper, and this VETO was an act which met a ready response in the bosom of every good citizen.

The putting a stop to the erection of Booths on the 4th of July, was an act of the Mayor, and for which the citizens are greatly obliged, and by which the people were greatly benefitted.

The abuses which were practised at the Steamboat landings for years, on the arrival of boats have been remedied by Mayor Harper, and every person who has had the opportunity of contrasting the past, with the present are convinced that he has accomplished what his predecessors in office deemed an impossibility.

Mayor Harper in vetoing the Rotunda Resolution done himself great credit, and rendered the city a great service, and although he was overuled by the Common Council in this, yet this proceeding illustrates the formidable difficulties he had to encounter in producing reform; for there were but three members in the Common Council which sustained him and those in the Board of Assistants, viz. MOSES TUCKER, J. C. BAYLIS, and WM. TAYLOR. But other intelligent citizens of the highest respectability, without reference to party, publicly expressed their unqualified approbation of this act of the Chief Magistrate.

Mayor Harper is a strictly temperance man, and the advantages growing out of this fact extend far into the future, as well as affect to a great and growing extent the present state of things.

The Mayor has no control over the financial department of the city—nor has he a seat or a vote in either board which compose the Common Council. All he has the power to do is to make proclamation to the people when they omit to do right or when they do wrong—and this is a most delicate duty.

COMPTROLLER FLAGG.

The Hon. ABRAHAM G. THOMPSON, Jr., presented in the House of Assembly of this State, on the 11th and 13th instant, two Remonstrances against the reduction of the salaries of the State Comptroller and Secretary of State, in which was contained an expression of approbation of the PUBLIC SERVICES of the State Comptroller. These Remonstrances, &c., are signed by several of the most distinguished citizens of the city of New-York. Among the names of the signers is that of His Honor the Mayor, also several gentlemen who belong to the Whig party. It must have been gratifying to the State Comptroller to receive so flattering a testimony of the estimation in which his public services are held by gentlemen who are among the most respectable and intelligent citizens of the State. The difficulties which have been experienced in other States in the payment of the interest of the public debt has been avoided in the State of New-York by the good management of Comptroller Flagg. Mr. Thompson, a son of the venerable Jonathan Thompson, was honored in the presentation of these memorials, and the State Comptroller was also honored in this service by the selection of Mr. Thompson. The fact that a public officer who performs his duties with ability and firmness of purpose, will receive the approbation of his political opponents is here demonstrated.

We here give the memorials from the Journal of Commerce of March 13th.

To the Honorable the Legislature of the State of New-York:

The undersigned, citizens of the city of New-York, most respectfully remonstrate against the passage of the act entitled, "An act to reduce the salaries of the Secretary of State and Comptroller."

The undersigned believe that the duties of the Secretary of State and Comptroller are of that importance to the people of this State, that men whose talents qualify them for the performance of the important duties should alone be selected, and such should receive a fair compensation for their services.

The undersigned take leave most respectfully to express to your Honorable body their approbation of the public services of the present Comptroller, and ask in case any change is made in reference to his compensation, that the same may be increased to three thousand dollars per annum.

And your memorialists, &c.

New-York, March 8, 1845.

Jonathan Thompson,	Phillip Hone,
Stephen Allen,	James Brown,
G. C. Verplanck,	Robert C. Cornell,
John I. Palmer,	Abraham Ogden,
George Newbold,	James Boorman,
Saul Alley,	Isaac Jones,
Brown, Brothers & Co.	John D. Wolfe,
Joseph Sampson,	C. V. S. Rosevelt,
H. & D. Parish,	John Q. Jones,
F. R. Tillou,	David Graham, Jr.
Sol'n. Townsend,	Nathaniel Richards,
David Hale,	Peter Cooper,
James Harper,	John Haggerty,
John I. Coddington,	Abraham G. Thompson,
Wm. W. Fox,	Jonathan Goodhue,
Charles H. Russell,	Burtis Skidmore,
D. S. Kenedy,	Geo. Griswold,
Peter Lorrilard, Jr.	Wm. B. Astor,
James McBride,	S. S. Howland,
Talman J. Waters,	Peter Schermerhorn,
Howlands & Aspinwall.	Moses H. Grinnel.

JAMES KENT.

In the Commentaries on the Constitution, Mr. Justice STORY, in speaking of that provision of the Constitution of New-York which limits the judiciary, and makes the age of 60 a disqualification for the office of Judge, appends a note which is highly complimentary to the distinguished individual whose name heads this article. The compliment is well deserved, and the source from which it emanates gives it additional value.

"The limitation of New-York struck from its bench one of the greatest names that ever adorned it, in the full possession of his extraordinary powers. I refer to Mr. Chancellor Kent, to whom the jurisprudence of New-York owes a debt of gratitude that can never be repaid. He is at once the compeer of Hardwicke and Mansfield. Since his removal from the bench, he has composed his admirable Commentaries, a work which will survive, as an honor to the country, long after all the perishable fabrics of our day shall be buried in oblivion. If he had not thus secured an enviable fame since his retirement, the public might have had cause to regret that New-York should have chosen to disfranchise her best citizens at the time when their services were most important, and their judgment most mature.

"Even the age of 70 would have excluded from the public service some of the greatest minds which belonged to our country. At eighty, said Mr. Jefferson, Franklin was the ornament of human nature.—At eighty Lord Mansfield still possessed in vigor almost his unrivalled powers. If 70 had been the limitation of the Constitution of the United States, the nation would have lost seven years of as brilliant judicial labors as ever have adorned the annals of jurisprudence of any country."

AMBROSE SPENCER, is another of the great men. His gigantic intellect gives to his noble frame a polish that makes him at the age of about four score years, a nobleman. Ambrose Spencer was for many years a Chief Justice of the Supreme Court of this State, and now, at his advanced age, he has not his superior in mental qualifications and bodily health combined, for a high judicial station, in this Republic.

Judge Spencer would make a splendid Ambassador to the Court of St. James. The government would in such a minister, be honored in their representative.

JOHN SAVAGE is another of the great men whom the tramels of the Constitution have lost to the Bench of the Supreme Court of this State. An able Judge, an honest man. In his retirement upon his plantation in Washington Co., he occupies a conspicuous place in the eyes of a free people. A good man in retirement is truly great, and continually acquires new lustre.

The three ex-Chief Justices of the Supreme Court now living in retirement, would together form a Bench unsurpassed in the aggregate of talent and ability in the habitable globe.

THE TAX BILL.

The New-York County Tax Bill recently passed by the Legislature, authorises the raising of $1,339.487.00. This is too much by more than a third of a million of dollars.

THE FALLS OF NIAGARA.

I surveyed this wonderful cataract, first by moonlight on a summer evening—next, at an early morning hour, ere the sun had made its entrance from behind the curtains of the eastern sky; again, at noonday, when the sun was shining in all the glory of meridian splendour; and again, at the near close of the day, when the sun was approaching the western shades of the terrestrial surface upon which I stood. I reposed the first night of my visit upon a bed shaken by the reverberation of the thunders of the waters of the greatest cataract on earth, in a dwelling founded on the rocks of the western cliffs which border the mighty chasm into which the waters of the great Niagara plunge with a roar and an echo which shakes the very bed on which the river falls. Yes, I was rocked to sleep by the thunders of the waters of of the great Niagara.

I penned a memorandum of that wonderful place with a pen shaken by the echoes of the thunder of the waters of a mighty river. There was a time when these falls had no existence. Ere the deluge these falls were not in being—they are the offspring of the flood, and now, on every day of brilliant sunshine, may be seen the *memento* of an awful judgment in the pillar of a cloud which rises from the bosom of the broken waters of this mighty river. It is also a memento of the promise of Jehovah to all flesh that the world shall never more be drowned. It is inscribed in brilliant colors and drawn by the solar pencil in the bosom of the cloud and forms what the sacred penman has denominated the bow of the cloud. What a testimony! and what a place to inscribe it! what a place this to survey the *memento!* Amid the roar of the aqueous thunders of the Niagara, resulting from the melting of the frosted summits of the gigantic mountains which stretch their borders to almost the verge of the arctic circle. I approached this wonderful locality from the borders of Lake Ontario which forms the vast basin in which the broken waters of Niagara find repose. The sun had withdrawn behind the curtains of the west ere I landed at the foot of the heights of Queenstown, and when the stage coach in which we took passage for the falls first commenced ascending the hill which leads to the plain, the moon was sending forth its silvery rays and gave a soft lustre to all around us. When we reached that portion of the heights on which the battle of Queenstown was fought, the horses were stopped to afford the passengers a better opportunity to see the place. I cast my eyes across the vast chasm cut through the rocks by the Niagara, to the village af Lewiston. It was across this chasm that members of the same great human family hurled at each other the instruments of death. It presented a picture that I had no desire to contemplate. The horses were again put in motion and soon we arrived opposite the monument of General Brock, a twofold *memento*. The rays of the Queen of Night illuminated the column, and discovered to our view, a Ruin. This monument was broken by the torch of an incendiary who had placed gunpowder beneath it with a view to its destruction. A monument when viewed at night makes upon the human mind a powerful impression, especially when it is connected with events of a painful nature, which are yet fresh in the memory of the observer. From this locality we proceeded across a plain for several miles toward the falls, to where it was announced to us that we were upon the battle ground of Lundy's Lane. The furious barking of a dog who seemed vexed and angry at our approach, seemed in keeping with the atmosphere of the place, and I began to reflect upon the length of time since the sanguinary battle was fought upon this ground, in order to determine the probability or possibility of the master of this dog having fallen a victim to the fates of war, for dogs will frequently for a long time watch the grave of a kind master. There was a fearful solemnity in the atmosphere of the place, for the ground which was then pressed by the wheels of our carriage had been drenched with human gore. Here the groans of the wounded and dying mingled with the thunders of the cataract, and here the pillar of the cloud which rises from the falls, is visible, and its tops and sides were silvered with moon-beams. Here was fought a most savage—most sanguinary battle. The ground was covered thick with the wounded, the dying and the dead. What wretchedness! what misery! what grief! What heart-rending emotion did the events of this battle-field produce—without even a single consolation. It was of no consequence which gained the battle, for it was a murderous scene, and conquest was most inglorious. The killing of the human species by their brother mortals in the sight of High Heaven is an awful crime.

It was over a path thus made impressive, that I approached the gigantic cliffs which border the gulf into which the great Niagara pours its agitated and broken waters. The human mind should, in approaching these falls, be in a state of deliberate calmness in order to enjoy the sweets of the sublimities of nature here displayed in all the majesty of splendor. When in my meditations at midnight on a gigantic mountain top I attempted to measure silence, and at the midnight hour in the greatest known cavern beneath the earth's surface I attempted to measure darkness, I found that notwithstanding a studied composure of mind that even the attempt was an impossibility, for I found both were so profound as to be overwhelming—so with this mighty cataract. The room which I occupied at the Clifton House was lighted by a window from which I could see the precipice over which that part of Niagara river which runs east of Goat Island, falls. When I retired to rest I could, by raising my head a little from the pillow, have a full view of this stupendous fall, for the moon shone brightly and illuminated its surface. This view was to me a strange companion of the midnight pillow and but for being weary with the journeying of the day which was just then passing away forever, I should have found it difficult to have closed my eyes for the windows of my room rattled with the force of the concussion produced by the falls. Unwilling to trust to my own impressions in this new scenery I enquired of my host if my feelings and impressions in this, had not misled my judgment, and he satisfied me that the circumstances I had noticed were a reality and that the windows rattled throughout the house when all else was still and quiet, and even the doors were sometimes shaken from the latch. Although I was weary when I retired to rest, yet my sleep was somewhat broken as the rattling of the windows awoke me, for the scene was new to me. I had a view of the falls from various points, both below, and above the cataracts on the western cliffs, and from Goat Island, and also of the river which runs east of Goat Island, from the Bridge which leads to this isolated rock sprinkled over with earth and covered with trees the roots of which are shaken with the reverberations of the thunders of the waters. With these prefatory remarks I will here rest, and in another number give a detailed account of this river, Goat Island, the Falls, and also of the burning spring above the Horse Shoe rapids.

THE APPLE SEED.

The apple seed is but a little kernel—but it is destined to a change. The warmth of the bosom of the mother earth causes it to germinate, to send forth a tender sprout, which in the progress of time becomes a little scion, and at length after a term of years attains to its full growth, and becomes a gigantic tree, in the branches of which the pretty robin builds her nest. I have, with folded arms, stood for minutes at a time surveying the apple tree in full blossom, and again, when its limbs were bending with delicious fruit. The apple tree with its beautiful blossoms, and its ripe and luscious fruit, presents a wonderful display of that mysterious power which is the fountain of life—the source of all good, and it also presents a beautiful and brilliantly illuminated page in the great volume of nature, and one that is full of instruction and encouragement to the mind that meditates and contemplates, that delights in that devotion which consists in the tribute of thought, offered up in the lofty temples of the mind, the homage of the immortal soul, where the pride of mortal man is humbled.

The apple seed presents to the eye of the chemist a most beautiful demonstration of wonderful combination, for its acid separated from the milk of nature with which it is so nicely combined changes the transparent and colorless solution of iron to a beautiful blue, and changes an alkaline compound to a soft and delicate chromate, and these united produce the green which is seen in the rich foilage of vegetation. These various properties brought into action by the rays of the solar orb, which is the great treasury of nature, produce the rich colouring which is seen upon the surface of the apple, and the gay adorning which is painted on the sweet blossom of the apple tree, by the soft touch of the solar pencil. When musing upon my pillow the remembrance of the apple seed and its extraordinary properties came into my mind. I arose to lithograph the thoughts which had thus been invited by calmness and quiet to the chambers of the mind, with the pen. The duration of life enjoyed by the apple tree is in proportion to its slow and steady progress from birth to maturity.

CIRCUIT JUDGESHIP.

William Kent who was appointed Circuit Judge by Governor Seward, resigned that office during the month of January last. Judge Kent is an only son of Ex-Chancellor Kent. The members of the Bar, on his retiring from the Bench, presented him with a piece of plate as an expression of the high estimation in which they held the donee, both as a man and a Judge. He discharged the duties of the office with ability, and in the short time he held the important station honored the venerable father, who was thus honored in the son. William Kent is (we understand,) about visiting Europe. He presents to the world in his life and daily walk, a beautiful specimen of human nature. His venerable father is in the enjoyment of good health, and is often seen in our public streets walking with as quick a step as most men at the age of 50. Ex-Chancellor Kent is in the eighty-second year of his age, and still retains the great powers of his mind unimpaired—a living commentary upon the absurdity of that provision of our constitution which deems experience and the greater acquirement of knowledge a disqualification for a judicial station.

CIRCUIT JUDGESHIP.

John W. Edmonds has been appointed by Governor Wright to fill the office of Circuit Judge, made vacant by the resignation of William Kent. The selection is a good one. Judge Edmonds will fill the office with advantage to the public, and with credit to himself. Judge Edmonds is a very humane man and such alone are qualified for Judicial officers. He has been for four years a member of the Court for the Correction of Errors, and he has also held the office of Recorder of the city of Hudson. The appointment made by the Governor is highly approved by our well informed citizens.

ABBOT LAWRENCE.

Abbot Lawrence whose name has appeared several times within a few years as the liberal benefactor of useful institutions, is the son of Deacon Lawrence of Groton, Middlesex County, Massachusetts. His father was a farmer, and a most excellent and worthy citizen. Deacon Lawrence, had four or more sons, viz. Luther, William, Amos and Abbot. Luther was educated to the law, and the other three I have named, settled in Boston and became merchants. Luther was killed by the machinery of one of the large mills in Lowell, or by a fall in one of those factories, a few years since. These four brothers were good boys when at home with their father, and were, in the language of the people of New-England, "well brought up," and have retained in manhood, in a remarkable degree, the precepts taught them in childhood. Abbot Lawrence was educated at Groton Academy, then under the care of Mr. Butler. In 1803, which is now 37 years ago, he was a school-mate of the writer of this paragraph.

"THE POWER OF THE CORPORATION TO PASS PENAL LAWS.

An application was made to the State Legislature now in session by the Corporation of New-York for authority to pass penal ordinances. The application was referred to a Committee, which Committee reported adversely to the application of the Corporation, and the report was unanimously accepted by the house, and the Committee discharged. A very right conclusion.

THE ROTUNDA.

We had no room in our last number for any remarks upon the Report of the minority of the Special Committee to which the Mayor's Rotunda Veto was referred. By this Report it appears that the Rotunda cost the city, for repairs, $3,523.84, and for the claims of Mr. Vanderlin, $5,439.48, and that it rented for 1,500 per annum. If the Mechanic's charged as extravagantly for their work in repairing the building as the prices paid for public printing it is no wonder that the rent was more than all absorbed. We have given the majority report of the Special Committee. We dissent from the doctrines of this minority report and in toto from the conclusions and also from the mode of blending together the statement of facts on which the conclusions are based. The appropriation of $1500.00 for a Court of Sessions should have credit for the occupancy of that building by the City Courts for a length of time. The Marine Court held its sessions in that building.

The amount paid Mr. Vanderlyn and his creditors was a large sum, and not for repairs, but for the construction of the building.

Persons who erect buildings for rent calculate the cost of erection as a permanent investment, and do not call this expense an item of repairs, nor is this the mode of estimate practised by Mr. Blackstone in his own business.

We give this Report a place, for two reasons, First, because our readers should hear both sides, and second, because we entertain great respect for the gentleman who made this Report. Mr. B. is a most worthy and excellent citizen, and is by no means the first good man who has made a great mistake.

REPORT.

"The Undersigned, one of the minority of the Committee to which was referred the Veto of his honor the Mayor, of the resolution of the Common Council appropriating the Rotunda to the use of the New-York Gallery of the Fine Arts, respectfully reports—

"That so far as the Veto is founded on the objection that the lease is perpetual, there is a manifest error, the resolution distinctly declaring that the occupation of the building is authorised during the pleasure of the Common Council, and not otherwise, and such is the understanding of the matter on the part of the Trustees of the Gallery.

Should the building be needed therefore at any time for public offices, it is within the power of the Common Council to terminate the lease and resume possession of the building.

The ground taken in the veto, that the building can be let for three or four thousand dollars, is also deemed extravagant and erroneous.

The city received from four to five hundred dollars only, for a number of years for the property opposite the rotunda, occupied for the Harlem railroad establishment, and never more than four hundred dollars per annum for the large and eligible premises within the park, occupied by the American Institute, and since March 1843, has given the Institute the use of it free from any charge whatever, as they now also do the Mechanics' Institute in the basement of the City Hall. The fact also that the building in the Park formerly called the New-York Institution contains many rooms unoccupied for offices, and much space that could be conveniently and cheaply arranged for public purposes, and now producing no rent, shows that the expectation of receiving any important amount of income from the building in the Park, is not sustained by any former experience.

The community do not expect, and will never permit the Park to be occupied for stores, manufactories, or other similar business purposes, and do not rely on any part of the public grounds, there, either by sale, or letting for such objects, to pay off the public debt.

"The park has always been used for two purposes, first for the accommodation of public offices: second, when not needed for public offices, for the use of institutions of a public nature.

"Before proceeding to show that the Rotunda is *not needed* for public offices, the course of the city for a long period of years in devoting the public buildings to the second class of objects will be referred to.—In the message of Gov. Clinton to the Legislature at the session of 1818, he thus refers to the building in the Park. 'The principal societies devoted to literature, science, and the arts, in the city of New-York, have by the liberal patronage of the *municipal* authorities, been collected in a spacious and accommodating edifice under the denomination of the New-York Institution. These associations are forming extensive and invaluable collections of the *works of the fine arts*, of our animal, vegetable, and mineral productions and of works and manuscripts illustrating our civil ecclesiastical and natural history, our geography, antiquities, and statistics. They are also zealously engaged in exploring the extensive field of natural science, in developing the principles of political philosophy, and in exalting the literature of our country.'

"'Whenever such institutions appear, they are entitled to the *countenance of government*, for there will ever be an intimate and immutable alliance between their advancement, and the glory and prosperity of the State.' In his message of the succeeding year he again refers to the "institutions devoted to literature, science and the arts as in every respect entitled to the public munificence." The ground occupied by the building in question, the Rotunda, was also devoted to purposes of a similar character; it was erected on ground heretofore forming a part of a street, on closing which the Corporation received about ten thousand dollars more for the land it sold, than was paid by the city in the proceeding for closing the street and obtaining the ground, since which time it has become by the act of 1831, and the subsequent ordinances, a part of the Park, to remain sacred from uses not of a public nature.

"The ground thus costing nothing to the city, was devoted by the city for the purpose of building by private subscription, and at private expense, the Rotunda, as a place for exhibiting works of the fine arts, and the question for the Corporation to decide is, what shall now be done with the building at present unoccupied, in bad repair, and unfit in its present shape, without an expenditure from four to five thousand dollars, to be used at all for the public offices.—The first question to be considered is, whether it is required for public offices, and is suitable for them.—Your Committee cannot suppose that there is any intention to make any large increase of public offices. For those already appointed, if abundant provision is not already made, there are many vacant and unappropriated rooms in the building in the Park on Chamber Street, as well the basement as the third story; and the City Hall, as well the basement as the upper part of the centre of the building. These rooms may be fitted at little expense and used for the public offices, as they are from time to time wanted, but the Rotunda cannot be so arranged without very large expense. It would be nearly, or quite as cheap, to put up a new building, as to reconstruct the Rotunda for the public use. On the other hand, for the exhibition of works of art, very little besides the side walls, a floor, and a roof are needed, and as the building is not required for public offices, no hesitation is felt in recommending the devotion of it during the pleasure of the Common Council to the use of the New-York Gallery of Fine Arts.

"In addition to the public objects of that Institution referred to in the report of the Committee on this subject, in the Board of Aldermen, the works of Art are to be exhibited on every Saturday to the children receiving education at the public schools, and charitable institutions; the schools to be taken in rotation to visit the exhibition.

Eminent artists have agreed, in the event of the building being so appropriated, to furnish the Gallery with paintings, free of charge, to become the property of the citizens who choose to become members for life by the payment of one dollar, to cover its expenses, and others of our citizens stand ready by contributions of money, to purchase paintings, and employ artists with the same object.

"No particular person is to be benefitted by the appropriation of this building to the use asked for.

"No private or selfish end can be gratified by it. On the contrary the public good is the sole end and aim of this institution, and should it ever cease to be wholly public, the Corporation may and should withdraw the use of the building from it. The question of want of power on the part of the Corporation, urged after years of experience to the contrary, cannot be deemed of any force, nor is there any force in the objection, that the Ordinaces pledged the property of the city to the payment of the public debt, and authorize its sale. The sale of the Park is not included within these Ordinances, and will never be made, while its corporate capacity continue.

"If this great city, with its enormous wealth, its immense business and activity—filled with strangers visiting it from all quarters of the world, and making large expenditures within its limits, is obliged by mistaken economical views, to prevent an institution of this character from occupying a building built by the friends of the Arts, and which cost the city nothing, or very little, and to let out the Park for some business purpose, it has reached a condition greatly to be deplored.

"Your Committee, therefore, recommend that the Board adhere to its former resolutions.

Signed,

"W. BLACKSTONE."

A TWOFOLD MEMENTO.

At the head of a cove which makes into the land from the Bay of Narragansett, is a small knoll in which is the grave of

THOMAS WILLET.

Two small stones with inscriptions upon each, mark the place where repose the remains of the

First Mayor

of the first city in commercial importance, upon the newly discovered continent. On one of these stones is the name, age, and year of sepultre, of Thomas Willet, and on the other it is recorded that he was the *first Mayor of the City of New-York, and that he twice attained to that office.*

Thomas Willet was born of English parents, was educated in Holland as a merchant, and emigrated to America in 1629, and in 1664 and 1665, he was Mayor of the city of New-York.

Marinus Willet, great grand-son of Thomas Willet, was Mayor of the same city, 143 years afterwards.

Rev. S. Chapin, of Providence, R. I., came to the city of New-York in June, 1844, with a letter of introduction from the Governor of Rhode Island to the Mayor of New-York, to communicate to the Executive of this metropolis the fact that the mortal remains of his earliest predecessor in office lay buried in a secluded spot near Narragansett Bay, and that the inscriptions which are upon the stones which mark the grave, are nearly obliterated by time, and also tendering his services to the Mayor and Common Council of New-York to procure the erection of a Monument to the memory of the First Chief Magistrate of this Metropolis, the cost of which he estimated at from $350 to 500. The subject was referred to a special Committee of the Board of Aldermen, consisting of Aldermen Drake, Miller and Gale, which committee reported in favor of the erection of a monument, and by so doing were greatly honored. The Report was adopted by the Board and sent to the Board of Assistants for concurrence.

The Board of Assistants by a deliberate vote refused to refer the subject to a committee, and also refused to concur with the Board of Aldermen.

The thanks of the citizens of the City of New-York are due to the

REV. S. CHAPIN, OF PROVIDENCE, R. I.

for the disinterested and praiseworthy effort to procure an official expression of remembrance of their ancient Mayor, from the Government of the greatest city in population and wealth upon the American Continent.

THE ANNUAL TAX BILL.

The Corporation have applied to the Legislature for the passage of the annual tax bill, and the same has been granted. We shall publish the acts in our next. The bill for taxing the property of strangers has not yet passed the Assembly, and it is hoped that it will not. The country members do not want to tax their own produce sent to New-York for sale to support the extravagance of the city expenditures.

LIGHT.

There remains yet to be discovered some easy method of refracting the rays of artificial light and thus cause a greater illumination upon the surfaces which are desired to be made more distinctly visible. There is no doubt but this can be ultimately accomplished. I intend in a few weeks to make some experiments upon light, with a view to this end. Nature has set a copy, and it requires but a careful and persevering study of this portion of its great volume, to begin to learn this important lesson. I have been much instructed in reference to the effect of artificial light upon space, in my frequent subterranean tours in the mammoth cave of Kentucky. A person travelling in this subterranean mansion with a lighted flambeau in his hand can see but a little way into thick darkness, but when I took the precaution to send a guide in advance of me with a lighted torch in his hand, and one followed in the rear carrying a lighted taper, the means of dispelling darkness from a given space was found adequate. This is a wonderful place to go to school, but I found that darkness is a most extraordinary and wonderful instructor.

THE VALUE OF WATER.

Many years ago I made a trip to the summit of a high mountain in company with some young men, for the purpose of encamping upon the pinnacle during one night, that we might be enabled to witness the beauties of an evening, the splendor of a morning, and the sweets of night in the quietude of the high atmosphere. Our route lay through a dense forest—the heat of the day was great, and we became very thirsty. We found no water in our path, and suffered excessively for the want of it. We had some excellent French brandy amongst our stores, but it was then of no use to us, for it would not quench thirst. We came to a deep ravine, in which was some moist earth. This we made into balls, and with our hands pressed out the little water it contained, and it gave us some relief. It was to me the most delicious fluid I ever tasted. We changed our route, and shortly after came to a little brook, which came down the mountain from near its summit. This we drank from, and at once commenced ascending the heights, which was abundant exercise to produce copious perspiration. This brook has its origin with the atmosphere condensed by the refrigerating rocks which form the top of this mountain, which lifts its head among the clouds. What a splendid laboratory—how delicious the pure water which flows from such a fountain, and how rich—how charming—how buoyant the atmosphere which surrounds it. It was pleasure to drink this pure chrystal flood, and breathe the pure atmosphere of the higher regions. Nature here is arrayed in all the stillness of her charms, for quiet is one of its sublimest harmonies.

SLEEP.

In our paper of the 20th ult., we made some remarks upon the mystery of sleep. We received a few days since, a letter from a lady, in which she remarks as follows:

"Your Gazette of the 20th ultimo, contained much matter of interest to me. The article upon "Sleep" was one upon which I particularly dwelt, as it is one upon which I have thought much as connected with the philosophy of dreams—for dreams are to me the *poetry of life*—and who can explain them? Why is it, that some of the mysterious faculties of the mind will still keep watch through the darkness and silence, and lethargy, which settle upon us, and still tell us we are spirits? And what is the chain, so poetic and so spiritual, whose mysterious links are wound so around our being, as to wrap our souls in the many colored mantles of the ideal and unearthly? The connection between dreams and night is wonderful and beautiful. One of the great purposes which night seems to have been intended to answer, is, that it tends to open to us a wider and more glorious region of spiritual realities, than we can discern by day—for, as the darkness brings the wonders of the visible heavens to the eye of the astronomer, so does it bring that fathomless invisible world of wonders to the *mind*, assuring it of an immediate existence, when Sirius and Pleiades shall be blotted from the firmament. This life was not designed by our CREATOR to be wholly a prosaic scene to us, for we have much to enjoy that is beautiful and poetic in our waking, as well as in our sleeping dreams. The musings of memory when the spirit looks through the mists of time, back to the dear wonder-land of childhood, when we live in airy castles, and in an ideal world of our own creation; or in the dark midnight when at the touch of slumber's magic wand we live again among the scenes of our early days, with the loved and the lost; still it is poetry, and who can explain its mysteries?"

COLD.

On the morning of the 15th of March, I noticed a body of water upon a flat roof made of zinc which was covered with ice, and at the same time a body of water lying upon a stone pavement ten feet below it, which was not in the least affected by the cold. The one was exposed to the wind, and the other not. A thermometer in each of these two positions would have denoted a difference of temperature at the same hour

WINTER BIRDS.

On the 11th of March, my winter birds paid me a visit, and were accompanied by a stranger bird, resembling in appearance and size the swamp Robin. I have noticed that birds practice hospitality with a care that discovers a bright trait in the character of the feathered race. Birds were tenants of earth ere man became an inhabitant of this terrestrial surface.

OLEOMETER.

Much enquiry is made as to the accuracy of the Oleometer as a test of the quality of oil. Cattle yield tallow, and hogs produce lard, but the quality of the tallow is dependent both upon climate and food. Tallow from the tropic contains more stearine and less elaine, than that from cattle nearer the poles. Hogs fed upon beach-nuts produce more elaine, than hogs fed upon corn. The melting point of these will be found to differ in exact proportion as the stearine is to the elaine, from the general standard, and the specific gravity is in the same ratio. Oils in a fluid state, hold substances in suspension, as well as in solution. The oil of the Benne seed, compared with that of the Olive, affords an illustration. I have placed these two oils on a plate of iron—heated the iron until the oil was expelled—that which was made from the benne seed, left a varnish on the plate, while that from the olive left no residium. The accuracy of the Oleometer, is a matter of great importance, and should be examined with care, before it is adopted as a standard, to determine the quality of oil. It is possible that Whales of the same species, differ less in the quality of the oil produced by each, than cattle and hogs, but it is not probable. In boring for salt water at Montezuma, at the depth of 604 feet, they obtained water testing by the salcometer 100 degrees, or full saturation. When this discovery was announced, and the specific gravity of the water stated, we remarked at once in the columns of the Journal of Commerce, that they were either mistaken in the quality of the water, or in the figures of the scale, for cold water would not take up or retain as much chloride of sodium as they had announced, and the result of subsequent experiments proved that we were correct.

PUBLIC PRINTING.

It is a matter of surprise and astonishment, that the Public Printing is not done by contract. Those who have had the benefits of the public printing, are vexed at the discussion of this question, because they hope to get it again; and those who enjoy it are vexed, because they are unwilling to part with a fat job. It is one of the most pernicious seeds of corruption in the city Government. Let a Committee of Citizens be appointed to examine the subject, and make a report to the people, and this practise of paying high prices will soon vanish away when a statement of the prices shall be all published to the people

THE NATIVE PARTY.

The natives have nominated for Aldermen in the Ninth Ward, the Hon. D. E. Wheeler. Mr. Wheeler is now a member of the House of Assembly of this State. They have made a good selection. Mr. W. is capable and honest and will be an acquisition to the Common Council.

Mr. W. E. Dodge, of the house of Phelps, Dodge & Co., has been nominated by the same party for Alderman of the Sixteenth Ward. This is a good nomination. Mr. Dodge is a highly respectable merchant, a practical business man, and will make a most excellent member of the Common Council.

Mayor Harper will no doubt receive the support of the substantial business men of the city of all parties. He has performed the executive duties to the satisfaction of the public and is a most worthy man, as well as a faithful and independent public officer.

Saul Alley, Esq., has been talked of for the Democratic candidate for Mayor. Mr. Alley will not accept of a nomination. Were he to fill the office of Mayor, we have no doubt he would veto half of the acts of the common council. If three-fourths of the acts of the common council for the last ten years had been treated in the same way, the citizens would have been better off.

AUCTION DUTIES.

The Resolution offered in the Assembly by the Hon. Abraham G. Thompson, Jr., on the 11th inst., requesting the State Comptroller to report the amount of duties paid into the State Treasury on sales at auction has met with a response from that officer.

The aggregate amount of duties from 1798 to 1844 both years inclusive is $7,420,434.98, of which the city of New-York has received for the Broadway Hospital, Foreign Poor, &c. $1,432,036,60.

The largest sum paid in duties in one year, was in 1327, $298,589.65, and the largest received of the duties for city purposes in one year, was in 1816, $73,705.80.

REDUCTION OF DUTIES ON SALES AT AUCTION.

A reduction of the rate of duty on sales at auction would increase the public revenue, and benefit trade. It is suggested that this dimunition should only apply to goods sold in original packages. This is recommended on the ground that it involves the same principles as cheap postage, and the same argument applies to a reduction of the rates of Toll on the Erie canal, and to making the public ferries entirely free.

MEAT SHOPS.

The Board of Aldermen have made a move to monopolize the sale of meat by permitting only two persons in each ward to sell this necessary article of food. Such kind of regulations belong to the dark ages, and are discreditable to the Board of Aldermen. It is ridiculous for the city government to attempt to put trammels upon trade. Better restrict their own expenditures for such a measure is imperiously called for.

APPOINTMENT OF INSPECTORS.

The most ludicrous practice has been for a long time indulged in by the appointing power in nominating persons for inspectors, who have no knowledge of the quality of the article they are called upon to examine. It is like applying to a shoemaker to mend a watch. We were some years ago very much amused in noticing a mistake made by a traveller who on entering Pittsburg on horseback found the brute on which he was riding had lost a shoe, and on alighting at a public house in the city of smoke and soot, he accosted a boy that stood near him, and requested the boy to ask his master to put a shoe upon the foot of his horse. The boy replied that his master was a Merchant Tailor. The smoke in Pittsburg gives to the countenances and dress of its inhabtants the appearance which a Blacksmith's employment would in a clear atmosphere.

Persons are appointed inspectors whose occupations are as much at variance with their new offices as that of the Tailor is to that of the Farrier. The Governors have in this made a greater mistake than the traveller.

RETRENCHMENT A SUBSTITUTE FOR TAXATION.

Governor Morton in a message to the Legislature of Massachusetts, recommended to that body to substitute retrenchment for Taxation.

MESSAGE OF THE MAYOR.

His Honor Mayor Harper has sent a message to the Common Council urging that body to take measures to remove the heaps of manure that now lies piled up on several of the Piers. The Mayor is right in this. Unless these accumulations are speedily removed the piers of New-York will soon present the same celebrity as the island of Ichaboe, which a Yankee sailor recently denominated the "King of Dunghills," and our harbor may become the resort of the Ichaboe flotilla.

MAYOR'S OFFICE, NEW-YORK,
March 17, 1845.

To the Hon. the Common Council:

GENTLEMEN:—Frequent and reiterated complaints have been made to me of the nuisances existing in several of the Slips in the lower part of the city, arising from the immense deposites of manure gathered from the streets and left there, and which have been accumulating for a long time, until the residents in those neighborhoods have found it necessary to make their complaints, and demand relief.

So loud, indeed, have these complaints become, of late, and they are grounded, I think, in so much justice and reason, that I feel it my duty to call your attention to the matter, with the confident expectation that you will take immediate action to remedy the evil and remove the cause of complaint.

You will allow me to suggest the propriety of procuring vessels to convey the manure already accumulated, and that which may hereafter be gathered from our streets, to Randall's Island, where it may be deposited without giving offence to any one, and disposed of at such time and in such manner as the common council may think proper.

Permit me, gentlemen, to urge the necessity of immediate action in the premises, both as a matter of justice to the complainants, and of duty as the conservators of the health and cleanliness of the city.

Respectfully,

JAMES HARPER.

NOMINATIONS FOR THE COMMON COUNCIL.

The Natives nominated for Aldermen in the Second Ward, Wm. Gale, Esq. and for Assistant, Wm. Everdell, Esq., both worthy and good men. Mr. Tucker and Mr. Blackstone have been renominated in the 8th Ward, and these gentlemen are also worthy good men. Aldermen Bunting has been renominated in the Seventh Ward. He is also a worthy good man. James Smith, Assistant Aldermen in the 5th Ward has been nominated for Aldermen of that Ward. Mr. Smith is a worthy and excellent man. It is proper here to mention that the Board of Assistants were in session when the ordinance was passed repealing the Street patching nuisance which had existed for years a disgrace to the city and source of annoyance to the citizens. The ordinance had passed both boards and was in the hands of the clerk of the Assistants, when an application was made by a delegation of the Anti-Assessment Committee to the Clerk of the Common Council to send the ordinance at once to His Honor the Mayor at his residence, but the Clerk declined. The delegation then applied to Assistant Aldermen James Smith of the 5th Ward, then in his seat, and requested him to procure the ordinance from the clerk for the examination of the Mayor. Mr. Smith obtained the ordinance and delivered it to the delegation which had been sent for it by the Mayor. The Mayor as soon as he had examined the ordinance promptly endorsed his approval upon it and the delegation returned with it to the Hall and delivered it to Mr. Smith and he passed it over to the Clerk and by this act of Mr. Smith it became of force that night. Alderman GALE, Alderman DRAKE, and Alderman BUNTING, were very active in pressing the repeal of this obnoxious street patching ordinance, and they each and all deserve great credit for their efforts in this important matter.

When we shall have learned the names of the other native candidates, we will publish them. We hope to be able to announce the name of EDWARD PRIME or LORA NASH as a candidate for Aldermen of the First Ward. Both of these gentlemen are in favor of reform, and should make the sacrifice of one years' services in aid of the government of the city. Both of these gentlemen are wealthy, and the loss of the time is therefore no inconvenient pecuniary sacrifice. Either of these gentlemen will be a great acquisition to the Common Council—one is a strong Whig, and the other equally a strong Democrat, but in the matter of City reform, both are of the same opinion.

CITY COMPTROLLER'S REPORT.

The Editors of the Journal of Commerce are reviewing the communication relating to the City Comptroller's Report, published in that paper of the 10th inst, which communication is in our columns. We will give their remarks in our next. We perceive that they refer to an extra *allowance* made to the Street commissioner, after midnight on the breaking up of the last Common Council. This "*extra allowance*," amounted to $2300.00 for extraordinary service. Mr. Ewen was paid a large salary, and should not have received a single dollar of this extra pay, but the Common Council had a sort of precedent for it inasmuch as the present City Comptroller before leaving office, in 1843, made a claim upon the Board of Supervisors for near $4,000, "extra allowance" for duties performed in the receipt of Taxes paid voluntarily to the city Comptroller prior to January 1, 1843, and the committee to whom it was referred, reported in favor of the claim, but some one of the Democratic members made objection, saying that the Receiver of Taxes is paid but $2,000 for a whole years services, and here was near double that sum, to be paid for about *six week's* services, and to a public officer who was also in receipt of $2,500 per annum, *besides*. The Board reduced the amount of the donation to $1000, which was precisely that sum too much. This was an act of a Whig common council, the other was the act of a Democratic, or rather, we should say, Locofoco common council. A strictly democratic common council would not have done this outrageous thing. It is due to the present Comptroller to say, that since he has held that office under the *Natives* he has performed the duties of Comptroller and also of Deputy Comptroller, for the pay of Comptroller, which is a *small compensation* for the labor required to be performed. If the Comptroller should retort upon the old street department he would make a smoke that would tingle in the eyes of the old Roosters and pensioners in that establishment. The surveyor's bills are an item in the expenditures of that office which would startle the citizens if they could but see the aggregate of these mammoth bills.

MEMORIALS TO THE LEGISLATURE.

The Hon. ABRAHAM G. THOMPSON, jr., member of the house of Assembly from this city has presented in that house numerous memorials in relation to Taxes and Assessments, signed by the most respectable citizens of the city of New-York, without reference to party. These memorials have been referred to the committee on ways and means. We have no doubt that great efforts will be made by certain persons to prevent an investigation into the proceedings relative to the passage of the bill authorising the Corporation to buy lands for assessments. In 1843, the Corporation of New-York paid the large sum of 1,007.63, for lobby services at Albany as appear by the city Comptroller's Report of that year, p. 36. Some of the same lobby members have been at Albany the present session, and we wore at one time so near one of them as to be able to see their shadows on the wall.

BOARD OF PERMANENT ASSESSORS

The County of New-York suffer greatly for the want of a permanent Board of Assessors of the annual tax. A Board of Assessors composed of three members which should have the supervision of the Ward Assessors would produce a more equal assessment of Taxes and bring into the Assessment Rolls a greater amount of property. This Board should have the correction of erroneous taxes and should also have the control of the list of jurors, and the supervision of the collection of the fines paid by jurors.

NOMINATIONS FOR THE COMMON COUNCIL.

The Natives, the Whigs and the Democrats have each nearly completed their nominations for the Common Council. The Natives have decidedly the best set of candidates.

DEMOCRATIC NOMINATION FOR MAYOR.

Mr. Havermeyer has been nominated as a candidate for Mayor by the Democratic Mayoralty Convention. Mr. Havermeyer is a merchant and highly respectable and worthy.

THE WATCH AND LAMP TAX.

The expense of the Watch and Lamps to the amount of $300,000.00 per annum should be assessed upon the owners and occupants of buildings, the contents of which are protected and benefitted by these two expenditures.

SINGULAR WORM.

During the last summer my little daughter discovered a singular and very curious worm. Its length was one inch and a half Its diameter three-fourths of an inch—its color was light green with a whitish cast, or semi-illumination. It had fourteen legs, which were of bright amber color, and transparent. All over its body there were little oval shaped cocoons about a sixteenth of an inch long, of pure white, and having the lustre of the richest satin. This worm was very inactive and refused food. I placed it in a box and made observation of it three times every day, when at length I discovered life in these cocoons, and occasionally I discovered the end of the cocoon fly open like a door with a hinge, and a beautiful little fly would emerge, and after a little time would take its flight. These flies had antenea longer than their bodies, their wings were very brilliant when viewed under a magnifying glass. One of the cocoons was broken off from the body of the worm, and the insect within it died, and I have this insect now preserved. I have also kept the worm, which is now reduced in size to less than half an inch in length, is inactive, and has never taken food. I have several species of worms or caterpillars in a chrysalis state, and all of these partook of food before the change, and some of them eat extravagantly. The caterpillars which I had in my cabinet in June and July last, passed through the entire change in fourteen days counting the time from the period when they first fasten the head to some solid substance until that period when they take the flight of a splendid and beautiful Butterfly.

The period of 48 hours elapses from the time the glutinous substance exudes from the head of the worm to the time when it sheds its worm coat, and becomes a chrysalis, and twelve days from the chrysalis to the butterfly. On the morning of the fourth of July I opened my cabinet and found I had eight beautiful butterflies. It was a lovely morning. The sun shone in all its splendor, and I at once gave these beautiful insects the full liberty which is their birth right, and as I took each upon one of my fingers and held it in the suns rays it would spread its little wings, give my finger a last embrace, and hie away among the sweet and beautiful flowers to pass a brief period of existence and then pass to another change.

What a page in the great volume of Nature these insects open to the view of mortal man—illustrating a change—yes, a change—not death, but a change both wonderful and mysterious, yet convincing—no doubt hangs upon this illustration, not even the shadow of a thought that contains a doubt. The hated, the despised worm which is often trodden under foot, becomes the beautiful, the splendid butterfly—full of cheerfulness, and activity—adorned with colors of the richest hue, spangled with gold almost too bright to look upon—and when I contemplate this charming insect, floating upon the bosom of the gentle zephyr, and look back to the worm crawling on the ground I feel instructed, humbled; and yet I feel an emotion arising in the temples of the mind which gives birth to the homage of adoration.

REVIEW OF CITY COMPTROLLER'S REPORT.

We give in this number of our paper a review of the City Comptroller's Report—it was put in type for our previous number, but was crowded out for want of room.

This review was written by an ex-officer of the Corporation, as we are informed. It is a plain and well expressed *document*, and although the writer is one of our most persevering assessment opponents, still we are glad at any time to quote him on the right side. The facts stated in this review as to *kept back bills*, have been frequently noticed by us, heretofore. It is an old practice, and a very bad one, and it is a pity that the Natives had not reformed this abuse, for the citizens had rather know the worst about the City Treasury than to see attempts made to varnish it over and thus attempt to cover the leaks.—We sent to the Binder the other day, the City Comptroller's Reports from 1837, to 1845, both years inclusive, to be bound up, and placed in the same volume Mayor Varian's Message to the Common Council of May 14, 1839, as a commentary upon these fiscal documents. We deemed it proper to put the text and the commentary together. We had intended to have re-printed the City Comptroller's Report, but this review shows that it is so imperfect that we deem it more useful to our readers to present the review instead of the Report. The City Comptroller and the ex-officer of the corporation who penned this Report, were the gentlemen who attended upon the Legislature in 1843, to procure the passage of an act authorizing the Corporation to purchase lands which that very Corporation had procured to be shamefully assessed. The City Comptroller has labored to make an argumentative report, to operate upon the minds of the Tax-paying citizens, as to the economy of the fiscal department, but this should have been made in the annual tax bill, by showing that the amount of the annual Tax is decreased. No argument that contradicts the footings of the Tax Bills, will be regarded by the people. We have been found fault with for commenting upon the city fiscal policy, but we must not heed these complaints. We know no difference between Democrats, Whigs and Natives.—The act is the same from whichever party it proceeds. We speak of public acts, and not the actors—of the officer and not of the man. It is of no consequence to the public what party a man hails from, his public acts are the test, and determine whether he is of the right party. The Natives, prior to the election of 1844, carried a Banner on which was inscribed "ANTI ASSESSMENT AND REFORM." This Banner was carried in the procession got up to celebrate the victory they achieved over their political opponents. We have looked for the fruits of this proclamation thus twice made to the people and have endeavored to publish them. We found the greater portion in the acts of Mayor Harper. The city financial department should be managed by an independent board, whose opportunity of leisure will afford them time to attend to the public business. Members of the Common Council are too much occupied with other duties to give their attention to finances of the magnitude to which the city fiscalities have attained to.

The business of the Common Council is all transacted at nocturnal sittings, and when it is proposed to change these to daily sessions, it is objected to on the ground that the members have their own affairs to attend to in the day time. What a commentary this plea! Yes, what a commentary!! The public business of this great city cannot be transacted except when the members have done their own work and are fatigued enough to be in their beds instead of spending half the night in hurrying through important affairs. Better call into departments competent men who neither want office nor its patronage. Such men will reduce the Taxes to one half the present rates.

From the Journal of Commerce of March 10, 1845.

THE CITY COMPTROLLER'S REPORT.

To the Editors of the Journal of Commerce:

Gentlemen: From your remarks in the Journal of Wednesday, upon an extract from the Comptroller's report in relation to the city expenditures, it would appear that you were under the impression that "the decrease of expenditure after the American Republicans came into power, compared with the previous year, was nearly a thousand dollars per day."

As such is not the fact, I desire to disabuse your minds and those of your readers of this erroneous impression.

In making the comparative Statement shewing this result, the Comptroller has included in the sum of $2,336,484 55, which he denominates as the total expenditure for the support of the city government, the payments made upon common schools, the floating debt, and the interest on the city debt, on which neither Common Council could exercise any control; the former being controlled by the Board of Education, and the two latter being a payment on the floating debt, and the payment of the annual interest on the city debt, and are therefore improperly called expenditures in the sense intended by the Comptroller. These items will be found in Schedule D, p. 12. Comptroller's Report. If you will turn to page 60 of said Report, you will find that the preceding Common Council paid, within the 4½ months comprising their term of the financial year, the instalment of the floating debt, amounting to $50,000, and $402,803.46 of the interest on the city debt, which amounted to $561,899.86. The present Common Council paying the balance of said interest within the 7½ months, amounting to but $159,096.46. These are fixed sums which must be paid within the financial year, no matter what Common Council may be in power. No discretion can be exercised in regard to them. Yet the Comptroller, from the mere circumstance of the previous Common Council's having paid the larger portion of the interest on the city debt, together with the instalment of the floating debt, within a short period of the year, leaving but a small portion of the interest to be paid within a larger portion of the year, in the time of their successors, has endeavored by drawing a comparison between these payments, with reference to the relative terms of the two Common Councils, to make it appear that there has been "an average *decrease* of expenditure for the support of the city government, by the present Common Council, of $96,164.53 *and eighty-two hundredths of a cent* per month," for per "seven and a half months a total decrease of $736,234.03 *and sixty-five hundredths of a cent.*" Now, from the foregoing statement it would appear, that the "decrease" in the amount of these payments, was not occasioned by "the present Common Council," as stated by the Comptroller; but was produced by the payment under the preceding Common Council, of the floating debt instalment, and nearly the entire amount of the interest on the City debt required to be paid within the financial year.—It will be perceived, therefore, that these payments have nothing to do with the action of either Common Council, in increasing or diminishing the expenditures of the city. It is of no importance whether they were paid in the first or the last of the year, a sum having been levied in the taxes to meet their precise amount. The calculation of the Comptroller, therefore, going to the 82-100 part of a cent, falls to the ground.

The statement contained in the other extract of the Comptroller's report, is equally fallacious in its results. The extract is as follows:—

"Total expense of support of the City Government for the year 1844, deducting the amounts paid on account of Floating Debt, interest on City Debt, and Common Schools, as will be seen on page 61, is $1,423,751,65, of which amount there has been expended by the late Common Council in four and a half months to May 15th, 1844,..... $616,643,09
There has been expended by the present Common Council in seven and a half months, to December 31st, 1844,..... 807,108.56

$1,423,751.65

Expenses four and a half months to May 15th, 1844, by the late Common Council, $616,643.09; the average expenditure per month, is.....$137,031.79
Expenses seven and a half months to December 31st, 1844, by the present Common Council, $807,108.56; the average expenditure per month is.... 107,614.47

Decrease,..... $29,417.32

Showing an average *decrease* of expenditure as per above, for support of the City Government by present Common Council, of $29,417.32 per month, being for seven and a half months, a total *decrease* of $229,679.92.

The above statement is exclusive of amounts paid on Floating Debt, interest on City Debt, and Common Schools,"

The above statement embraces all the objects of expenditure for the support of the City Government which are subject to be influenced by the action of the Common Council. The Comptroller, however, in making the comparison of expenditure between the late and present Common Council, with reference to the time of each within the financial year, has based his comparison upon false premises, and is therefore entirely fallacious in his conclusions, as I shall endeavor to show; and if I be in error in any of my statements, it will afford me pleasure to be corrected by the Financial Department

Bills incurred within the last three weeks in December are usually thrown over and paid in January, and February. Consequently the first 4½ months of the late Common Council included the expenses of three weeks of the preceding year, while the last three weeks of the succeeding 7½ months have been thrown into January of the present year. It follows, therefore, that the comparison should be as 5¼ months to 6¾ months, instead of as 4½ to 7½ months assumed by the Comptroller. On page 61 of Comptroller's report, the actual expenditure made within the 4½ months is set down at $564,678.84, and the sum of $616,643.09 assumed by the Comptroller as the expenditure within that period is made up by adding the sum of $51,964.25, paid by the present Common Council for expenditures said to have been incurred during the preceding Common Council, by which the 4½ months of their term is made to assume the payments of the succeeding fortnight, as well as those of the three weeks preceding that term; while the succeeding 7½ months under the present Common Council, has only been charged with the amount of the payments actually made therein, for a portion of the expenses incurred within the period; the sum of $51,964.25 being deducted from the payments made within that time, and added to the expenditures of the previous 4½ months, while the expenses incurred by the present Common Council within the 7½ months, which have been thrown into the present year, are not included in the sum stated as the expenditure of the 7½ months. I have personal knowledge of several bills which have been thrown over from November to Febuary for payment

There is another important element to be taken into consideration in making a comparative statement of the expenses of each portion of the financial year. All the monthly salaries for December are paid in January, and all the quarterly salaries in February; consequently these salaries should be deducted from the amount charged to the first 4½ months of the year, as having been paid for what was incurred and due the previous year, and they should be added to the amount paid within the last 7½ months, as having been thrown over into the present year for payment. That such is the fact I think I shall be able to prove pretty clearly from the Comptroller's report.

The total amount of salaries for twelve months (Compt. Report p. 12.) is $233,554,17, of which amount the previous Common Council paid $104,298.66, and the present Common Council but $113,582.40; whereas the proportion of salaries due to 4½ months, as any one may see by calculation, is only $87,583, and that for the succeeding 7½ months is $145.97; showing that the late Common Council paid $16,715.66 for salaries of previous year within the 4½ months and that the present Common Council have thrown over for payment in the present year $32,388.60, which should have been added to the stated expenditure for salaries during the 7½ months while the amount over-paid in the previous 4½ months should be deducted from the stated expenditure for salaries during that period, making a difference in the item of salaries alone of $49,104.26. Yet the Comptroller, as if he really did not comprehend the figures contained in his own report, attributes the large payments for salaries in the 4½ months and the comparatively small payments for the same in the succeeding 7½ months, to a reduction made during the latter by the present Common Council. On page 83, under the head of salaries, he says—"Upon this account there has been a considerable reduction, as will be seen by a comparison of the figures." The total reduction of salaries made by the present Common Council, after deducting additions, amounts for the year to but $5000, commencing from the first of June, which leaves but 7 instead of 7½ months. All the quarterly salaries, being those $1000 in amount and upwards, and all the monthly, salaries have been thrown over, as before stated, into the present year for payment; leaving but 4 months of the quarterly salaries and six months of the monthly salaries to have been

paid within the 7½ months. The average time upon which the reduction has been made so far as relates to the figures referred to by the Comptroller, is 5 months, —the reduction on which would be but little rising $2000. Yet the Comptroller's statement would make it appear that the reduction in the salaries by the present Common Council, has been at the rate of upwards of $49,000 per annum.

To prove the position which I have advanced, to the understanding of the most feeble comprehension, it is only necessary to go to the "figures" in the Comptroller's report. For this purpose I will refer to the salaries in the Street Commissioner's Department, which have not been altered, (page 51). The Street Commissioner has paid, prior to 15th May, $1250; subsequently, $122.28; making a payment to the Street Commissioner within the 4½ months of the preceding Common Council, of $1372.28, The payment to Street Commissioner for salary during the 7½ months succeeding is $1,127.00. The amount of salary actually to the Street Commissioner for the 4½ months, was but $955.61; but two months of the quarter of the previous year having been thrown into that period, swelled the amount to $1372.28; whereas the actual amount of salary due to the Street Commissioner for the 7½ months preceding was $1544.39,—two months of the salary amounting to $417.37 having been thrown over to the present year for payment.—The same will apply to the salaries of the other officers of this department, with but one trifling exception, as will be perceived by the following extracts: The assistant Street Commissioner received within the first 4½ months $499.99; within the last 7½ months $566.09; first clerk within the first 4½ months, $434.40 and within the last 7½ months only $436.04; second clerk; $333.-26 for the first 4½ months, and but $311.09 for the last 7½ months. Draughtsman and redemption clerk $511.76 first 4½ months; $529.09 last 7½ months. This salary was increased $250 from previous year. Superintendent of wharves, $419.35 first 4½ months, $393.35 last 7½ months, and so on with others. This "difference in the figures" has not been occasioned, as would be supposed, from the Comptroller's remarks, (page 33,) from a reduction in the salaries, but from the causes of which I have given a demonstration; none of these salaries having been reduced by the present Common Council.

The basis of the Comptroller's comparison of expenditure, involves other inaccuracies which may be gleaned from his report; and although those which have met my observation relating to the expenditures in the Street Commissioner's Department are not large in amount, they are nevertheless important, as showing the partial tendency of that report.

The late Street Commissioner on leaving Office, paid into the Treasury several unexpended balances on various accounts, amounting in aggregate to upwards of $6000. The Comptroller credits the expenditures on these accounts, with the balances thus returned in making up the actual expenditure of the year, as compared with the previous year; but gives no credit for them in comparing the expenditures under the respective Common Councils. For instance, on page 83, the Comptroller states, "From the expenditure of $30,885.51 (for Street expenses) should be deducted the amount of $2,375.56, paid into the Treasury by the late Street Commissioner." "This will make the actual cost for the year $28,509.98." On pages 45 and 6, in giving the comparative expenditures under the former and present Corporations, the expenditure of the former on this account is stated to be $8,138.45, whereas the sum of $2,375.56, acknowledged to have been paid in by the late Street Commissioner, should have been deducted from it, which would have shown the actual expenditure to have been but $5,762.88 for the 4½ months, which being added to the sum of $22,747.09, the expenditure stated to have been made during the 7½ months under the present Corporation, would show the actual expenditure to have been $28,509.98 as stated by the Comptroller on page 83.

To what extent similar inaccuracies run through the report, of course I am unable to judge from the short time I have occupied in examining the report; but enough has been shown, I trust, to controvert the statements contained in the extracts to which I have referred, and that the calculations have been made upon false premises, producing results erroneous and unworthy of credit.

The cases which I have given are but examples of the inaccuracies in relation to all the other branches of expenditure, of which the two sums assumed by the Comptroller for the comparison are composed. That there are other expenditures made within the 7½ months, not included in the Comptroller's statement of the expenditures for that period, I refer for proof to the report of the Superintendent of the Alms-house, (page 79 Comptroller's Report,) in which it is stated that the bills incurred by the Alms-house Department, remaining unpaid at the end of the year, amount to the sum of $19,494; and the same may be safely said of all the other Departments.

The only correct data upon which to make the comparison of the expenses of the two Common Councils, would be, to ascertain the exact amount of bills paid in the 4½ months belonging to the previous year, and deduct such amount from the expenditure charged by the Comptroller to that period, and the amount of bills incurred by the present Common Council within the succeeding 7½ months, which has been thrown into the present year, and add it to the amount charged by the Comptroller as the expenditure within that period. A more satisfactory comparison, however, would have been, to have compared the expenditures of the present Common Council with those of their predecessors, during the same period of the previous year. I have no doubt but that such comparison would be strongly in favor of the previous Common Council. I have reason to believe that an unusual amount of the expenditure of the 7½ months of the present Common Council, has been thrown into the present year for payment, not only to favor the comparison which has been presented to the public in the Comptroller's report, but to conceal the fact of a large increase of expenditure during the year 1844,—the same having exceeded the amount levied for the purpose, $177,115.05, and having exceeded in a large sum the amount expended the previous year. Where then is the saving or decrease in the City expenditures, to the amount of $220,679.9240-100ths for the seven months, referred to by the Comptroller? Where is the decrease of a thousand dollars a day? I submit the following statement made up from the Comptroller's report. Page 84 gives the information in relation to the watch, and lamps and gas, which being deducted from the sum of $1,423,747.65, given as the total expenditure, gives the expenditure for the County contingencies as I have stated them. The Comptroller, however, has not tated in his report the amount levied for County contingencies, including, also, cleaning and repairing streets. This amount fortunately has been obtained from Doc. No. 20 of the Board of Supervisors, who made the levy in October last.

	1844.		
	Levied.	Expended after deducting all receipts.	Excess of expenditure over tax.
Watch	$266,000.00	$270,329.76	$4,329.76
Lamps and Gas	120,887.36	129,021.87	8,134.51
County Contingencies, including cleaning and repairing streets	865,750.24	1,024,400.02	158,649.78
Total for support of city Government	1,252,637.60	1,423,751.65	171,114.05

The importance of this subject to the public must plead my apology for occupying so much space in your columns. E.

CITY COMPTROLLERS REPORT.

We give in connection with the above review of the City Comptrollers report, from the Journal of Commerce of the 10th instant, a reply to this review from the Journal of Commerce of the 17th inst. It is due to the city Comptroller, to give both, in the same number of our paper.

We purpose to post up the pages of the Comptrollers Report in order that our readers may see for themselves the items of the Report of 1845 with the items in the Report of 1843. A comparison of the two together will demonstrate in what items there is a difference, barring the accounts and bills kept back both years past the balancing day. The Comptroller's report should state the amount of bills suspended or unaudited at the close of the year.

REPLY.

From the Journal Commerce of March 17, 1845.

CITY COMPTROLLER'S REPORT.

Your correspondent E. has labored hard to bring distrust upon the Comptroller's annual report, and talks about "inaccuracies, false premises," &c., just as if the Comptroller, in this public document, had been playing the part of a political partizan, and would make a report "showing results unworthy of credit."

Now this whole matter is very simple. The Comptroller has made just such a report, and upon the same principle *as former reports*, giving a true statement of all payments and receipts during the financial year 1844. Had he done what E. desired, *he would have done what no previous Comptroller has ever done*, that is, make the separation between the last and first days of the year. If any former Comptroller has ever done this I am not aware of it, and would thank E. to point out any such case. Certain I am that no such thing was done in the report of 1843.

But the great cause of complaint arises from the fact that he has divided the financial year into two parts showing thereby that the People have saved money by their changing their City Rulers, and entrusting the management of the affairs of the City to the American Republican party. He thinks "a more satisfactory comparison would have been to have compared the expenditures of the present Common Council with those of their predecessors during the same period of the previous year." Mr. E. has this done at his hand, so far as it relates to the Alms House department, where there has been hitherto the greatest waste and prodigality. He will find his plan adopted in the Report of the Superintendent, pages 78, 79 and 80, and should silmilar results be the consequence of adopting the same plan by the Comptroller for the other departments, it would prove quite unpalatable to Mr. E. and his party. This report shows that the cost of supporting paupers and prisoners 7½ months, from 16th May to 31st December, 1843, by the former administration, was 16 cents per week more than it cost the *corresponding* 7½ months from 16th May to 31st Dec., 1844, by the present administration; which amounts to a saving on 3757 persons, at 16 cents per week, of $601.12 per week, and to $19,536 for 7½ months.

It appears by the same report, that it cost the late Common Council 102⅔ cents per week, to support 3933 paupers and prisoners from 1st Jan. to 16th of May, 1844, which is 28 cents more than it cost the present administration the residue of the year. Now I have good reason to believe that there will be all that difference in favor of the present administration for the first 4½ months in 1845; but will only put down the same as before, 16 cents per week on 3933 persons, and we have a saving for 4½ months or 19½ weeks of $12,271, which added to $19,536, makes the sum of $31,807 saved by the economical management of the present Commissioners of the Alms House, the Superintendent and Officers, all of whom, as I believe deserve credit for bringing about this result.

There is no escaping this result, for you are taken on your own ground. Your party is weighed in your own balance and found wanting. I pin this to your sleeve for you to look at until after election, and challenge you with fair play to take it off.

If you would like to know how such a result has been brought about, I will tell you, on condition that you keep it a profound secret until after election; or if it gets out, you deny it stoutly in your party papers. It appears by a late report of the Commissioners of the Alms House, that it took 551 barrels more flour to feed 128 less average number of persons, 7½ months of the former administration, than under the present, which by the rule of *loss and gain* makes 1102 barrels flour *wasted* in one year, at an average cost of $4.74, making a loss of $5,223.43; to which add $1.46 per barrel on 6,630 bbls. consumed during one year, being that much over its real value, amounting to $9,752, and you have the sum of $14,975.48 waste, and for bad purchasing in one year.

It also appears by the Commissioners' report, that with the same number of horses and carts, the former commissioners paid $114.31 for lighterage and cartage while the present commissioners paid only $16.25.

The public tables have been abolished at the Alms House and Penitentiary, which will save from $5,000 to $8,000 per year. There is now a commutation with most of the officers by which they support themselves at a stipulated sum, instead of receiving their support from the City Government. There has been a contract made to feed the Prisoners at the Penitentiary (200) at 6¼ cents per day. There is a saving in many other ways, which I have little doubt will equal $50,000 at the termination of the year.

In the other departments we will give Mr. E. a few items which he cannot dispute. The Tea Room which cost the former administration $2,065 in 4½ months or at the rate of $6,506 per year, was abolished by the present Common Council as soon as they came into power. Carriage hire, which cost under the former Common Council $946 in 4½ months, or at the rate of $2,522 per year, has cost the present Common Council $110 in 7½ months, or at the rate of $178 per year, making a saving of $2,344 for this item.

The present Common Council have collected of second hand dealers, for licenses, $1,550, when nothing had been collected by the previous Common Council for a year.

I will ask E. how it happens that, under the head of *sundries*, among the Almshouse items of the former administration, is put down the sum of $3,182.20? This is a large item for *sundries*, and the people ought to have a bill of particulars. Will E. also tell us how it happens that the former Common Council paid $12,861 for counsel fees and costs in 4½ months, from 1st Jan. to 16th May, 1844, while the present Common Council have paid only $1,894? I suppose that we shall be told that these are *hold over* bills; but when I look back into the previous year, 1843, I find there was paid in that year, $22,358 making the

enormous sum of $35,219 paid in 16½ months for counsel fees and costs by the former administration.

The truth is, that we the people of this city, have had a nightmare resting upon us, for years, in relation to the management of our city affairs, and many have been heard to say—"it is of no use; we can never hope for a better state of things." We have tried a new party for nearly a year, and without former experience, they have saved us tens of thousands, and, if continued in power, will no doubt save us still more in all the departments where it is practicable. In the Watch, and Lamp, and some other departments, no party can effect a reduction of expenditure, for the city is continually increasing.

We say, separate our city government from national politics; have it understood, we are to vote as we please without being called to account by party leaders, and all will be well; our city will be governed for the benefit of the *citizens*, and soon *stereotyped politicians* and leaders of cliques will find that "Othello's occupation 's gone." F——

TAXATION.

The increase of Taxation is injurious to any political party, such has been the experience of the world from the commencement of imposing public burdens from the earliest periods of these exactions to the present time. The Mamelukes in Egypt lost their power by that very measure. The increase of Taxes enable those in power to be more profuse in public patronage, but even the increase is not sufficient to satisfy all their office-seekers and operators, and the discontented soon become the disaffected, and thus the party is weakened, and besides this, the tax payers who are very numerous are made sensible by the presentation of their tax bills, that all is not right, and they will quietly and uinfluenced by polical preferences cast their votes in favor of a new candidate who promises to make retrenchment. At the termination of every election the great majority of the office-seekers are disappointed, for there is not offices for one in twenty of the applicants, and thus disappointment weakens the successful party at the next election.

EQUAL TAXATION.

President Jackson in his proclamation issued on the occasion of the nullification doctrines of the State of South Carolina being put in practice, remarked that "human ingenuity had never been able to frame a system of Taxation which operated with perfect equality.

INCREASE OF TAXATION IS DESTRUCTIVE.

In a speech recently made at a meeting held in Birmingham, England, before the Anti-Corn-Law League, by William Brown, Esq., of the Commercial House of Brown, Shepley & Co., of Liverpool, some facts were stated by Mr. Brown, which will be of service to put on record in this land of freedom,

Mr. Brown said: "Let us take warning in time of the fate of Cadiz, Venice, Augsburg, and other cities that were once important, and which are now no more."

Mr. Brown quoted Lord Chatham, in which he said:

"Give freedom to Commerce, and lighten the pressure of *Taxation* and you will have no complaining in your streets."

Again he says:

"A rigid and efficient system of *Retrenchment* enabling us to take off the Taxes upon salt, upon soap, upon leather, upon iron, and a few other articles of subsistence, our advantage from position, from coal mines, and from the skill and energy of our people, are so considerable, that were it not for *unwise* laws, and *overstrained Taxation*, Britain for ages to come might continue to be the great workshop of the world."

AGRICULTURE.

The experienced Agriculturalist is a man of science, his farm is his laboratory. The employment of the farmer tends to more real enjoyment than any other employment, for the the rewards of labor are sure, and in that proportion that neither stimulates the mind to excess, nor depresses it to injury.

The farmer from boyhood to old age is a student in the school of Agriculture and is always a learner.—The Book of Nature is an unending volume, and its pages are always open to those who are disposed to peruse them.

There is abundance to learn and nature is continually making new developements as the wants of the human family make these needful. The great Treasury of Nature is an inexhaustable store.

THE NATIVE PARTY.

The results of the election of Aldermen, and Assistants depend upon the quality of the candidates.—Mr. Jefferson, required as a qualification for public office, that the person who was to fill the place, should be both "capable and honest." The difficulty with members of the Common Council is, that they are called upon to perform duties which their experience has not qualified them to understand, but the greatest difficulty is, that all important measures are decided upon by a political "*Caucus*," which is the most incompetent body in existence. A member of the Board of Aldermen who had not acquired knowledge of a single note of music, might with as much propriety be called upon to perform the duties of chorister as some of the duties which are now required of them. If the democrats nominate their very best men, they will doubtless carry the election of members of the Common Council; but if they do not, and the natives select the best men as candidates, they will undoubtedly succeed. Mayor Harper will undoubtedly be re-elected, by a large majority, and the Democrats would do well to nominate him instead of any other candidate. Dudley Selden, Esq, has been nominated by the Whigs as their candidate for Mayor. Mr. Selden is a man of talents, an able lawyer, has been a member of Congress, and much in public life, is a worthy citizen, and if elected will no doubt discharge the duties of the office to the satisfaction of every body.

LAMP POSTS AND LAMPS.

On the north west corner of South and Fulton Streets is a lamp which should be dismissed from service. There is a wooden roof built under it, and the boards of which this roof is made, are an inch thick, and not transparent. On the north-west corner of Chamber Street and Broadway, and on the south-west corner of Read Street and Broadway, the lamp glasses are covered over with awning plates four inches thick, and 12 inches wide. These are not transparent On the North West corner of Harrison and Hudson Streets a hole is cut through a wooden awning to let the light through. On the north-west corner of Murray Street and Broadway is a lamp which is partially obscured by the awning beam, but a hole is made in this beam sufficiently large to enable the people at the City Hall to see one side of the lamp. These are specimens of the want of knowledge in the use of artificial light, and explains the why and wherefore of the largeness of the lamp tax.

RECEIVER OF TAXES.

The amount of Tax in 1845, collected by the Receiver, by voluntary payment, prior to the termination of December 31, 1844, was $881,661.56.

The amount of Tax of 1845, collected from Jan. 1, 1845, to Feb. 15. 1845, by voluntary payment to the Receiver was $649,484.07.

The amount received from the date of the delivery of the assessment rolls to Feb. 15, 1845, was $1,531,-145.63.

The amount assessed for 1845, was as follows:

Watch,	$265,995.72
Lamps,	120,877.69
Water,	469,340.40
Schools,	379,542.00
Streets,	95,393.01
Mutes and Blind,	2,494.10
County Charges,	388,321.05
State Tax,	259,556.05
	$1,981,520.12

Thus it will be seen that all of the tax but 450,-374.49 was collected before it fell due, by voluntary payment, which is the most satisfactory evidence of the advantage of one office of Receiver for collecting, over the old system of 17 ward collectors and of a saving to the Tax payers of more than Forty Thousand dollars per annum. This change was made by the Anti-Assessment Committee, with the aid of the Hon. Solomon Townsend, who was at that time a member of the House of Assembly.

THE MILL TAX.

The City Comptroller on page 10 of his Report, States as follows:

"Amount due State on Mill Tax,		281,607.66"
The balance in the Treasury is stated at,	56,730.03	
Warrants outstanding,	65,208.58	
		8,478.55
The Receiver collected of the Tax of 1845, prior to the close of Dec. 31, 1844, $881,661.56. (Ses page 13 of Comptrollers Report.) Of this sum about $120,-000.00 belonged to the State Treasury.		120.000.00
		$128,478.55

More than $200,000,00 was due to the State Treasurer on the first of the present month, which money had been collected and used by the City Treasury. and on the next day after our paper was sent to the City Hall, viz: on the 6th of March, which contained a paragraph stating that the mill tax had not been paid over—$95,000.00 was deposited to the credit of the State Treasurer as soon as the Banks were open.

ROCK MILLS.

Rocks and Sand reduced to powder by mills constructed for the purpose, will be found by the farmer a most important means of promoting the growth of vegetation. These require mixing and a knowledge of the properties of each is necessary to make the composition.

Some rocks are injurious to Vegetables and will destroy it in the same manner as the pummice of a cider-mill is seen to do when left upon the surface, or as sour apples do when left to rot under the trees.

MANURING LANDS.

Farmers who allow the manure destined to be put upon lands to remain in the barn yards, exposed to the frost and rains, loose nine-tenths of that which is useful to vegetation. It should be kept dry and warm in cellars under barns until required for use.

THE SPIDER.

The Spider is a wonderful insect and of extraordinary industry. I have been instructed in watching the labors of the Spider, and felt humbled by the teachings of that wonderful insect. From the Spider man learned the use of the diving bell, for this insect fills a ballon with a small volume of atmospheric air and descends to the bottom of deep water and rises again at its will.

I have watched the Spider weaving its net with a skill that surpasses human art and when it was broken have witnessed the same industry and the same skill in repairing the injury. Many of the threads of the Spider are as transparent as the atmosphere, and cannot be seen until the apartment in which they are suspended is filled with fine dust, and the dust adheres to the invisible thread and this brings it in view.—During a mountain excursion last October, I found in some rock specimens I was collecting from the mountain top, a most beautiful fabric of a spider and of most exquisite whiteness, and of great lustre. I was about bringing it away when I descovered a large spider emerging from it. Finding that it was his habitation for the winter, I returned, unwilling to deprive this industrious insect of so beautiful and so warm a covering, which it had prepared with so much labor for its winter habitation I have had a spider as a near neighbor to my writing table for two years, and have always been careful that no one disturbed it, for I found profit in the instructions of the hated insect. In the autumn it sheds its old coat and leaves it altogether and retires to a winter habitation.

NEW-YORK MUNICIPAL GAZETTE.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, APRIL 9, 1845. [VOL. I....NO. 32.

TAXTION.—FREE BANKS.—NEW BILLS.

We give below the copy of a Bill brought in by Senator CORNING. Mr. Corning is a practical business man, and it is therefore surprising that he should bring in a bill in this shape.

IN SENATE, March 4, 1845.

Brought in by Mr. CORNING, and reported by him, from the Committee on Banks and Insurance Companies.

AN ACT

To amend the act entitled "An act to authorize the business of Banking."

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Every banking association and individual banker, doing business under the act entitled, "An act to authorize the business of Banking," passed April 18, 1838, and the acts amending the same, is hereby declared to be subject to taxation on the capital of such association or individual banker, including the securities deposited with the Comptroller on obtaining circulating notes, in the same manner and to the like extent as incorporated banks are liable to taxation on their capital.

§ 2. It shall be the duty of every such individual banker, on or before the first day of September next, and annually thereafter to file in the Comptroller's office, and in the office of the clerk of the county in which the principal office or place of doing business of said individual banker is located, a statement specifying the whole amount of the capital used by said individual banker in the transaction of his business, and also the amount of securities deposited by him with the Comptroller, the place at which he transacts his banking business, and also the place of residence of said inidvidual banker, specifying the town village, or city, and the particular locality of said office and place of residence, which statement shall be verfied by the oath of said individual banker; and for every omission to file such statement, such individual banker shall be liable to a penalty of five hundred dollars, to be sued for and recovered by the Attorney-General in the name of the People of this State, and to be paid over when recovered, to the Treasurer of the State; and the Comptroller shall also in such case proceed to collect and sell the securities in his office belonging to such individual banker, and deposited for the purpose of redeeming the circulating notes furnished to such individual banker, in the same manner as if such individual banker had failed to redeem the circulating notes issued by him in the manner required by law. But the Comptroller, on receiving a satisfactory excuse, may remit said penalty and permit said banker to continue his business, provided such banker shall have paid all taxes unpaid on his capital as aforesaid, in the town village or city, and county in which his business is transacted, or shall have paid an equivalent amount to the proper authority of such town, village or city, and county, as the case may be, for the use and benefit thereof.

§ 3. If the collector or other proper officer of the town, village, or city, authorized to collect or receive any tax from any banking association or individual banker, shall not be paid the amount of such tax within the time allowed for the collection thereof, and if no property of such association or banker can be found by him to satisfy the same, in the manner required by law, he shall certify such fact to the county treasurer of the county, who shall report the same to the Comptroller, and the Comptroller shall thereupon proceed to collect and sell the securities in his office, belonging to such association or individual banker, for the purpose of redeeming the circulating notes issued by such association or banker, in the same manner as if such association or banker had failed to redeem said circulating notes; and if any surplus of said securities remains, after paying said circulating notes, the Comptroller shall out of the same pay any tax against said association or banker remaining unpaid as aforesaid. The said county treasurer may also, at the time of making said report to the Comptroller, issue under his hand and seal a warrant, in the nature and as nearly as may be, in the form of an execution on a judgment at law in a civil action, directed to the sheriff of any county in this State commanding him to collect the amount of said tax so remaining unpaid, with interest and the fees of said sheriff, out of the personal property of said association or individual banker, within the county of such sheriff, and to pay the amount of said tax, when collected, to the said county treasurer. The said execution shall be under the control and direction of the Supreme Court, in the same manner and to the same extent as executions in civil actions issued out of the said supreme court: and the sheriff shall be liable under the same, and return thereof may be compelled in the same manner as in cases of executions issued out of said supreme court.

§ 4. In case the securities deposited by any banking association or individual banker, shall at any time, in the opinion of the Comptroller, be inadequate security for the payment of the circulating notes issued to such association or banker, and shall not be equal in value to stock of this State bearing five per cent. interest, to the amount of said circulating notes, the Comptroller, in addition to the power now vested in him. shall have the right to requre such association or banker to deposit additional security in stock of this State with the Comptroller for such circulating notes, until such security shall in the judgment of the Comptroller be fully adequate, or until the same in all shall be equal to a stock of this State bearing five per cent interest, to the same amount as the said circulating notes; and in default of such additional security being placed in the Comptroller's office within thirty days after being so required by him, the Comptroller may proceed to collect and sell the securities of such association or individual banker in his hands, in the same manner as if such association or banker had failed to redeem their circulating notes according to law.

SPECIAL LEGISLATION.

We give below a Bill for the special taxation of a certain description of business This bill is objectionable in its principles, as well as in its provisions. The practice of putting trammels upon trade, is bad, and should not be indulged in. Indemnity against damage and loss by fire, and by the perils of the sea, should be adequate and full, and it would be far better for the community that all institutions created for this end, should be exempt from the burden of taxation.

This could be accomplished to a great extent, by requiring all Insurance Companies receiving premiums for underwriting to retain the amount of such premiums until the policies for which these were received for, had expired. This restriction would give to the assessed the security which the excess of business had brought to the company; whereas, a company doing a large business with a very small capital, which should divide the receipts before the expiration of the policy the insured might be without insurance in case of loss from the inability of the company to pay in consequence of dividing the monies received before these were earned, as insurance premiums are paid in advance.

The object which the Legislature has in view in granting charters to Insurance Companies, is to give to persons who wish to obtain indemnity in case of loss by fire or storm, the most adequate security, and not to enable the Insurers to make large dividends. We have given in our paper of the 17th ult., the reports of the majority and minority of the Committee on Banks and Insurance Companies of the House of Assembly, and two pages of valuable statistics, all of which are very full and conclusive.

The simple and easy way to make the Tax equal and equitable could be accomplished by repealing the existing law for taxing incorporated companies and pass a new act taxing all incorporated companies and Insurance agencies upon their premiums and income, without reference to capital, but if this premium is paid out for losses the tax should be abated.—Foreign agencies should be subject to legislative supervision, not as to their profits, but as to the security afforded to the insured by their capital.

TAX UPON INSURANCE AGENCIES.

IN ASSEMBLY, February 27, 1845.

Reported by Mr. Edwards, from the Committee on Banks and Insurance Companies—read twice, and committed to the committee of the whole.

An Act to increase the tax upon foreign insurance companies doing business in the cities of New-York and Brooklyn, and for other purposes.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be paid into the Treasury of this State, on the first day of February in each year, by every person who shall act as agent for any individuals or companies not authorized or incorporated by the laws of this state, to effect insurances against losses by fire or against marine losses and risks, in effecting or procuring any insurance or insurances on property situate in the cities of New-York or Brooklyn, or when the owners of such property reside in said cities of New York and Brooklyn, although such individuals or companies may be incorporated by other states or countries, the sum of dollars upon the hundred dollars, and at that rate upon the amount of all premiums which during the year ending on the preceding first day of September shall have been received by such agent, or any other person for him, or shall have been agreed to be paid for any insurance effected, or agreed to be effected, or procured by him as such agent, against loss or injury by fire, or against marine losses or risks.

§ 2. Every person who shall act as agent for any individuals or association of individuals or corporation not incorporated and authorized by the laws of this state to effect insurances against losses by fire or marine risks, shall, before any premium is received or any contract for insurance effected upon any property in this state, make out and transmit to the comptroller a statement under the oath of such agent, similar to the statement required to be made out and transmitted by moneyed corporations incorporated by this state, according to the provisions of chapter eighteen, title two, part one of the Revised Statutes; and shall make such returns annually at the same time and in the same manner as is required of companies incorporated by this state, under the penalty of five hundred dollars, to be forfeited for the use of the poor of the county where the offence shall be committed, and shall be collected in the name of the people of this state by the district attorney of the county where the offence shall be committed, for the use of the poor thereof.

§ 3. All acts or parts of acts inconsistent with the provisions of this act. are hereby repealed.

FALLS OF NIAGARA.

The greatest cataract on the face of the earth is that of Ningara, and this is now in the bosom of a plain. The Niagara River is 36 miles in length and connects the waters of Lake Erie with those of Lake Ontario. The level of Lake Erie above that of Lake Ontario is 334 feet, and the level of Lake Ontario above the tide waters at the city of Albany is 231 feet. The Niagara River is in some places 6 or 7 miles wide, and in others less than half a mile in width. Grand Island which divides this river a part of its course above the falls is 12 miles in length, and seven miles in width in its widest part. Goat Island divides the River at the Falls. The Horse Shoe Falls, as the cataract on the Canadian side is called, is on the westerly side of Goat Island, and the American Falls are on the easterly side of this Island and these are 60 or 80 rods apart. The Horse Shoe cataract is 167 feet perpendicular fall, and the American cataract 158 feet fall. Lake Erie averages about 120 feet in depth, it is evident therefore that if the obstructions in the bed of Niagara River were removed that this lake would be entirely drained. Lake Ontario is on an average four times the depth of Lake Erie. Goat Island is on an average forty feet higher than Niagara River above the falls, and is covered with heavy timber, excepting some small spots under cultivation as gardens. This Island is connected with the main land and the village of Niagara by a bridge. The bridge is erected across that branch of Niagara River which forms the American cataract and but a few hundred yards above the precipice over which that portion of the Niagara falls with such fearful crash. The bridge is over the rapids and the water passes under it with great velocity. It was to me a most thrilling journey to pass over it. The novelty of a bridge in such a place induced me to enquire how it was possible to construct such a work in such a current. The plan adopted was to erect a crane upon the eastern shore and with this the pier and the first set of string pieces were placed: the crane was then removed to this pier and the bridge made that far and the second pier was formed in the same manner as the first and the residue of the piers were placed in the rock bottom in the same way until Goat Island shore was reached. This is a toll bridge.—The toll for a foot passenger going and returning is 25 cents. My *first* view of the falls was from the northern cliffs of Niagara River, near the Clifton House, from a point nearly opposite the American Cataract, at this point I was on a level with the surface of the water of the River above the fall. The branch of the Niagara which runs east of Goat Island falls over the south cliffs into the deep gulf below the Horse Shoe rapids, and appears at first view more like another river coming in at almost a right angle with the main stream, than like a branch of the same river. My *second* view was from the foot of the cliffs, 160 feet below my first place of observation, and exactly opposite the American fall, and distant from it but a few hundred yards. This was an interesting spot as was also the first. Between the rocks I stood upon near the water's edge and the gigantic precipice over which a mighty river was falling with a terrific crash, was an unfathomed gulf presenting an agitated surface heaved by a bosom kept in constant commotion into which the broken river was plunging with a roar the reverberations of which shook the cliffs which were above my head and rent the very atmosphere I breathed with the echoes of the thunders of the broken waters.

I observed three isolated rocks projecting above the surface of the water in the river between the northern shore on which I stood, and the perpendicular wall which formed the gigantic precipice over which that branch of the Niagara which runs east of Goat Island, falls. The rock farthest from me, could I have reached it, would have given me a nearer access—to a closer view of the stupendous cataract directly in front of my place of observation. About two hours after my first visit to this part of the river, the rock nearest the shore was accessable, and I stood upon it for some time—and in about an hour after, and still later, I reached the second rock, and in the afternoon of the same day, when I crossed the gulf in a row-boat I could have reached the third rock. The river had fallen five feet during the day. This is a common occurrence, the cause of which I will notice hereafter. The view of the great American Cataract from the rocks at the foot of the northern cliffs, and at but a few hundred feet distant, is awfully sublime, and yet beautiful beyond description. With a studied calmness I looked up and surveyed this wonderful waterfall, but not without emotion—it presented to my mind an array of magnificence and splendor that no pen can express. The sun was risen and in its rich morning dress, decked with summer smiles, the air was clear and filled with brilliant sunbeams—I was wrapped in sunshine and breathed an atmosphere filled with the brilliant rays of the solar orb—I stood upon the fragments of rocks filled with brilliant chrystals which carpeted a path once the bottom of the Niagara, which path it had chisseled through a bed of rock which underlaid the soil of a once extensive plain—I stood at the base of a gigantic cliff the rocks of which were hanging above my head and trembling at the voice of the thunder of this mighty cataract, which they echoed back with a deafening reverberation—the face of the majestic river in its depth of volume was in full view before me on its arrival at the summit of the gigantic precipice, a point which it journeyed to with a hurried motion—I saw its depth of volume when it reached the precipice, the top of which was 150 feet higher than the rock I stood upon—in a beauteous green of the softest hue—it fell, and became a pale—a whitened sheet—a mighty contrast—it plunged into an unfathomed gulf with a crash that shook the rocks, but rose again in sparkling gems of transcendant lustre. Millions of aqueous pearls and brilliant aqueous diamonds floated upon the surface of the mighty vortex forming a magnificent casket of unequalled brilliancy, resulting from the bowing down of the mighty water. Above this boiling gulf, in aqueous drapery, was suspended the curtains of a cloud, in graceful and beauteous folds, and on the surface, and within the body of this ethereal fabric the rich tints of the solar pencil were visible in the colors of the rainbow, that *memento* of the promise of Jehovah to all flesh that the world shall no more be drowned. This cloud with its memorable inscription, floated in the thin air, above the agitated waters of this mighty river, broken by a fall—vibrating with the agitation caused by the concussion produced by the fall of the mighty stream. I had walked from my lodgings to the foot of the cliffs in a path bordered by the green grass which was ornamented with brilliants resulting from the dew of evening—the green of vegetation intermixed with these chrystal gems, sparkling with mysterious life, is a lovely, beauteous and charming contrast, and was a pretty border for a path to travel in to view the greatest cataract on earth.

The music of the waters, chaunted in the deep tones of the aqueous thunders of this mighty river, impresses the human mind with awe.

The cliffs on the Canada side, opposite the American cataract resemble those of the Kentucky River. I have descended the cliffs of that river in four different places, and crossed that water course which runs deep in the bowels of the earth, but have never measured the height of the cliffs above the surface of the river, but am inclined to suppose them to be of greater altitude at some of the crossings than those of the Niagara. An observer stationed at the foot of the cliffs opposite the cataract has in view before him a perpendicular wall of near 160 feet besides the depth of that part of Niagara which runs east of Goat Island, and besides the base of the precipice which is covered with a solid column of water of an unfathomed depth. It is a wonder to look up at, for the top of it is near two hundred feet higher than the rocks the observer stands upon, and not more than 1000 feet from his place of observation, and between him and the falling river is an unfathomed gulf into the lap of which the great river pours its flood of waters, producing a concussion which shakes the rock he stands upon. Here I examined the rocks which lay scattered over the narrow margin between the river and the cliffs and found, in the lowest strata to which I could get, a beautiful sand stone of greenish cast, mottled or spotted with red, it was very pretty and when wet, presented the two colors of a brighter hue and in greater contrast. This strata is about upon a level with low water and underlays the cliffs. I had not the opportunity to examine its depth. It no doubt once formed the shore of an ancient ocean swept away by the general deluge and the sand which formed its shoals became covered by a deposite of the waters of the deluge to the depth of more than two hundred feet preserved it from the wet and it soon became aglutinated with the mineral substances of the water which were held in solution, and thus became a strata of rock or shale, I gathered several specimens of this rock for my cabinet, which are now the companions of my pen. From this place of observation I continued my walk over the broken fragments of rock along a cragged, rugged beach, frightfully narrow, toward the Horse Shoe cataract which is along side of Table Rock. The path was both difficult and dangerous to travel, and when I had reached the most distant point, at which I halted.—I cast a look above me and saw the overhanging rocks with their uncertain fastenings and soon retraced my steps with care, for the rocks I scrambled over were totterish, and with loose foundations. These rocks were richly stored with crystals, and I could have gathered tons of valuable specimens but it was a frightful place to labor. I saw many stains of blood upon these rocks which was fresh, but saw no mangled bodies in the path and could not conjecture from whence they came. It is probable that some animals or fowls had passed the cataract, and surviving the fall had dragged their mangled bodies upon these rocks to bleed. These stains were, comparatively speaking, numerous. There is danger in travelling this rugged path beneath the cliffs, where the path is narrow, and I think the danger great; the loose rocks which are spread upon the cliffs above, may fall, the rocks over which the traveller has to clamber may slip from their foundations, the river sometimes rises suddenly, several feet, and besides the human mind is in danger of becoming spell-bound in such a place as this, for it presents to the stranger visiter an untried scene that is thrilling beyond conception.

I made a second visit to the rocks below the northern cliffs, but did not venture in the narrow margin of the shore. I brought with me a hammer and chissel to break the rocks for the purpose of obtaining geological specimens, and filled my basket in a little time. In this work I bruised one of my fingers severely, which became very painful. I was at a loss to know what to do for the wound, but recollecting the numerous advertisements in the newspapers of the virtue of Connell's Pain Extractor, I went to a drug store and procured a box, bound up the wound in this preparation and obtained immediate relief.

The next place I visited was Table Rock, which borders the great cataract, and overhangs the mighty gulf into which the river plunges with a terrific crash This rock is rent and I measured the fissure it is seven inches in width and more than two feet in depth, it is an uneven and crooked fracture, and at no distant day will doubtless open and widen and the rock between the fissure and the outer edge fall into the unfathomed depths of the gulf below.—I did not pass below the sheet of water for I felt no ambition to be daring. My object was to see all that was curious and wonderful, to examine the various stratas and obtain specimens of each, and to study this wondrous page of nature with a calmness mixed with careful examinations of this locality with a view to form an opinion of the past, and to conjecture as to the future in reference to these mighty waters.

On the surface of Table Rock a hundred feet or more back from the verge of the terrific gulf over which it hangs, are little pools of muddy water collected in the indented places in the rock over which boards are laid for walking. I slipped upon one of these boards and got one foot into the mud and water, and was obliged to retrace my steps to my lodgings and change my stockings. This rock is made slippery by the spray arising from the falls and is dangerous to walk upon. The timid, as well as the foolishly bold, will do well to heed their steps when passing over this dangerous surface.

At about four o'clock, P.M., we crossed the Niagara from the foot of the path of the northern cliffs in an open row-boat, rowed by a colored man, and landed at a point on the opposite side within fifty feet of the edge of the great American Cataract. Had I not seen persons crossing constantly during the day nothing would have tempted me to have undertaken this brief and thrilling voyage, and as it was I felt an emotion during the whole time I was floating on the bosom of the agitated and boiling gulf which was far from being pleasant, but our boatman had learned well his occupation, and handled his oars with a skill and care that was to me a wonder. A musician playing with his bow upon the strings of a violin could not have been more skilled in the use of the fiddle bow than

was this sable boatman in the use of his oars. He would pause and hold his oars above the water while the boat was nearing a peculiar current, and then with a motion quick as thought would ply his oars, and then pause again, until at length with a studied motion of the oar he threw the boat on to two skids which projected into the water like a little railway and landed us and our baggage in safety at the foot of the stairs which formed the path we had to ascend to the top of the southern cliffs of the river. These stairs are a laborious ascent, but there are several resting places between the foot and the top, but I would advise all persons in feeble health to avoid the labor and fatigue of the ascent. The weather was hot when we ascended this tedious flight of stairs, and the journey was oppressive and fatiguing. At one of the resting places about midway we were within forty feet of the cataract and had a near view of that falling sheet of water in the light of the burning sun. It was a splendid sight. Our baggage was brought up these stairs by men who followed this kind of labor as an occupation. I paid seventy-five cents for taking up our baggage from the bottom to the top of these stairs, and the money was fully earned.

Our next business was to proceed with our baggage to a public house, where we took lodgings. We expected to have been visited by the officers of the Customs on crossing to the American side, but was spared this unnecessary visit. Without further delay we proceeded to the bridge which connects Niagara Village with Goat Island, and crossed this extraordinary structure. The water was running beneath our feet at a fearful rate and within a few hundred feet below made a single leap of 158 feet. This was a thrilling tour! We passed upon this bridge several Indian Females who were seated upon the plank and at work with beads in making fancy articles to sell to visitors. This was a wonderful place to traffic, and the singularity of the place added to the interest which the visitor felt in making the purchase. After reaching Goat Island we proceeded directly to its western shore in order to have a full view of the Horse Shoe Falls, the Rapids, and Little Island above the great and unequalled cataract. Goat island is heavily timbered and is profuse in its growth of vegetation. It has for its base a rock over which is a coating of earth, which latter supports the trees and vegetation which live upon it. It is a beautiful grove, and occupies a place exceeded by none other in the world for beauty and sublimity.

I stood upon the western shore of Goat Island near the gigantic cataract for some time and with folded arms surveyed the splendid scenery here presented to the view of a human being. The air was clear, the wind was sleeping, the sun was shining in all its glory, and had reached that position in the western chambers of the heavens that brought the solar rays in a line with the summit of the pillar of a cloud which rose from the broken river, and in this cloud it drew its bow in lovely colors. What a display of beauty! sublime, beyond conception. On my right, was a terrific gulf heaving with dread commotion and almost beneath my feet, but at a stretch of depth that required almost a second look to see its surface which sparkled with countless gems—the pearls of a broken river and the aqueous diamonds of this water fall all of the richest lustre, and as bright and sparkling as a pleasant thought. The roar of the fallen river was deafening, the reverberation of its thunders shook the ground on which I stood, and the gigantic trees which spread their limbs above my head trembled at every crash of the fallen water The birds of the grove were flying from limb to limb, chaunting their sweet notes and appeared happy in uniting their lively songs with the deep toned accents of the thunder of the waters. On my left, the western branch of the Niagara coursed its way; a mighty river, filled with crystal waters hastening with more than a race horse speed to the brink of a terrific precipice from which it fell into an unfathomed vortex. In the bed of this river at low water are projecting rocks which rise above the surface, some of which form little islands. A few hundred feet above this fall is the island on which a fellow mortal landed but a few months since—a miraculous escape from the horrors of the awful gulf to which he was hastening with a fearful speed. In attempting to cross the Niagara River at a considerable distance above the falls he lost one of the oars of his little boat, and shortly after broke the other oar. The current bore his little craft swiftly down the rapids and at length the boat struck upon the little island a few hundred feet above the Horse Shoe precipice. What a sensation must have possessed his bosom in this trying time. The human mind is rarely adequate to meet such a crisis, and often becomes a ruin in the very contemplation of the scene it is required to pass through. Numerous persons on the shores witnessed the distressing sight but were unable to render the least assistance, except in the aspirations of their souls which ascended up on high for the rescue of a fellow being from a horrid death. *He was saved.* In a little time, a boat put off from the Niagara side above Goat Island, containing but one man. It was a bold and daring enterprise, and great numbers were assembled to witness the attempt. The man who thus volunteered to save the life of a fellow mortal was an experienced boatman. With his frail craft he darted across the rapids and landed safely on the little isle, the man he went to rescue embraced him on his landing with emotions that can be more easily imagined than described. The next business was to return to the main land. By this time the news of the disaster had reached the ears of the wife of the man who had been thus cast upon the rocks and she hastened to the banks of the river and was a spectator of this bold attempt to rescue her husband. What an agony of suffering she must have endured in this trying moment. The boat put off from the little island and was in a twinkling in the midst of a fearful current, but skill and strength were at the same time exerted by both the navigators, and with an extraordinary effort, and the blessings of heaven, they were enabled to land upon Goat Island in safety. A shout rent the air—every heart moved with gratitude and every breast expanded with emotions too intense for language to unbosom. What a thrilling spectacle—no human being could desire to witness it, although it ended well.

I surveyed this little island as I stood upon Goat Island with a feeling that I cannot describe, for this occurrence was but a short time prior to my visit, and I trembled when I looked into the fearful chasm over which these two navigators guided their frail bark.

In a view from the western cliffs of Goat Island is a small building by the side of the Rapids on the Canada side which covers a *burning spring*. Water rises through a fissure in the rock, and with it Carburetted Hydrogen Gas, which can be ignited by a lighted taper. I visited this spring in the morning and examined it with care and also drank a glass of its water, which has a metalic flavor. The gas when ignited produces a flame of about 18 inches in heigth and burns very bright and clear. I regretted that I had not brought with me a tube containing a piece of sponge, made of *platinum*, that I could have ignited the gas without the use of fire. My opinion is that an immense body of hydrogen gas rises in the column of spray from the Horse Shoe Falls, and should I visit the falls again, I will endeavor to set this column on fire. The rock which lies next to the soil which supports the vegetation on Goat Island, is lime stone, and is about 200 feet in thickness, and this reposes upon a bed of red and green sand stone. This limestone rock is the obstruction between the waters of Lake Erie and Lake Ontario, and contains fossils, and bitumen yielding carbureted hydrogen. Remove this strata of lime stone and Lake Erie would become an extensive plain or a vast prairie. It is this obstruction which has formed Lake Erie by damming up the waters of the river until it has flooded the surface now covered by the waters of that lake. At what period this embankment was formed we have no means of determining, but we have means of determining when it did not exist, and therefore we can approximate toward the fixing of the probable origin of the falls.

This limestone strata contains animal fossils to the lowest portion of this formation. Animal life did not exist until after the creation of the solar orb, therefore this limestone was formed since the solar system was put in motion, and long subsequent to the termination of the three periods which preceded that event and which ended in the introduction of vegetation. Time commenced with the fourth day of the creation and animal life which had its beginning in the water, was introduced on the second solar day; from that time to the termination of the general deluge, a period of about 1657 years intervened. This was a great length of time, during which, and almost at its commencement a change took place in the face of the earth from the fall of water from the clouds, for we find it mentioned in the sacred volume that "the LORD GOD had not caused it to rain upon the earth, but there went up a mist from the earth and watered the whole face of the ground." We have no account of Rivers until subsequent to that time, but we have the account of seas, in that early period denominated the second day of creation, which was anterior to the commencement of time. We next come to the commencement of the general deluge, and have in the record of that event a detailed and particular account of its commencement, duration, extent and termination—from this termination to the present time, a period of 4191 years, has intervened. The deluge must have caused a vast and mighty change in the surface of the earth, for the flow of water shortly after the rain commenced must have been in tremendnous torrents, carrying every thing before it, and when it had reached its greatest height a mighty wind was caused to pass over it, which must have greatly agitated the surface on which the water reposed. It is estimated by some writers that ten thousand years have passed away since the falls have been receding from the cliffs at Queenstown to their present location, but such an estimate is contradicted by the inspired volume, and any thing which contradicts the scriptures is unworthy of examination.

In various sections of the world, at the present day, the absence of rain has continued for a series of years during which time the water upon the surface, and that which had been absorbed by the upper stratas, has been abstracted. This water and moisture has been transferred to other localities, and saturated other surfaces, and these effects are seen almost every year in our own latitude, but to a lesser extent—During the dry weather in summer, many local surfaces which had in the spring and autumn become covered with water, are left dry and become parched up with the effects of the solar heat. The lakes are subject no doubt, to the same influences, and also the surfaces which discharge the waters which fall from the clouds into these reservoirs. I see no reason why this particular surface should be exempt from the effects of evaporation and also from the same intermissions of rain from the clouds that other places are. The waters of the Erie Canal are fed by Lake Erie in the commencement of this artificial stream, and this water is carried through the various locks down a descent of 565 feet to the tide water at Albany. If the locks should be removed the current of water would soon wear a channel both deep and wide for the frost would aid it in its excavations, and the beautiful Hudson, instead of the St. Lawrence, would become the channel for the waters resulting from the melting of the snow in the high northern latitudes, and convey these floods to the ocean.

The depression of the surface of the bed of the Niagara below the present surface of Goat Island, has undoubtedly depressed the surface of the waters of Lake Erie, but when we come to compare the broad surface of the Lake with the narrow channel of Niagara River in its most confined channel, we must be convinced that it would require a great length of time to drain the Lake, unless we allow for an increased velocity of current equal to the difference in the width of surface and depth of volume. I remarked in the former part of this narrative, that during one day the river at the falls receded five feet. I have been informed that it has been known to rise fifteen feet. This is produced by the wind blowing over the surface of Lake Erie and forcing an immense body of water into the Niagara River.

From the western section of Goat Island nearest the Horse Shoe Cataract, we proceeded along its northern shore which is bounded by a frightful precipice at the foot of which is a profound gulf of unfathomed depth to the branch of the Niagara which runs east of Goat Island, and here we had another new view of the great American fall.

From this point we proceeded along the eastern border of the Island to the path in which we had crossed it, and thence to the bridge which we crossed and reached Niagara Village about sunset. I felt uneasy in returning on the bridge from the moment I again set foot upon it until I was safe again on land. A gentleman who visited the falls but a few days before us declined crossing this bridge, and the circumstance was spoken of at the falls as evincing

in the stranger great timidity. I think the gentleman discovered great prudence and caution.

It is enough to make one's head giddy to look down from the bridge into the current running between the piers of this fabric, especially when a glance is thrown at the tremendous precipice which is but a few hundred feet below it. No human being could stem this current. There is a pretty garden upon Goat Island and its groves are delightful and beautiful. I noticed the Sumac of large size, and numerous forest trees of large growth. The mandrake grows here in great abundance.

I copy from a letter which I addressed to the editor of the Brooklyn Star, and which was published in that paper of August 22, 1844, a description of Goat Island, for the spirit was in me then to write of that beautiful locality, from the inhaling the atmosphere of the beauteous grove which borders the great cataract.

Goat Island is, as I before remarked, founded upon a rock. How long a period of time has elapsed since it was built, it is impossible to say, but it is evident from the numerous fossils that are found in the lime stone strata which underlays the soil which supports its vegetation, that it is far from being primitive.

The strata of soil from decomposed vegetation, sand &c., is on an average, about twelve feet in thickness, and in this strata are embedded the roots of the trees which form the beautiful grove which shade the surface. The limestone formation is about two hundred feet in thickness, and reposes upon a strata of red sand stone, beautifully spotted with green. A beautiful foundation this, for so beautiful a superstructure, although an inward adorning.

This Island, with the exception of its northern border, is surrounded by cataracts; and this northern border overhangs a fathomless gulf, the surface of which is as brilliant as a casket of pearls, and is in constant commotion, like the incessant boiling of a cauldron. The admirer of the grand, sublime, has here a terrestrial observatory anchored in a cataract and shaken by a cataract, to stand upon.—He has a picture drawn by the pencil of nature to gaze upon —and the music of the waters, the deep toned thunders of the cataract to listen to—the sweets of nature.

Nature mingles the sublime with the beautiful.—What a place this for meditation—for contemplation! Admiration and delight are the spontaneous effervescense of the human breast, in the commingling of the sublimities and beauties of nature displayed in the magnificence—the beauty—the loveliness of this almost enchanted Isle — the soul becomes enraptured with nature's charms —methinks I could listen to the deafening peals of the thunder of the tempest, and survey the brilliant coruscations of the lightnings fire in its vivid tints, drawn by the electric pencil upon the sable page of the volume of nature, with emotions of awe, while listening to the deep toned thunder of the cataract and surveying the brilliant aqueous gems which irradiate the agitated surface of the broken waters of this lovely river and at the same time feel charmed by the concert for they are the harmonies of nature.

Silence is a stranger upon this Island—yet notwithstanding, solemnity pervades its atmosphere—sublimity surrounds it, beauty adorns it, and tranquility finds its fountain in the harmonies of nature which are constituted of the sublime and the beautiful, in all the sweetness of her charms.

I have gazed at the stranger world, the mysterious guest of our solar system, (in March 1843) and feelings of admiration and of awe fired my soul and led my thought onward to contemplate that period when this earth shall become ignited, its atmosphere expanded, and thus be forced from its orbit, and with a comet's speed flying through space, leaving in its path millions of leagues of brilliant light, the coruscations of its mighty fire, and passing onward in its course until it shall arrive within that repulsive circle in which it shall receive a new impetus, and be thrown into distant space to revolve and re-revolve, until it shall again acquire density, and at length resume its original orbit a new earth—a new creation. Yet this fire shall not consume, but shall purify and reduce this terrestrial globe to its primitive state, but the accumulations upon its surface since that period when time commenced her revolving years—shall be changed. I pause—

These rocks are shaken by the cataract; and well may they vibrate when resting upon a liquid base, and moved by such a force. Upward, but a few thousand feet, is the region of perpetual frost, beyond which that point is not far distant, where all fluids become solids; but downwards, a point may be estimated, where all solids become fluids. Upon the surface of that ocean of liquid fire, floats the foundation of these mighty cataracts, and a greater or less ebulition of this liquid mass may expand or depress this terrestrial surface, and silence or augment the roar of the broken waters of Niagara.

The terraced gardens of ancient Babylon had doubtless a thickness of loose earth greater than that upon this Island, and walls higher than those of the cataract, and these are wholly blotted out—have become a blank upon the terrestrial map, and that time will come when this Island and these Falls will be blotted out and become extinct. Babylon was the work of art, and this Island, and these walls the work of nature; but the materials of the walls of that ancient city, and that of the walls which form these cataracts, and the rock which forms this Island, were all orginally the same—and that which underlays the table land which separates Lake Erie from Lake Ontario is of the same materials, and comparatively speaking, a recent formation. This barrier removed, and Lake Erie would become a river, and cease to be a Lake. The sand stone which underlays this strata was formed by the retiring waters of a primitive ocean, leaving the marking of its ebbing tide upon the surface, where the little pebbles projected above the sand as a record of its path. This limestone formation which overlays the sand stone strata may be presumed to be the earthy matter held in suspension by the waters of the great deluge, and the depth of this deposite will not be considered too great for one subsidence, when we compare it with that of the waters of the Mississippi, in the streets of St. Louis, at two feet deep for one single flood of but a few days duration.

We need not look for organic remains in the stratum which formed the earth's crust prior to the first solar morning, for animal life had not been called into being. Vegetation preceded the creation of solar light, but animal life succeeded that event.

Beyond the first solar morning, we have no record of time, for that morning was its commencement; but there were three periods of untold duration, which existed prior to that great event, the first of which was constituted in part of a primitive evening which had no beginning.

Except from the page of nature, the history of this Island and these Falls, beyond two hundred years ago, is a perfect blank.

There is an impressiveness in all things here which is powerful; it is the voice of nature speaking to the inner man. It speaks a language which is universal, and in the deep toned accents of the thunders of the waters.

I stood upon this island border gazing at the brilliant waters—at the mighty leap of the aqueous fluid—listening to its deep toned sound as the orb of day was retiring below the western horizon; solemnity—deep solemnity pervaded the very atmosphere ere the curtains of night were drawn around—which could be seen, and felt, and realized.

There is a difference in the scenery here when viewed by the light of the rising and that of the meridian sun, compared with that of the retiring orb, which shows a mighty contrast. This is in reality, an isolated spot; the mind here partakes of the locality, and becomes isolated also, for it becomes absorbed.—Boston has its "Mount Auburn," Brooklyn its "Greenwood Cemetery," Amsterdam, on the Mohawk, its "*unfenced grave-yard*," Rochester its "Mount Hope," and Niagara Village can here have "The Cemetery of the Cataract."

What a lovely spot this for a place of sepulture, and it should be devoted to such an use. The island of the dead would lose none of its charms by such an occupation of the soil. The cataracts would not be lessened in their attractions, or the rainbows which hang above the boiling deep, become less beautiful, or the continued reverbrations of the thunder of the waters, less solemn, but all would be increased in a two fold degree by such an acquisition.

Mankind are prone to adorn the living, but, alas, are careless of that dust which is to be clothed upon with the brightness of the morning star when this earth shall have become a liquid mass. The untutored savage venerates the grave of his kindred, and treads lightly on the ground where the ashes of his race repose, but civilized man————

A few weeks after I visited the falls a young gentleman from Philadelphia, descended the cliffs under Table Rock and passed behind the sheet of water which falls over what is called the Horse Shoe precipice —in returning he was missed by the guide and never was seen afterwards. He fell into the chasm which is at the side of table rock which is of unfathomed depth and in constant commotion like the ebultion of a heated cauldron. A few days after this sad event, a young lady from Lancaster, Massachusetts, in attempting to gather a flower from the verge of the precipice opposite the Museum, which is on the northern side of the River, fell over the shelving rocks, uttering a shriek, and a cry "save me," and survived but a few minutes. These two melancholy occurrences were near together, and will be long remembered at the falls. Visitors are sometimes ambitious to be bold and daring, and approach to the very verge of table rock, which overhangs a fearful gulf. I noticed that several stranger visitors were anxious to go behind the sheet of water that falls over the Horse Shoe precipice, and were anxious to obtain a printed paper duly signed certifying to the fact, that the bearer A. B. had passed under the falls. This certificate costs a dollar. Oil cloth and India Rubber dresses are provided at Table Rock for visitors to pass under the falls.

Danger sometimes has a charm which over stimulates the mind and produces mental intoxication, and it is by no means a rare occurrence—the field of battle —the battle ship—the duelist—are all witnesses so strong in this respect, as to leave no doubt of such an influence. A sad delusion! Death is ill approached in such a path.

A motto, true in all its bearings—instructing in all its principles—that "*Discretion is the better part of valor*," is often forgotten, or rarely heeded when remembered.

CEMETERIES IN CITIES.

We copy from the volume of printed documents of the Board of Aldermen, volume 5, of the Common Council of 1839, the following:

CITY INSPECTORS OFFICE,
September 10, 1838.

The undersigned, to whom was referred the annexed resolution "To report on the propriety of continuing interments within certain limits, and his opinion of the effect which will be produced on the health of citizens by interments made in the Marble Cemeteries," respectfully

REPORTS:

That the matter referred for his consideration, being of great and vital importance to all large communities, and particularly to this city, on acconnt of its peculiar location, and the delicate and gloomy associations connected therewith, demand of him a serious and candid investigation.

Aware of the various opinions entertained of the propriety of interments in cities, he feels the responsibility devolving upon him for his opinions, and had thought of stating the reasons upon which they are founded; but they are not called for by the resolution, and therefore will briefly answer—

That he considers the propriety of continuing interments within certain limits, as solely dependent upon a few contingencies. The most prominent of which, the selection of suitable soil, the dryness or moisture of the same, holding an important relation therewith.

The offensive or dangerous effects of the decomposition of dead bodies, being influenced very materially by such causes, it often happens that dead bodies are unexpectedly met with after having been interred for years, with their form and features unchanged, and no offensive exhalations arising therefrom. This is explained by the nature of the soil in which they are found.

Two necessary agents must be present in the offensive change of the dead body, viz. heat and moisture; if one of them be absent this change does not occur.

The dead are generally deposited in the earth, where the heat is very uniform, but the dryness and moisture of the same vary materially.

Therefore, it follows, as the nature of the soil is so essentially different in distinct parts of this island, that these circumstances should have their due weight upon an enquiry of continuing interments within certain limits.

In regard to interments within vaults or cemetries, a custom new to us, but old to the world, the same importance must attach to the exclusion, however obtained of one of these agents.

The means taken to prevent the percolation of the surface water from penetrating into the interior, and the material of which they are composed, all have an important bearing upon this question.

The use of vaults for the interment of private families, requiring only to be opened, perhaps once in five or six years; or vaults for the accommodation of large numbers, perhaps open most of the time for the daily interment of bodies, require different details, but tending to the same point.

The enquiry embraces a most important field, requiring provision for the annual interment of from 8 to 10,000 bodies at the present time, in a population of nearly 300,000 people, to be increased in regular proportion with the growth of the population, and confined to limits of about eight miles in length, by a breadth varying from one to three miles; a portion of it covered with buildings, and of the vacant ground, probably not one-third of it suitable under any circumstances for interments, even if it were not wanted for other purposes.

He thinks that much of the difficulty now apparently environing us, might be met and obviated by suitable regulations easily made and enforced.

As to the second section of the enquiry—"the effect which will be produced on the health of citizens by interments made in the Marble Cemeteries," he answers, that the only two Cemeteries of this kind he is apprized of in the city, are situated between Second and Third Streets, the Bowery and Second Avenue, and between First and Second Avenues.

Their appearance above the ground is neat. The vaults below, where rest the *silent*, are dry, and as far as his observation extends, free from effluvia; although by the side of those that have been immured for years, lie bodies that have entered but months or days since. Care has been taken to select a deep, sandy and dry soil, and by cementing over the vaults to prevent the water from the clouds from penetrating; and by the selection of a stone peculiarly drying in its nature to accomplish these results.

The effects produced have advantages over the ordinary vaults constructed of brick, and some kinds of stone. In the arrangements there made, and the mode in which interments are there conducted, he does not think there is anything to interfere with the health of the Citizens.

Respectfully submitted.

HENRY G. DUNNELL,
City Inspector.

STATEMENT IN RELATION TO MARBLE CEMETERIES.

By E. Meriam.

On the 29th August, 1838, Dr. Francis, an eminent Physician of the City of New-York, Dr. Fay, and myself, visited the Marble Cemeteries in this city, constructed by Perkins Nichols, Esq.

One of these Cemeteries is situate in Second Street, between the First and Second Avennes. It is enclosed by a wall, built of marble, laid in lime mortar, twenty-two feet high from the foundation, and two feet thick. The enclosure is 450 feet in length and 92 feet in width, and contains 234 vaults. The vaults are beneath the surface of the ground; are built with marble, laid in lime mortar, arched over with the same material; and the outside of the arches are covered with cement. The floors, doors and shelves are of the kind of stone known by the name of silver gray flagging stone, and such as are used for flagging the sidewalks of some of the streets in our city.

The earth in which these vaults are constructed is a dry sand, to the depth of forty feet.

We examined these vaults with great care—found the atmosphere of them comparatively dry, and not offensive. The *roof* and *sides* of the vaults were dry; the *floors*, however were damp; but this damp is easily accounted for, upon philosophical principles. The temperature of the flagging stone differs from five to eight degrees from that of the marble, and consequently the dampness of the atmosphere, (produced by the decomposition of the bodies,) is condensed upon the surface of the floors; or perhaps this stone may also possess attractive properties, and the dampness may be caused in some degree by this property of the stone.

The coffins were mostly dry; the hinges and screws but slightly corroded. The bodies were in various states of decomposition, according to the condition in which the person was at the time of death. Some of these the flesh was hard and dry, and others in a state of decomposition; but the dry atmosphere of the vaults, caused by the surface water being excluded by the cement covering, and the chemical properties of the marble, of which the sides, ends and roof are made, have had a powerful effect upon the decomposition of the bodies; and retarded, and, to a considerable extent, prevented putrefaction.

The Cemetery, situate between the Second Avenue and the Bowery is enclosed by a wall of the same heighth and thickness, and built of the same materials as the other. It is 250 feet long and 83 feet wide, and contains 156 vaults, constructed of the same materials; but the ouside of the arches are not covered with cement. In these vaults we found stalactites hanging from the roof of the vault, like icicles from the eaves of a building. These stalactites are white, and formed of the minute particles of the marble, and lime mortar, and are caused by the surface water oozing through the arches. This surface water arises from rain and snow. The vaults in these two Cemetries are overlaid with earth to the depth of several feet. Had these vaults been constructed entirely of marble or limestone, laid in lime mortar, and the floors covered with a layer, one foot thick, of sand, previously well dried in the sun; and the rain and snow water carried off on the surface, in such a manner as that none of it should be allowed to penetrate the vaults, the only objection to interments in thickly populated cities would be removed, and the dead might be deposited in such vaults without the least danger to the health of the living. The human body, placed in such a vault after death, (in a coffin which should allow the moisture of the body to escape, and with the lid left open,) would not decompose rapidly, but gradually; and unless the corpse was that of a person very fleshy, or of a person dying of some peculiar disease, like dropsy, the flesh would dry and become hard. Limestone and marble possess very peculiar properties. The dampness which might settle upon the surface of these stone, in a vault used for interring human bodies, would form nitrate of lime, and be precipitated to the bottom of the vault and be absorbed by the dry sand.

I have seen bodies that had been deposited in lime stone caves, and the flesh was dried upon the bones and was hard, and the general features of the person remained. The nails, hair and teeth were in a perfect state of preservation. These caves were perfectly dry. I have also seen skeletons taken from mounds which must have lain there for centuries, and these skeletons were in a good state of preservation. The mounds were of conical form and high, and the bodies were several feet above the level of the surrounding land. The shape of the mound was such as not to allow the water, accruing from melted snow or rain, to penetrete it; consequently, the bodies which it contained were kept dry, and all the moisture which they contained drained from them through the sand below and left them dry.

The Reverend Mr. Stewart, missionary to the Sandwich Islands, states that he saw a great number of human bodies, in South America which had for years been exposed to the open air, above ground, and they had become perfect mummies, in consequence of the dryness of the atmosphere.

Clark, when he visited Egypt, found the atmosphere of the brick vaults, in which the dead had been deposited, *offensive;* but those constructed of limestone *were free from smell.*

Brick will absorb moisture, and a vault or tomb made of brick, will not only allow the surface water from rain and snow, (which, in our latitude, averages about thirty eight inches annually,) to penetrate, but will also absorb the moisture of the bodies, and retain the same in its putrid state unchanged. Take a brick from a vault in which dead bodies have been deposited, and pulverize it, lixiviate the powder, and the lixivium will be found to be putrid and offensive. Take a piece of marble or limestone, which has been in a like situation, and treat it in the same manner, and it will be found to yield nitrate of lime.

The ancients generally used limestone for constructing the resting places of the dead, and such was the material of the sepulchre of the Saviour of the World.

The Pyramid in which the body of Joseph was deposited, was made of limestone, and his bones were not removed from it for 150 years, when they were carried out of Egypt by Moses.

It is important that the burying places of the dead should be kept dry, that the rains and snow water should not be allowed to penetrate the ground occupied for graves or vaults.

Moisture and heat produce decomposition and putrefaction of both animal and vegetable substances. The earth, three feet below the surface, always contains heat. This is the reason why rain water cisterns, beneath the surface, do not freeze.

If you cut grass in summer, and expose it to the dry air, it can be preserved; but suppose you place it, green, into a damp brick vault, will it not rot?—But instead of a damp brick vault, suppose you place it in a dry marble or limestone vault, will it not dry? Any substance, either animal or vegetable, will putrify in a damp brick vault.

Objections have often been made to vaults under churches. They are often constructed of brick, and are damp; and a church which is drier than the vault will attract the moisture from the vault and render it unwholesome. But to limestone or marble vaults, constructed in the manner here directed, there cannot be a single well grounded objection urged. Such vaults might be constructed in any dry sandy soil, in the most populous city on the earth, without the least detriment to the health of its inhabitants. Upon the whole, I consider the Marble Cemetery in Second Street, nearest the Bowery, as decidedly and in every respect superior to brick vaults, or vaults constructed of any other description of stone than the limestone species, of which the marble is one; and the Cemetery between the First and Second Avenues, a great improvement of the first, (inasmuch as the surface water cannot penetrate the roofs;) and the Cemetery which Mr. Nichols contemplates building, if built according to the plan herein detailed, will be entirely unobjectionable, and will afford to the living an opportunity to dispose of the dead in a manner more satisfactory, and in a way more consistent with the enlightened spirit of the age. Instead of any impediments being thrown in the way of such an undertaking, every facility ought to be afforded, to enable him to accomplish the work, and be encouraged to continue his labors. I see no possible objections to constructing this description of vaults above ground, or at least making them two tiers deep. The lower vaults would be better protected from water, and the upper ones could be made secure from the atmosphere.

These remarks have been written in much haste, and during the hurry of business; but, in the main, they contain my full views upon the subject, although a little more leisure might have enabled me to have expressed my ideas more clearly.

Very Respectfully,

E. MERIAM.

New-York, September 5, 1838.

STATEMENT

By J. W. Francis, M. D.

New-York, Sept. 5, 1838.

To Perkins Nichols, Esq.

Dear Sir,—The statement of Mr. Meriam in relation to the Marble Cemetries is so ample and so accurate, as to supersede any further description of them at this time. I have repeatedly visited the Cemeteries since their first appropriation to the objects intended, and am most ready to assert from the nature of the soil in which they are built; the materials of which they are composed, and the masterly manner in which they have been erected, that they are admirably adapted to secure the great intentions of the projector. An acquaintance with the structure of vaults, and the manner in which decomposition goes on therein, derived from very many examinations, for a period of nearly thirty years, convinces me that the Marble Cemetries are wholly free from the objections usually urged against such establishments in populous cities, and that the evils which are alleged to be caused by this mode of interment as generally conducted in vaults, do not apply to those which you have erected. I have never found any noxious exhalations in the marble Cemeteries, they seem remarkable for their antiseptic properties, and their preservative powers are evinced in the extraordinary examples which they afford of sustaining the state of the physical features of the

dead so long, and in retarding the progress of those changes to which dead animal matter is inevitably doomed. It would swell this note to a greater length to assign my reasons and detail the facts upon which this decision is made up. You may fearlessly declare to all whom it may concern, that the Marble Cemeteries and their contents can never be assigned as a cause of pestilence and death. Most respectfully,

JOHN W. FRANCIS, M.D.

More attention is now being paid to laying out cemeteries, and I have for that reason introduced the three statements which are above. Doct. Francis, of the city of New-York who penned the last statement as above, is one of the most distingnished of medical and scientific men of our country.

Some time since, I visited the Greenwood Cemetery on Long Island, it is about two miles distant from Brooklyn. The grounds enclosed are quite extensive and handsomely laid out in avenues and walks, shaded by numerous trees forming beautiful groves. A high fence is built around these grounds. I noticed that the Birds were quite numerous, for here the unfeeling sportsman cannot pursue and distress and destroy these pretty creatures, which here chaunt their sweet notes over the graves of those who repose in dust. The fence protects the groves and the birds from the visits of the thoughtless and cruel gunners.

I noticed several tombs in this garden of graves which are ornamented. Care should be taken to select that species of stones for tombs which does not absorb moisture, for where moisture penetrates, frost will soon follow, and the expansion by freezing soon destroys the fabric.

Tombs to be durable, should be wholly below the surface and may be surmounted by an earthen mound to turn off the rain and snow water.

Death was but little known in our world for the first nine hundred years, but since the termination of that period the records of mortality have been abundant.

The Patriarch Abraham, as early as the year 2144, reckoning from the commencement of solar time, purchased the Cave of Macpelah for the last resting place of his beloved consort, and his mortal remains were also conveyed to the same resting place three years after. Jacob, the father of Joseph, who died in the solar year 2315, was placed in the same cave. Here we have a record of one burying place in early time for a period of 171 years. The knowledge possessed by Abraham was derived from the early inhabitants of the earth. Shem, the son of Noah was living at the time of the death of Sarah and of her husband Abraham. Shem lived near four hundred and fifty years on earth with his father Noah, and Noah lived near six hundred years on earth with his gaandfather Methuselah, and Methuselah was 242 years old when Adam, the primitive inhabitant of earth, died. Abraham therefore possessed that knowledge from one of the inhabitants of our race who survived the deluge, and this individual was near 100 years old when Methuselah, who had been a neighbor of Adam 242 years, died. This example of Abraham and his family independent of thousands of other considerations, should have an influence with the present inhabitants of earth to cause them to have care for the resting places of the dead. The dust which has worn an earthly crown is trodden under foot, and that dust which will be clothed with immortality and eternal life is treated in the same way. This should not be. What we term death is not an extinction of life—but a suspension of animation—a sleep—a rest. The living are careful to provide a habitation while living and this but for a temporary residence, surely they should be as careful to select a resting place for those ashes which are to sleep in dust till the resurrection morning. The graveyard is a useful place for the living to resort to—a profitable field for meditation. The records which are chisseled in the rock are full of instruction and witness to the brevity of time and the uncertainty of its continuance to him who treads the earth in which the ashes of the dead repose.

A SLEEP ABOVE THE CLOUDS.

There is a sweetness in a sleep above the clouds which give a charm to rest, and refreshment to midnight slumbers.

I have reposed in sweet, quiet, and refreshing sleep in the quietude of a high atmosphere, upon the mountain top, above the clouds.

Such stillness, so profound,—such quiet, so peaceful and impressive—that it seemed to me that all nature was at rest.

My pillow was made of the sweet foilage of vegetation—my couch of the tender branches and leaves of the mountain wood, and my habitation of the same material. In such a house and on such a bed it was a luxury to sleep. The damask drapery of the palace lacks the sweet *aroma* of the mountain wood, with the green branches of which the walls of my humble habitation were adorned.

What a pillow this to meditate upon, and what a place this to meditate—while breathing the air above the clouds, all producing emotions in the human breast which no pen can unbosom, no human language can express.

The solemnity of silence—so impressive—so instructive, so beautiful—and to be witnessed in an atmosphere so high as to be relieved from its greater pressure, in which man, is in reality, and not in fancy, in another state of existence—for it is in the breath of man in the language of the pen of inspiration that he is made a living soul, and the air he breathes is the very essence of his mortal life.

Night, in the high atmosphere is sublime, and it is beautiful—the spangled vault of the mighty firmament with its myriads of brilliant worlds dotting the unbounded ocean of space, present to the human vision a display of magnificence. of splendor, and glory, far, far beyond the comprehension of the finite mind—to the most distant of these shining worlds within the reach of vision *thought* travels with the speed of the lightnings fire, *for thought is electric*, but it finds no rest in the distant world, its atmosphere is inaccessible to the mind of man dwelling in the flesh, for its territories are a blank in the page of human knowledge. Thought travels back and descends to the lower terestrial surface which is beneath the dark volume of the clouds, and these piles of watery vapor in which the lightning reposes, it passes, and finds a resting place amid scenes which are familiar.

Sleep, kind messenger to the mortal frame, comes gently and quietly to the chambers of the human mind in these lofty regions and whispers it away, and occupies its place for a brief space of time, but departs at the waking hour, leaving a blessing in its place. How mysterious—how incomprehensible—how wonderful, and yet a reality—a solemn, beautiful reality.

In such a place as this it is a pleasure to go to sleep, —it is pleasure to sleep—for sleep is sweet—it is calm —it is undisturbed—it is quiet and refeshing.

No terrific dreams come in the midnight sleep of this pure atmosphere, for the air is full of life and buoyant and is filled with the sweets of ethereal fragrance.

A still higher atmosphere could be reached on more elevated mountain summits where sleep would be more lasting, and so durable that a human being who should reach the particular altitude in an aerial car would doubtless fall asleep and remain in its embraces until the car descended to a lower atmosphere where the lungs would become filled with air of a greater specific gravity.

There are two instances on record that came within the reach of my observation, where an aeronaunt fell asleep in the night time in the higher atmosphere and awoke when arriving near the earth. A human being floating in the air subject to the tossings of the various currents of the wind would not indulge in sleep unless it came unbidden to the chambers of the mind.

I witnessed the beauties of a charming morning upon the mountain top, I saw the golden orb as the terrestrial sphere on which I stood revolved and lifted me above the shadow of the broad Atlantic which curtained the eastern sky—I saw the ethereal ocean of vapor which constituted the clouds which formed a sable canopy above the heads of those who were upon the earth's common surface.—Yes, I saw clouds piled on clouds, far, far beneath me, and these changing continually, and upon their surface rested a flood of solar light as beauteous as it was brilliant. The vast surface of vapor resembled an ocean of spray crystalized by frost, but of such uneven surface that some portions appeared like gigantic cataracts, others like deep ravines and valleys, others assumed the shape of high hills, extensive plains, terrific precipices, and overhanging glaziers, and these were continually changing and presenting different shades of light and brilliancy in proportion to the depth of their respective volumes.

The high mountain top at midnight in summer, and also in an early morning hour, is an observatory which is well worthy the fatigues required to be endured in the upward and downward journey—it presents a picture in the great volume of Nature that forms one of the riches adornings of its pages.

Man, above the clouds, as I have said, is another being,—his vision is increased in a tenfold ratio, and his sense of hearing is changed, for there sound has no echo,—no reveberation strikes the ear.

The wind comes not here in its furious blasts, as is often noticed on the common surface. Such is the testimony of the high mountain forests—mute witnesses, but nevertheless their evidence is conclusive. I could not find a single tree upon this high mountain top uprooted by the storm. The trees are stinted in growth, twelve feet being the greatest extent of their altitude, and perhaps allowance should be made for this in estimating the force of the wind.

WATER SPOUTS.

The Rev. Isaac Anderson, in a letter published in the Murfreesboro' Telegraph, Tenn., states that on the evening of the 27th of July last, not less than one hundred water spouts descended from the clouds upon Chiloawee mountains, and that the water from each spout fell with such momentum as to force away into the earth ten or twelve feet, and tear out a large channel in its way down the mountain, carrying with it rocks, trees and roots, and depositing them at the base of the mountain.—*Journal of Commerce, March* 21, 1845.

WATER SPOUT IN 1813.

In the summer of 1813, I travelled through Washington County, in this State, on Horseback. The weather was exceedingly hot. To the left of the road I was travelling and at several miles distant I discovered a heavy black cloud hanging over the Rupert mountains, but no clouds were near me. On reaching the village of Salem, through which a small creek runs, I discovered the inhabitants a considerable distance ahead of me running in great confusion, on coming to the creek I discovered its banks were overflowing with a flood of water, fences, hog-pens, chicken-coops, and hay were floating down the creek which greatly surprised me for no rain had fallen where I had been travelling during the day.—On enquiry I found that a cloud had broken upon the Rupert mountain and discharged so much water as to produce this sudden and wonderful flood. I heard no more of this extraordinary water fall until 1837, when I was speaking of the occurrence to Chief Justice Savage, and he informed me that he resided at Salem at the time and recollected the flood and he had visited the spot upon which the cloud broke, and that it presented an extraordinary appearance. The water excavated a large hole in the ground to a considerable depth and circumference, and that rocks and earth were removed by the force of the water to a considerable distance. Judge Savage also informed me that before the creek began to rise at Salem Village, that a man on horseback came down upon the bank of the creek at full speed, and without hat or coat, hallooing at the top of his voice that the "water is coming—take care of your fences,—take care of yourselves," but those who heard and saw him supposed he was crazy, and paid no attention to what he had said until the flood came and confirmed his report.

In the summer of 1810. a cloud broke in the night time upon the Clarendon mountains, in Rutland Co., Vermont. The quantity of water discharged was immense, and produced such a flood that the family of Jonathan Parker, of that town, who resided in a large two story house upon the plain, were obliged to retreat from the chamber windows of the building which had been floated from its foundation by this extraordinary water spout. Rocks of immense size were rolled for great distances by the water, and the torrents cut a channel in the earth which remains now to be seen.

BIRDS.

We have here placed on the same page, three several notices of Birds, copied from the Journal of Commerce of last month. The first and third of these notices are from the pen of GERARD HALLECK, Esq., of New-Haven, Conn., one of the editorsof the Journal of Commerce.

THE PRETTY BIRDS.

The other day one of the editors of this paper received from a naval officer, formerly a pupil of his, who has recently returned from a voyage to South America and the Mediterranean, 23 birds and a butterfly, all perched upon one little tree, the body and branches of which are wound with moss and lichen, looking as natural as life. The birds comprise 22 varieties, many of them decked with splendid plumage, and all in excellent order. Looking at them from a little distance, a person would expect to hear them break forth into singing. Much as we were gratified with this generous token of remembrance from an esteemed friend, we could not help regretting that so many lives should have been taken, and so many harps silenced, for our sake. But we comforted ourselves that we were not accessories till after the fact, and that the same, also, was probably the case with our friend. And now, as the best amend we can make to the feathered tribe, we re-publish the following article, which first made its appearance in the Boston Courier a year or two ago, and which we hope will be heeded by every man and boy in the land.

"God heareth the ravens when they cry."

SPARE THE BIRDS.—The Courier lately copied an article on this subject from the New England Farmer, versus the birds. It certainly has some little appearance of reason, but it is all of the most selfish kind. The writer may be a philanthropist, so far, at least, as "himself and his family" are concerned; but he is an antiphilobirdist of the most inveterate class. His whole argument is, "They eat some of *my* cherries and other fruits, whereas *I* want every one of them for *my own* special enjoyment; ergo, let us murder all the birds." This reasoning is not altogether conclusive;—and besides, it is not very liberal, hospitable, or humane. He is exceedingly tenacious of his *own* rights;—but have not the birds their rights also? I think they have. They may be unwritten rights; but they are the sacred, original, unalienable rights of nature.

When God created the earth and its animals, he provided food for all, and gave them the right of taking it from his great store house. The trees and bushes, at his command, bore delicious fruits, suitable for man and his monkey brethren, and for certain kinds of birds. They were as much given to the latter as to the former. But man, assuming the right of the strongest, has cut down millions of these trees and bushes, reserving a few for his own special use. What natural or moral right had he to destroy the means of sustenance for hundreds of millions of animals, which God himself had provided for them, and freely given them? The birds not finding their own proper food in its wild and natural state, now take it where they *can* find it; and this too, *innocently*, from the instinct implanted in them by God himself, and fully believing they have a perfect right to it. The birds gather this food ignorantly, whereas man robs the birds of their means of sustenance *knowingly*, and with the clear perception that it was given them by the great Father of all. The birds might say to mankind, "You take our life, who take the means whereon we live." But man is not even satisfied with this *constructive* murder: This writer, who facetiously or ironically signs his name "*Justice*," is for positive, deliberate, bloody murder—for shooting all the birds in cold blood. He is not satisfied with robbery and starvation: nothing but the life-blood of the innocents will satisfy him. "Myself and my family" are all the world to him. They are so magnified in his microscopic view, that nothing else in nature is seen: all else is in eclipse.

"He leaves his carriage in the barn and it is defiled by the swallows." Then let him shut his barn-doors and windows; or, if a circulation of air is required, let him apply lattice-work doors, or something of the sort. But he complains that another kind of swallows build in his chimneys. This is easily prevented, by placing a coarse wire net-work over the chimney tops. Indeed, most of the evils he complains of, are easily prevented. He should consider, that if he has treated these little fellow-beings so ill, in robbing them, and taking away their just rights, he cannot complain if they retaliate by robbing *him*; and surely he should not grudge a little trouble and expense in keeping them off, without killing them.

"The birds sing." True, he says;—but he had rather hear "his family" sing and rejoice, while they are selfishly eating up ALL the fruits. Perhaps *he* may, but *others* do not. Other lovers of nature, and partakers of the delights enjoyed by all animals—the happiness of all God's creation—prefer the thankful and joy-inspired songs of the birds, to all the music of "his family," however charming the latter may be to *his* ears. *He* is only *one* in the creation. He should not arrogate to himself the privilege of making everything submit to *his* notions of right and of taste, and forget that others have equal rights with himself. If he never thinks of the rights of birds, nor delights in their songs, let him, notwithstanding, bear in mind the claims of others of his *own* race.

He is afraid our legislature will, by and by, make laws for the protection of birds. Bless his simple soul, they have already done so. It is a statute crime *now*, to kill birds at certain times of the year; and in some of the other States, it is forbidden to kill certain birds at any time of the year. I fear Mr. *Justice* does not live on the great road, to hear the news:—or he must be, at least, some twenty years behind the age. We wish him more light, more cultivation, more humanity, more philosophy, more consideration and respect for natural rights, bowels of compassion, more sympathy with all of God's animal creation; and, in addition, a pair of *periscopic* spectacles, by means of which he may *look* AROUND *and to a distance*, beyond the contracted limits of "MYSELF," and "MY LITTLE FAMILY."

"The merciful man (says holy writ) is merciful to his beast;" and why not to birds? I suppose the love and enjoyment of life may be as great in a bird as a man, and the agonies of death as excruciating.

> Even the poor beetle, that we tread upon,
> In corporal sufferance feels a pang as great
> As when a giant dies.

"Justice" should bear in mind, that when he shoots a bird, he not only takes the life of that *one*, but that it probably has a "family" of three or four, which are left to starvation, unsheltered from the cold dews and winds of the night, and from the drenching rain, suffering the tortures of a protracted death. Let him think of this, and when he is eating the cherries and strawberries thus preserved for "himself and his family," let him imagine his *own* three or four youngest children, in an upper room, stripped entirely naked, the roof and ceiling taken away, exposed to the cold and the rain, without food or drink, thus lingering, in prolonged agony for days and nights, till death relieves them; then, with his table loaded with delicious fruits, his children around him, and thinking of the mothers he has murdered, and the sufferings of their orphan families, let him go to supper with what appetite he may. MERCY.

March 12. 1845.

THE BIRDS.

MESSRS. EDITORS:—It is said that happiness is made up of agreeable sensations; that those who confer such sensations, confer happiness; and that happiness is the stuff that life is made of. I believe this, and therefore consider myself much indebted to you for the publication of an article in your paper today in defence of the rights of the BIRDS; and I thought that the best way I could repay you would be *in kind*, by letting you *know* the good you have done.

I believe that man has yet to learn that this beautiful creation was not designed for him alone, and that he will never enjoy that state of happiness of which he is susceptible, until he learns not only to respect the rights of his fellows, but those of every other portion of sensitive existence. As to the extent of these rights, it would not be proper for me to give my opinion through the columns of a commercial paper; but you may, if you please, publish this from

March 12, 1845. STEWART.

THE PRETTY BIRDS.

COMPLIMENT RETURNED.—Our readers will remember that we recently published a good article headed "Spare the Birds;" at the same time expressing a hope that it would be heeded by every man and boy in the land. It was an earnest plea in behalf of the feathered tribe, based upon their natural rights, their usefulness in the destruction of insects, the gratification to the eye afforded by their plumage and motion, and to the ear by their music. The claims of humanity were also urged.

This publication was made on Wednesday morning last; and in the course of the day it was scattered far and wide. The joy and gratitude which it diffused among the birds, may be estimated from the fact that on the following morning they waited upon the writer's family in a body, at his residence in New-Haven,—the number present being, as nearly as could be calculated, from 2500 to 3000. The blue-birds sent the largest delegation; next, the robins; then the canker-birds, snow-birds, &c. As it was impossible for so large a number to be received in person h e greater portion of them very considerately took their positions on the different trees and fences about the yard, while a sub-committee of about 250, comprising say 100 blue-birds, 75 robins, 40 canker-birds, and 35 snow birds, with perhaps small representations from other tribes, presented themselves near the window of the sitting-room, most of them gathering around, upon, or among the branches of a young cedar 25 feet distant; and such a chirping, fluttering, and cooing,—such pretty colors and motions,—have rarely been heard and seen before. Not only the sub-committee, but the whole delegation, from every tree and shrub and picket, raised a grand chorus, such as was never heard before, nor any thing in comparison to it, by any who witnessed the celebration. The only mortifying circumstance is, that the *writer was not present*, (otherwise we should probably have a speech to report,) having been engaged at his usual drudgery in New-York. The sub-committee were however entertained in the best manner which circumstances would permit; an ample repast being provided for them,—for the cedar was covered with berries,—which they partook of with an excellent relish, and appeared to enjoy the interview quite as much as did their honored guests. It continued for about two hours; when fearing that they should be burdensome, they withdrew, but repeated the visit on the following day, much in the same manner. The robins were uncommonly large and fat, and in fact the whole delegation, and especially the members of the sub-committee, were highly respectable in appearance, as we have no doubt they were in reality. They have our best wishes for their continued health and happiness.—*March* 18, 1842.

A BEAVER DAM.

In a tour across the plains of Upper Canada, between Lake Erie and the head waters of the River Trent, I was informed that a large Beaver Dam was within a mile of the path I was travelling. A kind friend residing in the neighborhood was so obliging as to offer to go with me to see this work of a race of animals which are now but little known among the settlements of white men. I gladly availed myself of his offer. He harnessed up a span of horses and attached them to a strong road wagon with which we set out. The road was rough and hilly, but we were prepared for such a path, and therefore found no difficulty in getting over the ground. When within a few rods of the dam we left the wagon and walked to a pretty little brook which ran through a valley and there found a dam seven feet in height and 310 feet in length which had been built by a little community of Beavers.

The settlers in this neighborhood cut a channel through the dam and let the water off, but the dam remains entire with the exception of this opening of about three feet

wide. The angles of the dam are obtuse, the locality well chosen, and as much science displayed in its construction as human ingenuity developes. The Indians had a great regard for the Beaver on account of their extraordinary skill. A settlement of the Onantonaba Indians is within eight miles of this place. From the top of this dam I obtained a large piece of fossiliferous rock resembling in appearance black marble. This I brought home with me as a relic of this ruin and as a valuable geological specimen.

I measured the length of this dam, with the angles, and both together are three hundred and ten feet. This dam is seven feet high at the highest part and when first erected must have exceeded ten feet. Some of the largest trees in the forest grow on this dam. I have inspected most of the ancient works in the far west, and there are few that exceed this dam in the skill of construction. I walked this dam for some minutes, with feelings of admiration mingled with regret. Of admiration at the skill and industry of the Beaver; and of regret that an animal, possessing such *intelligence*, should be destroyed by men who lay claim to be also intelligent. The Indians, ere the white man came, spared the Beaver; but since, both the Beaver and the Indian are fast becoming extinct, and ere long it will be said of the North American Indian, in the language of Logan, " that not a drop of their blood runs in the veins of any human being.

BABBOONS.

The Journal of Commerce of the 29th ult., states thus, " The following paragraph from Bombay papers are given in the Hong Kong Register. On the 2d ult., Taukeewall, a small town on the river Gambia, was stormed by a column of about two hundred Babboons, who assailed the natives with great ferocity, biting, and pelting with sticks and stones in their attempt to carry off what provisions they could find in the village.— The inhabitants made a stout counter assault with cutlasses and muskets, more deadly weapons than the monkey's could command. In a running contest near 100 were captured and since sold, several are here, and seem by their antics to have forgot the old cause of their captivity."

ELEPHANTS.

A few years since a town in Southern Africa was attacked in the night time by a herd of Elephants and nearly destroyed.— The natives had committed some depredations upon some young elephants and these animals came in the night time and took revenge.

PUBLIC AUDITOR,

In Boston, all bills paid out of the City Treasury are audited by an officer specially appointed for that purpose. In Philadelphia the accounts are audited by a Board of City Commissioners, and there should be such a board in the City of New-York.

TABLE OF DISTANCES.

The following table of distances shows the great extent of the interior with which the growing city of New-York is connected. The City of New-York is dependent upon its interior trade, for it is that which brings to its shores the commerce of other nations. In proportion as this trade is increased by cheap and abundant avenues, so will be its prosperity, but if the City Government assumes to put up turnpike gates on its borders to make a revenue to support politicians from the business of the country, New-York will suffer, and the interior trade made to run into other channels.

LAKES

ERIE, HURON AND MICHIGAN.

TABLE OF DISTANCES.

Places.	Intermediate.		Buff.	Cle.	Detr.	Chic.
Buffalo	Dunkirk	45	0	191	372	1049
Dunkirk	Erie	45	45	146	327	1002
Erie	Conneaut	28	90	101	282	957
Conneaut	Ashtabula	13	118	73	254	929
Ashtabula	Grand River	30	131	60	241	916
Grand River	Cleveland	30	161	30	211	886
Cleveland	Black River	20	191	0	181	856
Black River	Vermilion	10	219	28	153	828
Vermilion	Huron	10	229	38	143	818
Huron	Sundusky	10	249	58	123	798
Sandusky	Toledo	50	259	68	113	788
Toledo	Monroe	28	309	118	63	738
Monroe	Detroit	35	337	116	35	710
Detroit	Ft. Gratiot	70	372	181	0	675
Ft. Gratiot	Pt. A. Barks	60	442	251	70	605
Pt. A. Barks	Th. Bay Isl.	75	502	311	130	545
Th. Bay Isl.	Presque Isl.	30	577	386	205	470
Presque Isl.	Mackinaw	60	607	416	235	440
Mackinaw	Maniton Isl.	80	667	476	295	380
Manitou Isl.	Milwaukie	220	747	556	375	300
Milwaukie	Racine	20	967	776	595	80
Racine	Southport	12	987	796	615	60
Southport	Chicago	48	999	808	627	48
Chicago		00	1049	856	675	00

DISTANCES

From New-York to Buffalo and Intermediate Places by Steamboat and Railroad.

Places.	Intermediate.		N. Y.	Alby	Utica	Aub.	Roch	Buff.
New-York	Albany	145	0	145	238¾	318	395	469
Albany	Schenectady	16	145	0	93¾	173	250	324
Schenectady	Hoffman's Ferry	8½	161	16	77¾	157	234	308
Hoffman's Ferry	Crane's Village	3½	170½	25½	68½	147¾	224¾	298½
Crane's Village	Amsterdam	3	173½	28½	65	144¼	221¼	295½
Amsterdam	Tribe's Hill	5½	176¾	31¾	62	141¼	218¼	292½
Tribe's Hill	Fonda	5	182¾	37¾	56¼	135¼	212¼	286½
Fonda	Spraker's	5½	187¾	42¾	51¼	130¼	207¾	281½
Spraker's	Pallentine Bridge	3	196	51	42¾	122	199	273
Pallentine Bridge	Fort Plain	3½	199	54	39¾	119	196	270
Fort Plain	St. Johnsville	5½	202½	57½	36¼	115½	192½	266½
St. Johnsville	Little Falls	10	207½	62½	31	110½	187½	261½
Little Falls	Herkimer	7	217½	72½	21	100½	177½	251½
Herkimer	Cuyler	6	224½	79½	14	93½	170½	244½
Cuyler	Utica	8	230½	85½	8	87½	164½	238½
Utica	Whitesboro'	4½	236½	91½	0	79½	156½	230½
Whitesboro'	Oriskany	9	243	98	4½	55	152	226
Oriskany	Rome	7	246	101	7½	72	149	223
Rome	Verona Centre	7	253	108	14½	65	142	216
Verona Centre	Oneida	5	260	115	21½	58	135	209
Oneida	Canistota	6	265	120	26½	53	130	204
Canistota	Chittenango	7	271	126	32½	47	124	198
Chittenango	Kirkville	4	278	133	39½	40	117	191
Kirkville	Manlius	2	282	137	43½	36	113	187
Manlius	Syracuse	8	284	139	45½	34	111	185
Syracuse	Geddes	2	292	147	53½	26	103	177
Geddes	Camillus	6½	294	149	55½	24	101	175
Camillus	Halfway	4½	300½	155½	61½	17½	94½	168½
Halfway	Elbridge	4	305½	160	66½	15	90	164
Elbridge	Auburn	9	309	164	70½	9	86	160
Auburn	Cayuga Bridge	11	318	173	79½	0	77	151
Cayuga Bridge	Seneca Falls	5	329	184	90½	11	66	140
Seneca Falls	Waterloo	8	334	189	95½	16	61	135
Waterloo	Geneva	7	337	192	98½	19	58	132
Geneva	West Vienna	10	344	199	105½	26	51	125
West Vienna	Canandaigua	12	354	209	115½	36	41	115
Canandaigua	Victor	11	366	221	127½	48	29	103
Victor	Pittsford	10	377	232	138½	59	18	92
Pittsford	Rochester	8	387	242	148½	69	8	82
Rochester	Churchville	13	395	250	166½	77	0	74
Churchville	Bergen	4	408	263	169½	90	13	61
Bergen	Byron	7	412	267	173½	94	17	57
Byron	Batavia	7	419	274	180½	101	24	50
Batavia	Attica	11	426	281	187½	108	31	43
Attica	Darien Centre	6	437	292	198½	119	42	32
Darien Centre	Alden	5	443	298	204½	125	48	26
Alden	Lancaster	10	448	30	209½	130	53	21
Lancaster	Buffalo	11	458	313	219½	140	63	11
Buffalo			469	324	230½	151	74	0

CITY COMPTROLLER'S REPORT.

We have no room for any remarks upon the city Comptroller's Reports in our present number, and besides it is so near election that is an improper time to discuss the City Financial documents. This Report is not made up in the old fashioned plain way that the Comptrollers report for 1830 was made up. We have both reports before us. That for 1844 requires to be posted up like the items of a blotter. It looks very much like the Report of the Committee on Annual Taxes of the Board of Supervisors of September last of which 10,000 copies were ordered to be printed.

ALMS HOUSE BILL.

The Corporation have laid an anchor to windward in reference to the Alms House appropriation, by including $350,000 in the Annual Tax Bill more than will be required for City purposes, and this Bill the Legislature have already passed, and it has become a law. Two of the Corporation functionaries went to Albany to urge its immediate passage, and besides the Corporation have a resident functionary at the Capitol.

THE MILL TAX.

Since our last paper was issued the State Treasurer has received nearly one hundred thousand dollars more of the Mill Tax from the Corporation of New-York which was collected by the Receiver prior to the 15th of last February.

DUTIES OF ALDERMEN.

The Journal of Commerce contains an article in relation to the duties of Aldermen with a schedule of different offices pertaining to the same individual functionary which number 11. The Legislature should require another duty to be performed by them, which is, to write their own reports. Aldermen who never learned a note of music might with as much propriety be called upon to play upon the clarionet as to perform some of the duties now required of them. Alderdermen should hold no other office but that of a member of the Common Council. A Merchant would not entrust the command of his ship to a man who never studied navigation, and yet will vote for a man to be the Judge of a Court who would not pass the examination which a schoolmaster must submit to who is a candidate for a teacher in a village school.

DISCRIMINATING TOLLS.

Unequal Taxation is unjust, and so are discriminating tolls, or duties.

CITY GOVERNMENT.

The whole power of the City Goverment is exercised by the Common Council, and it is therefore a legislative despotism.

Municipal Gazette.

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EDITED BY E. MERIAM.] NEW-YORK, APRIL 23, 1845. [VOL. I....No. 33

NEW-YORK STATE CANAL DEBT

By a Report made to the Legislature by the State Comptroller it appears that the whole amount of Bonds issued by this State for the various Canals, is $27,108,122.22 of which amount there has been paid $6,394,216.64, leaving now outstanding $20,713,905.58

The following is a statement of the Canals and the amount of the cost of each work:

Erie and Champlain Canals	$8,079,245.51
Erie Canal enlargement	9,787,000.00
Oswego Canal,	437,000,00
Cayuga and Seneca Canal	237,000.00
Chemung Canal,	663,600.58
Crooked Lake Canal	120,000.00
Chenango Canal	2,420,000.00
Black River,	1,506,000.00
Genesee Valley Canal,	3,739,000.00
Oneida Lake Canal,	50,000.00
Oneida River improvement,	69,276.13
	$27,108,122.22

The Erie and Champlain Canal Debt has been reduced to $1,721,724.87.

The Erie Canal was commenced in 1817 and completed in 1825.

The State Bonds are signed by A. C. Flagg, Comptroller and countersigned by Jonathan Thompson President of the Manhattan Company. The transfer office is kept at the Manhattan Bank in the city of New-York.

The interest on the state debt is paid quarterly and more than a third of a million of dollars of this interest is paid annually to a single banking house in Wall Street, the oldest firm of bankers in the city.

The Comptroller states that $3,592,039.05 of the auction duties, paid by the auctioneers in the city of New-York, has been applied to the construction of the Erie and Champlain Canals. This duty comes ultimately out of the consumer, and therefore the Erie and Champlain Canals have been made by citizens of other states uniting with those of New-York who have been the purchasers of goods sold at auction.

Up to the first of January, 1845, there has been paid into the State Treasury as a duty upon Onondago Salt consumed within and without this State upwards of three millions of dollars, which money has mostly been applied to the construction of the Erie and Champlain Canals.

NEW-YORK CITY STOCKS.

			Amount on interest.
5 per cent stocks of 1820 and 1829,	due 1850	250,000	12,500.00
Public building stock	1856	515,000	25,750.00
Fire Loan stock	1851	500,000	25,000.00
Fire Indemnity Stock	1868	375,088	18,754.00
5 and 6 floating funded do.	1848	200,000	11,000.00
Water Loan Stock	1858	3,000,000	150,000.00
" " "	1860	2,500,000	125,000.00
" " "	1870	3,000,000	150,000.00
" " "	1880	978,354	48,917.70
" " "	1847	120,305	8,421.35
" " "	1852	890,207	62,314.49
" " "	1857	989,488	69,264.16
4, 5 and 6 temporary water loan	before 1847	1,158,544	69,512.64
		14,476,986	776,434.74

There is in addition to the above sum, a temporary city indebtedness amounting to near two millions of dollars.

There are no records kept of the City Bonds either in the office of the Mayor of the City, or in the office of the Clerk of the Common Council, and both these officers sign these Bonds. This is all wrong. All Bonds issued should be recorded in the office of each officer who signs these obligations.

THE HUDSON — MOUNTAIN GAP.

During the month of October, 1844, we made a geological excursion among the mountains of Rockland and Orange counties, during which we visited the top of the Dunderburgh mountain. It was a beautiful morning when we were upon that height, and here we had a fair view of a portion of the Hudson River, and of the Steamers and vessels passing through the narrow strait between the two mountains, through which the tides of the great Atlantic ebb and flow. We ascended a stunted tree and seated ourselves upon its expanded branches, and looked down into the chasm beneath the rocky precipice, but not without emotion. It is a wondrous place and the view here presented to the beholder was a rich reward for the labor of climbing this terrestrial observatory. In no place that we have ever been have we seen such a wonder as is here presented,— a mountain rent to give passage to the ocean's tides. What convulsion has rent this mountain range human records afford no information, but we have the record of the rocks and these mute witnesses give evidence of internal fire which has heaved the base of these mountain ranges. We found on the top of Dunderburgh a stone weighing about two pounds which on examination proved to be pummice stone, and we treasured it up as a valuable geological specimen. The steamers, we have said, pass through this narrow strait which is walled up on each side to the height of one thousand feet with solid rock. It is bounded by precipices and its volume of water is an unfathomed gulf. The wind in passing through this narrow path is compressed into so narrow a limit as to increase its force, and woe, woe to the steamer which is wrecked here unprovided with life boats. The shrieks of the affrighted passengers would reverberate from rock to rock and echo among the cliffs of these adamantine walls while time should last, and every whistling wind would bear on its wings the heart moving sound.

I am unable to account for the depth of water in the chasm between the Dunderberg and and Break Neck mountains. I have not examined the hydrography of the surface to the north of these mountains to enable me to determine if here was once a water fall, the falling water of which has chisselled out this vast chasm, but it is evident to my mind that some powerful force must have wrought this deep excavation.— The river below this race is not so deep. If it had been the effect of the wear from the falling water it would be reasonable to suppose that in the course of time the earthy matter held by the water in suspension during freshets would precipitate and fill up these deep indentations, but such is not the fact. If this chasm was originally the result of fire, there may be some active current of subterranean gases which prevent the bottom from becoming covered with new accumulations, or there may be stratas beneath the rocks which form the mountains base through which the waters of the distant surfaces find an outlet.

The rocks which form these mountains are granitic and of various proportions of composition, and it is more than probable that magnesia and limestone stratas underlay them, for both lime stone and magnesia rocks crop out but a short distance below, and the water which rises from under these heights is impregnated with lime, magnesia and common salt.

The top of Dunderburg affords the most splendid site for a public house for summer resort that is to be found upon the Hudson and can be reached by a carriage road. It is but about 46 miles from New-York.

LIGHTNING.

The brig Corsair bound from New-Castle, England to New-York, put in Halifax in distress. She had been out 84 days. On the 18th of March she was struck with lightning, two of the crew were instantly killed, and two are seriously injured, and are now sick. *Three lightning wires costing a dollar each would have protected this ship and her crew.*

THE STEAMER SWALLOW.

This race horse of the waters has become a wreck, and the rock on which she foundered has been made a grave stone in the bosom of the Hudson, and although unlettered, presents a record which makes it a monument of death—a monument which casts an additional shade upon the atmosphere of this locality in the mournful history which enshrouds it.

Upon this rock, when mantled with darkness and surrounded by the commotions of a cold and chilling storm, the Swallow, loaded down with human beings, made an awful shipwreck.

A terrific catastrophe, this, to chronicle, a painful scene to narrate upon paper, and to contemplate even at this distance, but to those who participated in its trials and its agonies, it was one of awful moment, for death was riding on the storm mantled in the robes of darkness.

The human mind is inadequate to the crisis which the passengers were here in an unexpected moment summoned to meet. Man in the hour of danger and of trial, is a frail being, and at best in such a scene but a child in the exercise of judgment.

The sacrifice of human life was great—but the wonder is that it was not greater, for the confusion must have been awful, and this added to the ignorance of the cause of the disaster, and the fear of the destruction of the steam boilers, superadding the horrors of fire to the perils of the deep, was enough to unman the stoutest heart and to unsettle the strongest mind.

We have had much opportunity of knowing something about the North River Steamers having passed up and down that river a very great number of times. During the spring of 1844 we were upon the river thirteen nights out of fifteen, and have become fully satisfied that there has been a culpable negligence in reference to a supply of small boats by the owners of these steamers.

There is not a LIFE BOAT on a Steamer upon the Hudson River.

It cannot be expected that passengers will be calm in case of accident. Persons who are strangers on the river do not and cannot know of its localities, will feel alarmed, and those who are acquainted with the North River know that its waters in some places are of vast depth and will feel equally alarmed unless the difficulty happens at the Overslaugh, where the bottom can be both seen and felt.

The Swallow was of great length, and the axles of the wheels obstructed the narrow passages between the bow and stern at an elevation of about four feet from the deck. The stairs to the tier of saloons on the roof of the boat was nearly in the middle of the boat and only wide enough for two persons and these were the only avenues of access to two tier of state rooms, occupying about one-half the length of the boat. There are three gang ways to the lower cabin, one through the Ladies' Cabin at the stern, one to the forward part of the cabin and another about midships.

It has frequently been the case when we were upon the river that the passengers were so numerous that the middle of the cabin was filled with temporary berths, erected two or three tiers high. An accident like that which befel the Swallow, happening to a boat stowed with passengers after this manner, would have been tenfold more awful.

The Steamers, as we have said, are too long. Boats of one-half the length would be much safer, and the same objection as to extreme length exists in some of the East River Steamers. We came through the sound in the month of November last during the night; the water was very rough, and the weather boisterous. When the steamer reached the North River, the boat, from her length, was unable to get into the dock, for the wind was blowing a gale, and her extreme length made a lever of the steamer upon the which wind bore with such force as almost to bend the boat as she lay midship against the end of

the pier. A boat of the shape of the Great Western would have got into the dock in three minutes without trouble.

The North River is an almost unobstructed navigation, but nevertheless it passes a chasm which is wonderful, and through which the wind is sometimes forced with the fury of a hurricane, and this chasm is of great depth and a comparatively narrow path. What confusion would fill the minds of passengers of a river raft steamer in such a place as this to meet an accident without a single life boat to cling to.

The strife between the cities of Albany and Troy is a difficulty which tends to harm, and the ambition of the Steamers of each to out do the other is great, and should be abated by legislative enactment.

The officers of the steamboat Swallow were uniformly attentive to their duties, so far as our observation extended, but the speed at which the steamers move on the North River in the night makes the voyage a lottery to passengers.

The best berths in the Swallow below deck, were those which are now under water, and these berths always had the preference with passengers, and were first taken up. We have frequently occupied No. 59 during the present season, which was among the first under water, and this berth we occupied but four days before the catastrophe.

The number of steamboat accidents upon the north river within a few days is singularly admonitory, In the near neighborhood of the same section of the river where 9 persons were recently run over by a steamer and drowned, another disaster painful and distressing in the extreme has occurred. At this season of the year the river is frequently either mantled with fogs or visited by squalls, the offspring of the change of the seasons, and at such times particularly, greater precaution should be taken for the safety of passengers. Every thing is done to make the boats splendid and showy, and of great speed, but what is done for the safety of passengers? Yes, we ask, what is done for the safety of passengers? Where are the life boats? We answer none are to be found upon this River. The East River steamers which navigate the sound carry life boats, and so should the North River Steamers. Passengers on board a boat amply provided with LIFE BOATS would in case of accident feel easy and act discreetly, having a confidence in this means of safety, but when a boat filled with passengers becomes the scene of confusion, and there is but one or two little Boats, these will be filled and swamped in a moment. We came down the North River some years ago, when the Sandusky was upon the River, in a steamer which had but one small boat which was stove during the night by coming in collision with the Sandusky. When we arrived at Tappan Bay the fog was so thick that we could not see four rods ahead, and the engineer had frequently to stop the engine. A little before 7 o'clock we arrived sufficiently near the city of New-York to hear the ferry bells ring, but until this we were unable to determine where in the river our boat was floating, and besides the last fuel on board the boat was upon the fire. We finally got along side some vessels lying by the piers in the upper part of the city.

Steamers should be by law required to carry as many life boats as would be sufficient to save every passenger and besides a sufficiency of small boats for other purposes.

The great speed of the North River Steamers at the present time is a serious evil, and should be the subject of legislative restriction.

We have passed up and down the North River since the opening of navigation and more frequently on board the Swallow than any other boat, and the arrival of that boat at the dock at Albany was uncommonly early.

On Friday evening the 4th inst. we came down in the Knickerbocker and reached the wharf in New-York between two and three o'clock in the morning.

Boats are often overloaded with passengers and in such cases in the event of accident the confusion would be great and the very fact being known that the steamer was but poorly supplied by small boats would create alarm among the passengers.

It is said that passengers can regulate this by refusing to go on board of boats that have not these requisites. The same remark would apply to boilers, which latter, the authorities have found it necessary to subject to official inspection. If accidents hereafter occur upon the Hudson for want of life boats, the responsibility rests upon the present legislature, and it is incumbent upon each individual member to weigh the responsibility calmly upon his pillow.

The Ferry Boats which navigate the north and east rivers, and the Bay, should have small boats in case of accident. As many as one thousand passengers have been together at one time upon a single Ferry Boat. When we were upon Lake Ontario in the summer of 1844, we had an opportunity to contrast these boats with those of the North River, and were satisfied that more strength is required in the North River Steamers than is found in their boats. The great length of the North River Steamers is an objection, and a serious one, for the boats are not strong in proportion. The Dewitt Clinton, when upon the river, was a noble boat, and we have frequently when on that boat spoken of the preference passengers gave to this boat on account of its great strength.

Many of the shores of the north river are bold and near such shores is the deepest channel. Should such a river be navigated by steamers carrying hundreds of human beings without the means of safety in case of accident?

Some time since we addressed a letter to the Hon. John McKeon, then a member of Congress, in relation to the North River Steamers, and during the winter of 1845, addressed the Hon. D. S. Dickinson, U. S. Senator upon the same subject, and we have that Senators reply now on the table before us, dated Washington City, January 23d, 1845. in which, among other things, he remarks as follows:

"I think your suggestion as to boats, &c., is entitled to much weight."

It is but a few years since (1834) that a vessel passing through the gap at the foot of Dunderburgh, loaded with Iron, was struck by a flaw of wind, capsized and sunk to the bottom and all on board perished.

The accidents on the North River the last four weeks have been so numerous as to be as we before observed, admonitory, and should not pass unheeded. Some years ago when the accidents were numerous by the explosion of steam boilers, the North River companies provided Safety Barges for Passengers which were taken in tow by the Steamers, but people soon forgot the disasters which at the time of their occurrence caused so much alarm, and the safety barges were discontinued. We here present several extracts from the Journal of Commerce of the perils of North River Steamers within three weeks, as follows:

ACCIDENT ON THE HUDSON.

The steamboat South America, on her passage down on Wednesday night last, accidentally run over a boat opposite East Camp landing, containing nine persons, all of whom were drowned, viz: George Rockefeller, wife, and daughter; Philip I. Saulpagh and daughter; Andrew Hawyer, Albert Rockefeller, Rufus Sasher and Coonrod I. Saulpagh. The latter leaves a wife and six small children, and most of the others leave families. They were all residents of Germantown, Columbia county. Mr. Rockefeller's family had been at Hudson to purchase articles for his daughter, who was recently married, and whose husband stood on shore awaiting their return, when they were suddenly hurried into eternity.—*Journal of Commerce of March* 31.

STEAMBOAT ACCIDENT.

In consequence of the accident to the Columbia, from collision with the Columbus, it was found necessary to put the North America on the line. This boat left New-York on Sunday evening, and when off Hampton her shaft broke close to the pillar block, which was followed by the breaking of the crank, when the whole of the machinery came down with a tremendous crash, spreading the utmost consternation among the passengers.

Most fortunately (says the Albany Atlas) and almost miraculously, no one was injured. The passengers of the North America were transferred to the Steamboat Splendid, and reached Albany at 11 o'clock on Monday morning. The damage done to the N. A. is very heavy, probably over $2,000.—*Journal of Commerce April 2d. We add,*

On Monday evening, April 7th, the Steamer Swallow on her way from Troy to New-York with between 250 and 300 passengers on board, struck upon a rock near the western Bank of the Hudson River opposite Athens and in a few minutes was a complete wreck. The boat left Albany at 6 o'clock and was at 8 o'clock, according to the statement of Mr. Pomeroy who looked at his watch a few minutes previous to the accident, opposite Athens, a distance of 30 miles from Albany. This makes a rate of 15 miles per hour—a mile in four minutes—eighty rods in one minute, and twenty-two feet in a second. The boat ran a considerable distance on the rock. The passengers were for some time ignorant of the cause of the shock the boat received, and therefore lost some minutes in making preparation to leave the boat, and when the difficulty became known the water was rising in the stern so rapidly that the utmost consternation and alarm filled the minds of all on board, and therefore all were not able to save themselves. The Steamer Rochester and Express were close behind the Swallow, and both of these boats came along side and took off near two hundred of the passengers —others went on shore at Athens and Hudson.—Boats put off from Athens and Hudson as soon as the catastrophe was known. The rock on which the boat struck is called the Brig—it lies about 60 feet from the shore, and at low water (which was the state of the river when the accident happened) presents a surface of about 40 feet by 25. The Boat was entirely out of her course. The night was dark and snow was falling at the time. The Steamers Express and Rochester came on to New-York. These two boats should have laid by the wreck until morning by all means, and their not having done so is highly reprehensible. It is impossible to know how many persons were on board and the number probably never will be known. The last accounts which we have seen state that 13 bodies had been recovered, and the body of one person known to have been lost, has not been recovered, and 41 yet remains to be accounted for by name, who were known to be on board. A Special Committee appointed by the Senate have proceeded to Athens to examine the wreck, and to investigate the particulars of the disaster.

THE GALE.

The steam tug Trojan, with barges in tow, was blown ashore on Tuesday night below Newburgh, and had her promenade deck blown off. The barge Ontario, in tow of Steamboat Commerce, had the greater part of her promenade blown off. Other boats found the gale as much as they could stagger under; passengers frightened, &c.

The Empire had her cutwater badly bruised,—we understand by coming in contact with the Catskill dock. She did not arrive here till yesterday noon. She was due early yesterday.

It blew very strong on the river Tuesday night. The South America was obliged to miss her landing at Caldwell's, although there were several passengers for that place, and also at West Point. When near Newburgh, a squall struck her, which almost capsized her. Although it was a rough night, and the passengers, whose nerves were strung to the highest possible tension by the disaster of the Swallow, were kept in a state of constant excitement.

The Eureka broke an arm in her larboard wheelhouse with a tremendous crash, tearing the whole structure away. She crawled back to the city to refit. —*Journal Com. April* 10.

It has been suggested that the State Legislature has no power in the premises. The restriction pertains to local navigation and not to foreign Commerce, and an act of the Legislature requiring inspection of boats brings the matter within the provisions of the Constitution of the United States.

The following is the copy of a memorial presented in the house of Assembly by the HON. ABRAHAM G. THOMPSON, jr., on the 11th inst.

To the Hon. the Legislature of the State of New-York:

The undersigned take leave most respectfully to call the attention of your Honorable Body to the necessity of some provision of law which shall compel steamers carrying passengers to provide as many small boats as will be sufficient in case of accident to convey the passengers to the shores, and that the boats shall be limited as to the number of passengers which they shall carry.

The undersigned deem it sufficient to bring this

subject directly to the notice of your Honorable Body and trust that the Legislature will take such action thereon as they in their wisdom shall deem meet.

And your memorialists, &c.

New-York, April 9th, 1845.

Jonathan Thompson,	Peter Cooper,
James Brown,	G. A. Worth,
Philip Hone,	John H. Cornel,
D. S. Kenedy,	John A. Stevens,
James McBride,	Geo. Curtis,
William W. Fox,	Anthony Lamb,
Henry Young,	A. B. McDonald,
Wm. H. Smith,	Lambert Suydam,
J. R. Schuyler,	Joseph Strong,
James Harper,	John H. Talman,
P. Lorrilard, Jr.	E. A. Somerendyeck,
Solomon Townsend,	N. W. Crittenden,
John I. Palmer,	Abraham G. Thompson.

THE FROZEN CREW.

There are fearful wonders upon the ocean, wonders in the tempest and in the calm; in the tropical heat and in the cold of the frozen seas. Thousands and tens of thousands go down in the deep, and are no more seen forever. A more fearful fate has befallen a thousand sons of the ocean.

Long before the idea of the existence of a new world was contemplated by the Europeans, the northern seas had been traversed in every direction by the daring freebooters of the north, who often bore the title of *the kings of the sea*. They had discovered Iceland and the settlement there formed, became an asylum for the host of northern men who were driven from Scandinavia, by the gradual approach of southern civilization. In time Iceland also sent forth her colonies, and early in the tenth century effected a settlement upon the coast of Greenland. It long languished for want of sufficient population; at length, in 988, Erick Raude, an Icelandic chieftain, fitted out an expedition of twenty five gallies, at Snefell, and having manned them with sufficient crews of colonists, set forth from Iceland, bound to what appeared to them a more congenial climate. They sailed upon the ocean fifteen days, and they saw no land. The next day brought with it a storm, and many a gallant vessel sunk in the deep. Mountains of ice covered the waters as far as the eye could reach, and but a few gallies escaped destruction.

The morning of the seventeenth day was clear and and cloudless. The sea was calm and far away to the north could be seen the glare of the ice fields reflecting on the sky.

The remains of the shattered fleet gathered together to pursue their voyage. But the galley of Erick was not with them. The crew of a galley which was driven farther down than the rest, reported that as the morning broke, the huge fields of ice that had covered the ocean were driven by the current past them, and that they beheld the galley of Erick Raude, borne by a resistless force and with the speed of the wind, before a tremendous flake of ice. Her crew had lost all control over her—they were tossing their arms in wild agony. Scarcely a moment elapsed ere it was walled in by a hundred ice hills, and the whole mass moved forward and was soon beyond the horizon. That the galley of the narrators escaped was wonderful. It remained, however, uncontradicted, and the vessel of Erick Raude was never more seen.

Half a century after that, a Danish Colony was established upon the western coast of Greenland.—The crew of the vessels that carried the colonists thither, in their excursions into the interior, crossed a range of hills that stretched to the northward; they had approached perhaps nearer to the pole than any succeeding adventurers. Upon looking down from the summit of the hills, they beheld a vast and almost interminable field of ice, undulating in various places, and formed into a thousand grotesque shapes. They saw not far from the shore a figure in an ice vessel, with a glittering icicle in place of a mast rising from it. Curiosity prompted them to approach, when they beheld a dismal sight. Figures of men in every attitude of wo, were upon the deck, but they were icy things. One figure alone stood erect, and with folded arms, leaning against the mast. A hatchet was procured and the ice split away, and the features of a chieftan disclosed, pallid and deathly and free from decay. This was doubtless the vessel, and that figure the form of Erick Raude. Benumbed with cold and in the agony of despair, his crew had fallen around him. The spray of the ocean and the fallen sleet had frozen as it lighted upon them, and covered each figure with an icy robe which the short lived glance of a Greenland sun had not time to remove. The Danes gazed upon the spectacle with trembling. They knew not but the same might be their fate. They kneeled down upon the deck and muttered a prayer in their native tongue for the souls of the frozen crew, then hastily left the place for the night was fast approaching.—*Milwaukie Gazette.*

COMPARATIVE MORTALITY.

The two houses composing the Legislature of the State of New-York number in members about half as many individuals as the two houses which compose the Congress of the United States. The Legislature of New-York have been in session four months, and no case of death has occurred among the members. We frequently hear of the death of members of Congress during the session, and numerous duels have been fought by members of Congress during the sessions of that body. A calm and undisturbed state of mind tends to the preservation of health and the prolongation of life.

NIAGARA FALLS.

An anonymous correspondent suggests that carbonated hydrogen gas rising in the spray from the Horse Shoe Falls, would, if ignited, explode with great force. *Not so.* Hydrogen gas mixed with atmospheric air in the proportion of 1 to 1, is explosive, but not when the atmosphere air is in the proportion of millions of millions of cubic feet, to a single cubic inch of hydrogen. Such a mixture is not explosive A salt well at Kanhawha, which is a little less than a thousand feet in depth, discharges a column of hydrogen gas 18 inches in circumference and of great height, and with it a column of salt water. This column of gas when ignited burns freely, and without detonation, and is now used for heating the salt boilers. The gas rises through water, and so does the gas under the falls. I kindled a flame upon the spring about a mile above the horse shoe falls, and the gas burnt freely and quietly for some minutes.—The flame was about 20 inches in height, and two inches in circumference. The escape of hydrogen gas from numerous excavations in the western part of this State, is great. I collected it on the surface of the Erie Canal at Utica, in considerable quantities as it arose from the fissures in the bottoms of the Canal and escaped on the surface, and saw it rising in numerous places on the surface of that artificial water channel. There can be no doubt in reference to the carbonated gas rising with the spray at the falls, for it is a very deep excavation, and no more danger in touching a burning taper to it than there is in applying a burning taper to the wick of a tallow candle. In preparing oxide of Iron for particular purposes I frequently use Iron in grains or particles in a retort mixed with dilute sulphuric acid, and in these operations I burn the hydrogen as it escapes, taking care that the atmosphere air is all expelled from the retort before I apply the match. I was once a little too soon in applying the torch and the gas and air exploded throwing the retort around the laboratory in numerous pieces. Our anonymous correspondent also finds fault with our chronology. The measure of time was not created until the sun and moon were placed in the firmament, which were to be for signs, for seasons, for days and years, During the three periods which preceeded the fourth day of creation, time had no measure of duration, nor did they belong to time, for these periods were cradled in eternity. Man in his primitive state was in a state of innocence, and therefore both philosophy and religion belonged to that period which preceded the first Sabbath of rest. Religion does not require philosophy to support it, for it is independent of all human philosophy. Human philosophy is theory.

We take leave to refer our anonymous correspondent to the following pages of the first volume of the New-York Muncipal Gazette, viz: page 135, "Primitive Geology"—page 377, "The New-Year"—page 435, "Longevity"—page 440, "The Deluge"—page 446, "An ancient copy of the Bible," where he will find noticed the events of time, and also the periods which preceded the first solar morning.

TAX UPON ALIEN PASSENGERS.

The State law imposing a tax upon alien passengers arriving in our sea ports from foreign Countries is a violation of the Constitution of the United States. The principles involved in this question were discussed by the Supreme Court of the United States in the suit of Brown, vs. the State of Maryland.

TAX UPON WIGS.

We find in the minutes of the Colonial Assembly of the Province of New-York of 1732, an entry in the words following:

"*Ordered*, That the Treasurer of the Colony lay before this house on Thursday next the following accounts, viz: an account of what has been paid into the Treasury, on the TAX UPON WIGS, by virtue of an act entitled an "an Act to defray the charge of victualling his majesty's troops posted at Oswego, and for other purposes therein mentioned, since he delivered his last account thereof to this House."

On the following Thursday the Treasurer reported the amount received as a tax upon *wigs* at nine pounds seventeen shillings and five pence. Also the amount received from the fees of the WEIGH HOUSE in the city of New-York, at four pounds three shillings and eight pence.

PUBLIC PATRONAGE.

We notice in the Journal of Commerce of Tuesday last a statement of the amounts paid the publishers of the Evening Post by the Corporation of the city of New-York, as follows:

1840,	$10,840.63
1841,	10,062.19
1842,	4,291.57
1843,	4,709.87
Part 1844,	2,094.86
Total	$31,999.12

We presume that some of the other city papers have also received equally large patronage.

FIRE AT PITTSBURG, PA.

A great Fire broke out in the city of Pittsburg, Pa., on the 10th inst., which spread over 62 acres thickly covered with buildings. The length of the burnt district was about one mile, and the width 480 feet. About 1200 buildings were burnt, of which 700 were dwellings. Pittsburg is at the head of the Ohio river, and lies between the Alleghany and Monongahela Rivers, which here meet and form the Ohio.—In New-York, during the great fire of the 16th Dec., 1835, there were only two or three dwellings burnt out of the great number of buildings destroyed. The loss by that fire was estimated at $20,000,000.

It is estimated that at Pittsburg 4000 persons have been deprived of house and home. In New-York during the great fire the suffering was altogether pecuniary.

PITTSBURG SUFFERERS.

Mayor Harper has addressed a letter to the Mayor of Pittsburg, expressing his regret for the calamity which has befallen that city, and advising him that he has taken the preliminary measures for calling a public meeting of our citizens with a view to giving aid to those who have been bereft of house and home by the destructive conflagration.

The citizens will, we are confident, second the Mayor in this measure, called for by both humanity and duty.

ICE AT NIAGARA FALLS.

The Journal of Commerce of the 8th inst. contains a paragraph stating that the Niagara River is choked up with ice, and that one mile above the falls the ice is piled up to the height of 40 feet. This obstruction may produce some change with this wonderful locality, and we should think would endanger the safety of Gout Island Bridge.

COMPARATIVE METEOROLOGY.

COLD.

The temperature of the atmosphere at Montreal, Lower Canada, which is in North latitude 45° 30′, West longitude 73° 25′, was for the months of October and November 1832, a fraction less than a mean of 37° of Fahrenheit's scale.

The temperature of the atmosphere at Charleston, S. C., which is in North latitude 32° 46′ 33″, West longitude 79° 57′ 27″ was for the same time a mean of 59½° of the same scale.

Of the 61 days in the two months named above, there were 32 clear and fair days at Charleston, and 49 fair days at Montreal. There were eight rainy days at Charleston during the time named above, and 11 rainy days at Montreal, and one day on which snow fell. During the 61 days, rain fell but one day at both places at the same time.

The temperature of the atmosphere at the City of Savannah, State of Georgia, which is in latitude 32° 4′ 56′ and 81° 8′ 18″ West longitude, for the month of July 1832 was a mean of 84°; August, 82°; Sept. 77°; Oct. 71°; Nov. 64°; December, 54°; January, 1833, 56°; February, 59°; March, 62°; April, 69°; May, 79°; June, 82°. This gives a mean temperature for 12 months of a fraction less than 70°.

The mean temperature of the atmosphere at Concord, New-Hampshire, which is in north latitude 43° 12′, for the month of December 1832, was 26°; January 1833, 26°; March, 29°.

The mean temperature of the atmosphere at Waltham, Massachusetts, which is in north latitude about 43°, west longitude about 71°, for 1832 was 49°, and for each month as follows: January, 28°; February, 29°; March, 38°; April, 43°; May, 55°; June 66°; July, 69°; August, 71°; September, 63°; October, 54°; November 40°; December 32°.

The mean temperature of the atmosphere for the month of January 1833, at Columbus, Ohio, was 37½°, and for the month of February of the same year was 33¾°. Columbus, Ohio, is in north latitude 39° 47′, west longitude 83° 3′.

It appears by a notice of a journal kept by Governor Plummer of New Hampshire for 22 years that the mean temperature of the atmosphere of the year 1809 was 47°, and of 1812 was 42°. Seven years the mean temperature was 46°; two years 47; three years, 45°; five years, 44°; four years, 43°, and one year, 42°. Epping is in north latitude 43° 3′.

The temperature of the interior of the mammoth Cave in Kentucky is 59° of Fahrenheit throughout the year.

RAIN.

The fall of Rain upon the surface of our globe is reckoned at an average of about 34 inches annually. The quantity of rain varies greatly in different years and is more abundant in some sections of the same continent than in others.

The surface nearest the equator is more abundantly supplied with rain than farther toward the poles.—The number of rainy days in low latitudes are about equal to the number of snowy days in the high latitudes.

At Grenada, in north latitude		12°, —	126	inches
Cape Francais	"	19°, 47′	120	"
Calcutta	"	22°, 23′	81	"
Rome	"	41°, 54	39	"
Island of G. Britain	"	50°, 53′	31	"
St. Petersburgh	"	59°, 6′	16	"
Uleaberg	"	65°, 1′	13½	"

The average fall of rain in London for 7 years from 1775 to 1780, was 23 inches; Liverpool, 18 years 34 inches; Lancaster, 10 years, 45 inches; Keswick 7 years, 67 inches.

On the 21st and 22d of August 1843, the rain fell in a few hours at the city of New-York to the depth 9 13-100 inches and during the same time at Syracuse 300 miles distant, in the interior of the State only three-fourths of an inch.

Some of the Provinces of South America have been without rain for a series of years and so great has been the droughth that vegetation has wholly failed and the district thus affected has become desolate for where there is no water neither man or beast can long subsist.

THE FAITHFUL DOG.

It is said of the Roman General, Sabinas, who suffered death for his attachment to the family of Germanicus, that his dead body was exposed upon the precipice of the Germonece as a warning to all who should dare to befriend the house of Germanicus. No friend had courage to approach the body; one only remained true—his faithful dog. For three days the animal continued to watch the body. His pathetic howling awakened the sympathy of every heart. Food was brought him, which he was kindly encouraged to eat, but on taking the bread, instead of obeying the impulse of hunger, he fondly laid it on his masters mouth and renewed his lamentations, but did not quit the body. The corpse was at length thrown into the Tiber, and the generous creature leaped into the water after it, and clasped it between his paws, vainly endeavoring to preserve it from sinking. I was reminded of the account of this touching incident in receiving a visit early this morning from the little dog which was found in the woods in New-Jersey some time since lying by the dead body of his master.

Mayor Harper some time since related to me an account of a dog for which the master of the dog and his family had a great regard. One morning late in summer the Mayor's servant informed him that a person was waiting to see him at the door and was much excited and seemed very anxious for an immediate interview. The Mayor lost no time in seeing his visitor, but found him so distressed that it was difficult to learn from him the cause of his trouble.—At length however he learned from him that the Dog Banditti had killed his favorite dog, and that when he left his dwelling his wife was in hysteric fits, and his children were all crying in consequence of the brutal attack upon their favorite dog. The Mayor endeavored to calm and soothe the mind of his visitor but found it impossible, and finally directed him to call at the Mayor's Office at 10 o'clock, hoping by that time that his feelings would become calmed.

At ten o'clock the man came, and was in as much distress as before, and insisted on knowing the name and residence of the dog butcher, but the Mayor did not think it safe to inform him, fearing that he might take summary vengeance upon the unfeeling creature. He endeavored to calm the feelings of the man and expressed to him great regret for the occurrence and assured him that if it was in his power to restore his dog to him he would gladly do so. The man left the office in a better state of feeling than when he came in. Some little time after the Mayor saw his visitor returning with a countenance lighted up with smiles and gratitude, and quickly approaching the Mayor kindly thanked him for the feeling manner in which he had been treated, at the same time informing the mayor that he had obtained his dog again. and turning round gave a whistle, and his dog came toward him at almost a single jump, with his head bound up with a silk handkerchief. The dog man had knocked the dog on the head with a club as he came out of the store door upon the sidewalk, threw him in the dog cart, and dumped him in the River. The water restored him, and swimming to the shore he crawled home to his masters house. The man added to his own thanks those of his wife and children. The dog was a fine animal and so highly did the owner prize him that he paid for his board in the country during the time he supposed the dog law was in force, and had only brought him home the day before supposing the dog law had expired.

The owner of the dog assured the Mayor that his family were then all happy, that his wife had come to herself again and the children were delighted.

It is said of the dog killers in China, that the dogs howl after them when they see them in the street.

Owners of dogs should be required to keep them out of the streets, and fined if they violated the law in this, but no person should be employed to kill dogs.

FASCINATION.

In a forest journey about twenty-nine years ago, near the southern shores of Lake Erie I espied in the path some distance ahead of the horse I was riding, a large rattle-snake lying perfectly still, and a striped squirrel crawling slowly toward the serpent. I turned my horse in a moment, dismounted and cut a small sapling with my pocket knife and at once approached the snake and it immediately turned from me and retreated. It was of that species known as the ridge rattle snake, and was five or six feet long. The rattles shook as he left the path. It was the second rattle snake I had met with in very extensive forest journeys, and the last. The squirrel seemed to be nearly overcome by fear, or the fascination of the serpent, for it made no effort to run, and I took it in my hand, remounted my horse and carried it with me several miles, but it died in the course of a few hours. It is the only instance that I have ever seen of the charming of a serpent, and I felt no desire for a single moment to witness the operation but set myself at once at work to drive away the charmer and save the life of the little animal.

Near the banks of the Tuscarora River I was travelling in the woods and heard two birds crying very piteously and shortly after saw both of them flying about in great distress, I turned my horse from the path to see what troubled them, and discovered a large black snake killing their little ones which were in a nest and nearly ready to fly. I dismounted from my horse, picked up a stone and at the first throw struck the serpent in the head and he dropped from the tree and I killed him on the spot. The serpent had killed but one of the little birds and my timely arrival had saved the rest. The parent birds returned to the nest and seemed greatly relieved by my interference and I felt almost as much so, for the act has been a source of comfort to me ever since, when I call the occurrence to mind. The tree on which the snake had clambered was thirty or forty feet high and the nest was near the top.

INSTINCT AND INTELLIGENCE.

Who can draw the line of distinction between instinct and intelligence, and determine where the former ends, and where the latter commences? It is beyond the powers of the human mind to draw the line of distinction, for these faculties, as we may call them, are blended together like the day and night in the gradual approach of morning.

Man is sometimes endowed by the Great Creator with intelligence of a superior order,—by powers of mind that are gigantic, and gifted with an intellect that is brilliant and extraordinary.

The human mind is often stored with abundance of acquired knowledge, possessing talents which have been diligently and highly cultivated, but talents of the brightest order are oftimes spontaneous and spring up like the sweets of vegetation in a soil and in an atmosphere where both are congenial to its growth.

This ethereal essence is incomprehensible—it is the gift of that being whose attributes are all perfection, whose powers are unlimited, and whose knowledge is supreme

PINE TREES.

On the plains north of Lake Ontario, in the Province of Upper Canada, pine trees called the Norway Pine grow to a great height. During a tour in that region in the summer of 1844, I saw several trees which had been cut down which measured 170 feet. These trees are fastened in the earth by powerful roots which enable them to withstand the winds, and having but small leaves they do not present that resistance which trees of a different folinge offer to the winds. I saw several pine trees which were broken off by the wind at 100 feet from the ground. These trees grow in mixed forests.

On the top of Killington Peak in Vermont which is about 4000 feet high, I saw great numbers of trees of the evergreen species which measured from 10 to 12 feet in height and 12 inches through at the butt.—What a contrast.

THUNDER AND LIGHTNING.

In a meteorological account kept at at Medfield in Massachusetts in 1832 it is stated that thunder and lightning occurred on 21 days of that year. The earliest on the 12th of March, and the latest on the 29th of September.

BUNKER HILL MONUMENT.

I visited this monument in November 1844, and ascended to the highest apartment on the top of it by a flight of stone steps, 300 in number. The height of the monument is 220 feet. It is 30 feet square at the base. It is a laborious ascent. It was a cold day for the season, and I wore a cloth cloak which was rather cumbersome, yet notwithstanding the inconvenience I found a cloak necessary, for the labor of the ascent produced free prespiration which was liable to be checked by the cold atmosphere of the stone wall and steps. It is an ascent which I would not like to make again for it is not a healthful exercise. The top stone of this monument is of about two and a half tons weight. The block is four feet nine inches square at the base, and constitutes of itself the apex of the monument. The centre of the apex is three feet six inches in thickness. This monument is built of granite.

AMERICAN ANTIQUITIES.

I have visited and examined many of the ancient works which were to be found scattered over the far west on the settlement of that section of the United States. These works are constructed of earth and many of them were in the midst of dense forests and some of the largest trees were growing upon these artificial embankments. Some of these works are very extensive and evidence that great labor has been exerted in the formation of these earthen works. The rapid settlement of that section of the country, and the extensive cultivation of the land upon which these are located is fast erracing these terrestrial records of an age unchronicled upon the page of writen history, and the time is not far distant when these works of art will no longer be seen. The plough and the harrow of the farmers will in a few years reduce these structures to a level with the surface on which the base of these embankments rested. In the city of Cincinnati was once a large mound, which I have been informed has been levelled with the ground. At Chillicothe a large mound has been treated in the same way. At Circleville, on the Sciota River, extensive works were found. This town is built upon the Picaway Plains, and the town takes its name from the works within the walls of which it was built. At Marietta, at the junction of the Muskingum River with the Ohio, very extensive ancient works existed, and on Licking Creek, between Granville and Newark, were numerous works, both curious and interesting. I visited the works on Licking Creek nearly thirty years ago in company with Major Munson, and spent some time in examining the various structures. Major Munson had the year previous made a survey of the ground. The whole were at that time in the midst of a dense forest of heavy timber and as there was no road which led to the place, we travelled through the woods on horseback, after fording Licking Creek. One of these works was circular and contained about 120 acres. The walls, which were of earth, were eight or ten feet high. On the western side was a parapet of about fifteen feet high, and about fifty or sixty feet long and about 20 feet thick. There was formerly a subterranean passage under this parapet to the circular enclosure. On the eastern side and exactly opposite was another parapet like the first I have mentioned, with a subterranean passage which had been walled up with stone. This connected with another work of about half the size of the first. This work was either an Octagon or a Hexagon, I cannot remember which, for I now write from memory, having made no memorandum on the spot or at the time. This work consisted of two parallel lines having numerous obtuse angles with an opening at each angle, and these lines were about four rods apart and in each opening in the inner circle was a deep pit. This work connected with a work protected by two embankments, 64 feet apart, which extended in a southerly direction several miles. Near these works were several high mounds. There were extensive works on Paint Creek. I noticed several large mounds near the banks of Big Barren River in the State of Kentucky, several of these mounds were opened and were found to be filled with human bones. At Irville, on Licking Creek, a large mound was opened about thirty years ago, and found to contain two human skeletons one of which measured 8 feet 3 inches, and the other 8 feet 3 inches in length. It is impossible to form any correct opinion as to when or by whom these works were constructed for the history of this continent beyond 350 years ago is a perfect blank. In reference to the mounds we have an evidence in their existence of the possession of knowledge as to the best means of preserving the resting places of the silent from the action of the frost, wet, and heat, for the bodies which have thus been placed have undergone less changes than bodies placed beneath the common surface, and a care in this evinces a belief in a future state of existence, which is a matter of great interest, as it shows forth the teachings of the spirit in the absence of the written word.

MENTAL CULTIVATION.

The cultivation of the human mind tends to the promotion of the health of the human structure.—Many persons look upon the cultivation of the human mind in very early life as the most important portion of time during the existence of the individual, but I am inclined to the opinion that more mature years is the period best calculated for extensive mental cultivation. The cultivation of the mind should be attended with suitable and proportionate exercise of the body.

The powers of the human mind during the period of infancy, are feeble in the extreme, and it is not safe to task these feeble powers to the utmost limit, nor until they acquire suitable strength.

The Book of Nature is the most instructive volume extant, and is the most easily studied, and the lessons learned from its countless pages are longest remembered.

The industrious man who mixes exercise with study is always a learner to the outer limits of old age.—Deliberation and moderation in the acquirement of knowledge is very necessary. The mind which calmly investigates, acquires that even and useful habit of thinking and acting which enables it to secure useful knowledge. Useful knowledge is the offspring of diligent and patient labor. It should be sought with the same care and preparation that we would cultivate a garden or an orchard. The fruit depends upon the sowing of the seed, and the watching and care of the young plants.

The human mind should not be taxed with labor to cause it to be weary. The mind like the body requires rest, and this the creator has in infinite wisdom provided in the repose of sleep and also in the Sabbath of rest.

Extravagant anticipations which are not realized enfeeble and derange the human mind, and these are increased by neglecting those periods of rest and repose which nature has indicated in the economy of her laws.

It is a great study to learn to moderate one's thoughts—to discipline the human mind and bring it to regular habits—it is what tends to good health, promotes happiness and enjoyment, for in nature there is abundance to sweeten life. Nature is full of charms and full of loveliness. Employment is useful to every human being, rich or poor, bound or free. The man of active business habits who retires from active life requires employment if he desires to have health and long life—it is as necessary as his food.

TOMPKINS LIME STONE QUARIES IN ROCKLAND COUNTY.

During the month of October, 1844, I visited the lime stone quaries of Mr. Tompkins in Rockland county, and also the brick kilns in the same vicinity, The limestone quaries are about one mile below the brick-kilns and both are on the westerly bank of the Hudson River, near the Dunderburgh mountain and below this height. The lime stone contains no fossils that I could discover. Some of the specimens which I obtained here are very beautiful. One section of the quarry the stone is of nearly white, others red, and a greater portion is blue and intersected with lines of white, a beautiful satin spar. Some of these stratas are horizontal, others vertical, and others of every degree of inclination, and many of these are bent or contorted. The stratas of clay, which were near by, were of the same colors as the lime stone rock, and the stratas and inclinations are precisely the same.—These stratas are underlaid by stratas of coarse sand and gravel, and these stratas of sand are also contorted. Those on which the clay reposed and with which it is in contact is cemented and crystalized and is become, or becoming a rock formation. I discovered precisely the same operation going on at Syracuse, on the face of an excavation near one of the deepest Salt Wells. The fragments of Lime Stone rock near that part of the Tompkins Quarry where the limestone is red, which had been washed down by the snow water, had become agglutinated and cemented together, and this fact presents a very important consideration for investigation, for it discovers that water holding a small portion of the carbonate of soda in solution is capable of dissolving this rock, and when the water evaporates, of again crystalizing. Mr. Tompkins showed me some stalactites which the workmen obtained from fissures in the rocks. In this neighborhood are springs from which nitrogen gas issues. Stony Point is a short distance below these quaries.—

There is a spring of water near the base of Dunderburg which holds in solution *Chloride of Sodium, of Calcium, and of Magnesium.* The analysis was made some years ago by Dr. Chilton, but he does not state the proportion of each, nor does he state the specific gravity of the water. I have a bottle of water which weighs eleven pounds to the gallon, which holds these three substances in solution, which becomes instantly opaque and solid on the addition of dilute sulphuric acid. This water came from the depth of 604 feet in the earth. One pint of the water yields 1033 grains of solid matter. There are some stratas of talcose slate which make in between those of the lime stone. Verplanck's Point is on the opposite side of the River from Tompkins' Quaries, and here the limestone crops out again. At the foot of Dunderburgh mountain and on that side nearest Caldwells and a few hundred feet from the River is an excavation in the solid rock near fifty feet deep, and about eight feet in diameter, recently made. I obtained some pieces of this rock as specimens. I found in this excavation that the rock had the appearance of having been fractured and that the fractures widened as they deepened, and had been subsequently filled with quartz. In the sinking of this well several snakes were found embedded in the rock and in a state of activity. I saw two of these reptiles in the possession of A. G. Thompson, Esq., of New-York. One was about 10 inches long, and the other of less length, and about the size of a pipe stem—the under part is of a reddish cast, and the backs of a blueish slate color. I have never seen any of the same species before. Mr. Thompson has one of them now in his possession, the other died some months ago. These snakes no doubt found a retreat in the fissures of the rock which afterwards closed up with the crystalization of fluid which penetrated these fissures, and it is thus that animal life has been preserved for an unknown period of time.

PROFANITY IN PUBLIC MEN.

Men holding public office who are in the habit of using profane language set an example which the office gives force to with the ignorant and the vain, which is very pernicious, and the penal laws of the State should be put in force against such public officers, and thus shame them to regard the laws which they are bound to obey. We noticed two or three years since a public officer, a man of venerable years, who had been but a few months before on a bed of sickness and to the very borders of the grave indulge in profane language, a practise which ill becomes his station, and which evidenced that even the bed of sickness was forgotten. In the haunted room of the Mammoth Cave of Kentucky a curse uttered by a human being within its walls has an echo and a continued reverberation which returns to him the curse in the deep toned accents of those subterranean chambers which would resound in the ears of the blasphemer as long as life continued to dwell in his bosom and keep alive his memory.

TEMPERANCE.

The Journal of Commerce of March 31st, states that the Temperance Committee proceeded to Albany on Saturday evening with 20,606 signatures to their petition. The petition measured 287 yards, 861 feet more than one-seventh of a mile in length. Mayor HARPER signed the petition, and made a contribution toward the expense of the delegation.

MAYOR HARPER.

Mayor Harper has reason to feel gratified in the result of the election. The office of Mayor of New-York is a station of responsibility, notwithstanding the executive possesses but very little power, yet he must either be on bad terms with the Common Council, or bear the blame of their omissions of duty.

The powers of the City Government are vested wholly in the Board of Aldermen and Assistants. It is therefore a legislative despotism, and besides, the members of the Board of Aldermen exercise Judiciary powers, thus making a concentration of power at variance with the principles and doctrines of a free government.

Mayor Harper received the support of the most intelligent and worthy men of both parties, Whigs and Democrats, and this expression of approbation of his faithful services, is a rich reward for the labors he has performed.

NATIVE COMMON COUNCIL.

The Native Common Council erred greatly in their general measures in reference to the city Government. The extravagant expenditure made by both parties in the payments for public printing was loudly complained of, and the matter was brought distinctly before the Native Common Council on the commencement of their term and referred to the Finance Committee, but that Committee made no report, and all the satisfaction which could be obtained in the premises was that the Comptroller said the prices paid were cheaper than any others would do the same work for. The Comptroller was greatly in error in this, and such will be found to be the fact when the accounts come to be overhauled.

The Assessment abuses which had been so much and so loudly complained of were left wholly untouched, and not an effort made by any member of the Common Council to investigate the abuses or to remedy the evils which had caused so much dissatisfaction, and which alone placed the Natives in power in the Common Council.

The finances of the city were not managed by the finance department in a manner satisfactory to the people. The Report of the Committee on annual taxes published in September 1844, was a most unsatisfactory document and to aid the public finances, ten thousand copies were ordered to be printed at the expense of the City Treasury.

The City Comptroller's Report was a sort of second edition of this Fiscal document, and a very vague and mishapen statement.

This Report is not creditable to the fiscal departments and clearly illustrates the necessity of the creating by the State, of a Board of Auditors, to audit public claims. The Native Common Council deserve credit for abolishing the Tea Room profligacy, and for repealing the Street Patching nuisance, and for sundry other reformations.

Had the candidates for the Native party been elected to office the present year they would no doubt have reformed numerous abuses.

MAYORALTY VOTE.

The following is the result of the election for Mayor of New-York, on Tuesday the 8th inst.

James Harper,	16850
Wm. F. Havemeyer,	23071
Dudley Selden,	6331

The Board of Aldermen is composed of 15 Democrats and 2 Whigs.

The Board of Assistants is composed of 15 Democrats, and 2 Whigs.

The new Common Council have a fine field for earning popularity, and some of them of remedying abuses which were the acts of Common Councils, of which they had previously been members.

THE WEATHER.

The highest temperature attained by my thermometer in the month of March was 75°, and in the month of April the lowest 28°. No thunder and lightning has been noticed in March, nor in April thus far, in this vicinity. The Icebergs are on the Grand Banks.

THE BANKS OF THE WALLKILL.

I have made two geological excursions to the Wallkill township, in Orange County, through which the Walkill River has a channel.

It presents in its geological features a wonderful display. It was in this township that I examined the bones of the giant beast of antiquity that were exhumed in the digging of a marl pit, of which a full account is given on pages 130 to 133 of this volume. In the vicinity of the place where these bones were found the surface of the ground is covered with isolated rocks of a great variety, and boulders imbedded in the ground and lying upon its surface in great numbers. About twelve feet underneath this surface is a slate formation, and this extends to the high hills and to the deep vallies averaging about that same distance from the surface. I examined several wells which had been sunk and the slate which had been thrown out, and brought home numerous geological specimens. From this slate strata in several localities issues springs of water highly impregnated with sulphur. It is this description of water the Behemoth resorted to, in this vicinity, and besides, the rich pasturage which was here afforded by vegetation was an inducement for Behemoth to make this region his home.

The giant bones which have been found in this neighborhood are quite numerous, and if more extensive excavations were made no doubt immense numbers would be found, for the waters possess antiseptic properties which prevent the decomposition of the bones. The thinness of the covering of earth upon the slate formation is a singular illustration of the operations of nature. Remove this twelve feet of earth, which I have mentioned, and this whole locality would present a naked rock of slate for miles in extent. I am opinion that this slate was once a clay, and that the change has been produced by the action of subterranean gases and the waters which have absorbed these gases. I brought home with me a piece of indurated earth which on being exposed to the air, becomes so hard as to bear a polish. I ascended a height at the foot of which the bones of the Behemoth were found and from this elevation had an extensive view of the surrounding country.—The numerous high lands which project above the ordinary surface denoted that this region at some distant period was in great commotion, that beneath its surface the mighty mass was heaved by a force that the human mind is incompetent to estimate, that this portion of our globe was then in a semi fluid state, and heated to an intensity of an unmeasurable extent, or that the waters beneath this extensive surface holds rocks of every species in solution which were instantly chrystalized when in a state of commotion, or that the subterranean gases are the uncondensed nucleus of a mighty comet, which at the commencement of the morning of the creation of our earth, became compressed and then incrusted, and thus a surface formed for the occupation of newly organized life. The distant past is an unfathomed deep, too profound for the researches of the human mind in its present state of acquired knowledge,—The mind of man becomes amazed in calmly surveying this local terrestrial surface—In beholding the gigantic frames that have reposed for centuries in its bosom,—for it presents a record—full of mystery.

Within the reach of vision are the highlands which border the Hudson, overhanging its deepest chasms, standing sentry on each side of the narrow gulf, a strait through which the great Atlantic's tides pass in their inland journey, and through which they return to the bosom of the mighty deep.

Within the reach of vision on this terrestrial protuberance I surveyed that surface which was once the red man's home, and which now forms the red man's grave—peace, peace, to his ashes—in the dust of which is the germ of a celestial being destined to dwell amidst the glories and the beauties, and to enjoy the charms of a new, a bright, and a shining world.

The Wallkill has its head in the State of New-Jersey, and near its source during the last year a great number of bones of a large size were found in the drawing off of a pond, imbedded in the earth which formed the basin which held the water. Immense herds of these herculean animals must have frequented the Banks of the Wallkill, and the sides of the mountains which fringe this stream of water. The water of the Wallkill is now being extensively introduced into the city of New-York in Tin Milk Cans, via the New-York and Erie Rail Road.

QUINCY GRANITE QUARIES.

I visited the Quincy Granite Quaries in the month of October 1844. These quaries are both extensive and valuable and produce a large revenue to the owners and workers of the rock.

I examined the deepest excavations which have been made in this bed of rock. The strata is intersected by seams which are fringed with what the workmen call sap, being a less solid portion of the rock.

The seams intersect the rock in every variety of angle, and I noticed that the rocks were in some places separated by seams that were bent upward in the centre, and the upper rocks appeared to have been placed there in a semi-fluid state, after the lower rock had been formed, for its under surface was indented with the projecting points of the lower rock. I visited a large granite rock which now forms a surface of several feet in extent, which is as smooth as polished marble. This rock was once covered with earth and being rounding on the surface, the water resulting from rains and melting snow had run over its surface carrying particles of fine sand, which have during the progress of centuries of time worn away its rough surface and given the present polish.

The Quincy Granite contains hornblende, which gives it a singular appearance. I do not know whether the hornblende enters into all the rocks in these ledges but I noticed it in many of them.

Granite is generally composed of quartz, feldspar, and mica, and varies in the proportions of each, but the varieties of Granite are very numerous and differ greatly in quality.

The seams in the Quincy Granite Quaries are very narrow and appear of the same uniform width all the way down as far as the Quaries have been worked so far as my examinations and enquiries extended.

The opinion has been expressed that granite is a rock which has been formed by intense heat but it seems to me that such cannot be the fact, for I find the different materials, which constitute the rock are visible in minute particles and preserve to a great degree their individuality. If intense heat had been the agent which had been used to form these rocks they would partake of the appearance of glass so far as the texture and arrangement of the particles is concerned would present on breaking, a fracture very different from what we notice in this rock.

I have examined great varieties of rock which have undergone different degrees of heat and there is a peculiar arrangement in the order of chrystalization. The limestone rock often indents the granite stratas where these are near neighbors, and the granite often indents and runs into the limestone, and we find this the case among, what are called by geologists, secondary rocks.

Silex is the principal ingredient in most rocks and this forms a great proportion of Quartz, of Feldspar and Mica. The hornblende which enters into the composition of the granite rocks of Quincy is a species of shorle and its principal ingredient is silex.

The gneiss rock is a species of granite, but differs from it in the order of crystalization, and besides it has less feldspar than there is in the granite, and is coarser and more irregular in its structure. In granite the mica is scattered promiscuously, but in gneiss it is arranged in one direction through the rock.

The gneiss rock is very abundant upon the Island of New-York, and varies greatly in its quality. Some of this rock is valuable for building stone while much of it is of little worth for any purpose where strength and durability are required.

On the surface of the ground in the vicinity of the Granite Quaries at Quincy is the Pudding Stone or Conglomerate, and this stone is of great solidity.—I obtained specimens of this Conglomerate from a rock which weighed forty or fifty tons, which had been broken up by gunpowder and made into a stone fence. The aglutinating substance was so powerful that the fractures in the rock extended through the pebbles which were embodied in the rock. I am of opinion that this agglutinating or cementing fluid which entered into the conglomerate rock is the same which forms the cement of the granite.

On the surface of the ground underlaid by slate in Orange County the conglomerate rock is abundant, but the pebbles were mostly white. There is more of the Oxide of Iron in the conglomerate of Quincy than that of the Wallkill.

The Quincy Granite is called the Seinette rock from its near resemblance to that of some of the Quaries of Egypt.

REDUCTION OF POSTAGE.

We place before our readers the first three sections of the act recently passed by Congress for reducing the rates of Postage. This act will go into operation on the first of July 1845. The three sections we have here set forth in full, contain all the provisions which are important to the citizens generally.

NEW POST OFFICE LAW.

AN ACT to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenues of the Post Office Department.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, from and after the first day of July next, members of Congress and delegates from Territories may receive letters, not exceeding two ounces in weight, free of postage, during the recess of Congress, anything to the contrary in this act notwithstanding; and the same franking privilege which is granted by this act to the members of the two Houses of Congress, is hereby extended to the Vice President of the United States; and in lieu of the rates of postage now established by law, there shall be charged the following rates, viz: For every single letter, in manuscript, or paper of any kind by or upon which information shall be asked for or communicated in writing, or by marks and signs, conveyed in the mail for any distance under three hundred miles, five cents; and for any distance over three hundred miles, ten cents; and for a double letter there shall be charged double these rates; and for a treble letter, treble these rates and for a quadruple letter, quadruple these rates; and every letter or parcel not exceeding half an ounce in weight shall be deemed a single letter, and every additional weight of half an ounce, or additional weight less than half an ounce shall be charged with an additional single postage. And all drop letters, or letters placed in any post office, not for transmission by mail, but for delivery only, shall be charged with postage at the rate of two cents each. And all letters which shall hereafter be advertised as remaining over in any post office shall, when delivered out, be charged with the costs of advertising the same in addition to the regular postage, both to be accounted for as other postages now are.

Sec. 2. *And be it further enacted,* That all newspapers of no greater size or superficies than nineteen hundred square inches may be transmitted through the mail by the editors or publishers thereof, to all subscribers or other persons within thirty miles of the city, town, or other place in which the paper is or may be printed, free of any charge for postage whatever; and all newspapers of and under the size aforesaid, which shall be conveyed in the mail any distance beyond thirty miles from the place at which the same may be printed, shall be subject to the rates of postage chargeable upon the same under the thirteenth section of the act of Congress approved the third of March, one thousand eight hundred and twenty-five, entitled "An act to reduce into one the several acts for establishing the Post Office Department;" and upon all newspapers of greater size or superficial extent than nineteen hundred square inches, there shall be charged and collected the same rates of postage as are prescribed by this act to be charged on magazines and pamphlets.

Sec. 3. *And be it further enacted,* That all printed or lithographed circulars and handbills or advertisements, printed or lithographed on quarto post or single cap paper, or paper not larger than single cap, folded, directed, and unsealed, shall be charged with postage at the rate of two cents for each sheet, and no more, whatever be the distance the same may be sent; and all pamphlets, magazines, periodicals, and every other kind and description of printed or other matter, (except newspapers,) which shall be unconnected with any manuscript communication whatever, and which it is or may be lawful to transmit by the mail of the United States, shall be charged with postage at the rate of two and a half cents for each copy sent, of no greater weight than one ounce, and one cent additional shall be charged for each additional ounce of the weight of every such pamphlet magazine, matter or thing, which may be transmitted through the mail, whatever be the distance the same may be transported; and any fractional excess of not less than one-half of an ounce, in the weight of any such matter or thing, above one or more ounces, shall be charged for as if said excess amounted to a full ounce.

TRADE WITH THE CANADAS, &c

We give in full, for the information of our readers, the act recently passed by Congress allowing the same drawback on Goods exported to the Canadas, as is now allowed on goods exported to foreign countries. This is a very important bill, and much credit is due to the Hon. J. P. Phœnix, of New-York for urging forward this important bill to its completion. This bill will greatly benefit the city of New-York.

AN ACT

Allowing drawback upon foreign merchandise exported in the original packages to Chihuahua and Santa Fe, in Mexico; and to the British North American provinces adjoining the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any imported merchandise which has been entered, and the duties paid or secured according to law, for drawback, may be exported to Chihuahua, in Mexico, or Santa Fe, in New Mexico, either by the route of the Arkansas river, through Van Buren. or by the route of the Red river, through Fulton, or by the route of the Missouri river, through Independence.

Sec. 2. *And be it further enacted,* That all the merchandise so exported shall be in the original packages as imported, a true invoice whereof, signed by the exporters, shall be made, to the satisfaction of the collector, describing accurately each package with its contents and all the marks upon it, exclusive of the name of the exporter, the place of destination and the route by which it is to be exported; all which shall be inscribed thereon, upon which invoice the collector shall certify that he is fully convinced the same is true, that the goods are in the original packages as imported, that they are duly entered for drawback, and to be exported by the owner, (naming him,) to either of the places aforesaid, (naming it,) and by one of the aforesaid routes, (naming it.)

Sec. 3. *And be it further enacted,* That upon the arrival of such goods at either of the places in Arkansas or Missouri above named, they shall be again inspected and compared with the invoice and certificate aforesaid, by an officer of the United States, who shall, if fully convinced that the several packages are identical, having remained unbroken and unchanged, also certify on said invoice the facts, in such form as the Secretary of the Treasury shall prescribe.

Sec. 4. *And be it further enacted,* That upon the arrival of any such goods at Santa Fe or Chihuahua, they, with the invoice and certificates aforesaid, shall be submitted to the inspection of the Consul of the United States, or such agent as the President may appoint for that purpose: who, if fully convinced thereof, shall, in such form as the Secretary of the Treasury shall prescribe, certify upon said invoice that the goods have arrived there in the original packages as imported, without change or alteration; and have been exported from the United States in good faith, to be disposed of and consumed in a foreign country.

Sec 5. *And be it further enacted,* That if the exporter shall give bond, with satisfactory sureties, in thrice the amount of duties, that the said merchandise by him exported, has been delivered at either of the places aforesaid without the United States, in good faith, to be sold and consumed there, and shall also produce said invoice, with the regular certificate thereon, the collector shall thereupon pay to him the usual drawback allowed by law.

Sec. 6. *And be it further enacted,* That the Secretary of the Treasury shall appoint inspectors to reside at each of the following places, to wit: Van Buren, Fulton and Independence, above named, or such other places in Missouri as the Secretary of the Treasury shall designate; who shall each have a salary of two hundred and fifty dollars, and make a full report of all the trade that passes under their inspection, to the Secretary of the Treasury, semi-annually, giving an account of all the number of packages, the kind of goods, the value, and the names of the exporters.

Sec. 7. *And be it further enacted,* That any imported merchandise which has been entered, and the duties paid or secured according to law for drawback, may be exported to the British North American Provinces, adjoining the United States; and the ports of Plattsburg, in the District of Champlain; Burlington, in the District of Vermont; Sacketts Harbor, Oswego, and Ogdenburgh, in the District of Oswegatchie; Rochester, in the District of Genesee; Buffalo and Erie, in the District of Presq'isle; Cleveland, in the District of Cuyahoga; Sandusky and Detroit, together with such ports on the seaboard from which merchandize may now be imported, for the benefit of drawback, are hereby declared ports from which foreign goods, wares, and merchandize, on which the import duty has been paid, or secured to be paid, may be exported to ports in the adjoining British Provinces, and to which ports foreign goods, wares, and merchandise may be transported inland, or by water, from the port of original importation, under existing provisions of law, to be thence exported for benefit of drawback; *Provided,* That such other ports situated on the frontiers of the United States, adjoining the British North American Provinces, as may hereafter be found expedient, may have extended to them the like privileges, on the recommendation of the Secretary of the Treasury, and proclamation made by the President of the United States, specially designating the ports to which the aforesaid privileges are to be extended.

Sec. 8. *And be it further enacted,* That all laws now in force in relation to the allowance of drawback of duties upon goods imported into the United States, and exported therefrom, and in relation to the conditions and evidence on which such drawback is to be paid, shall be applicable to the drawback allowed by this act. And in addition to existing provisions on the subject, to entitle exporters of goods to the drawback allowed by this act, they shall produce to the collector of the port from which such goods, wares and merchandise were exported, the certificate, under seal of the collector or other chief revenue officer of the port to which the said goods, wares and merchandise were exported in the said adjoining provinces; which certificate shall be endorsed upon a duplicate or certified copy of the manifest granted at the time of such exportation, and shall state that the same identical goods contained in the said manifest had been landed at such foreign port, and duly entered at the custom house there, and that the duties imposed by the laws in force at such ports upon the said goods had been paid, or secured to be paid, in full; and the said exporters shall also produce the affidavit of the master of the vessel in which the said goods were exported, that the same identical goods specified in the manifest granted at the time of such exportation had been carried to the port named in the clearance or manifest, and had been landed and entered at the custom house, and that duties imposed thereon at the said foreign port had been paid, or secured to be paid; and that the goods referred to in the certificate of the collector or chief revenue officer of such foreign port herein mentioned were the same identical goods described in the manifest aforesaid, and in the said affidavit.

Sec. 9. *And be it further enacted,* That no goods, wares, or merchandise, exported according to the provisions of this act, shall be voluntarily landed or brought into the United States; and on being so landed or brought into the United States, they shall be forfeited; and the same proceeding shall be had for their condemnation, and the distribution of the proceeds of their sales, as in other cases of forfeiture of goods illegally imported. And every person concerned in the voluntary landing or bringing such goods into the United States shall be liable to a penalty of four hundred dollars.

Sec. 10. *And be it further enacted,* That from the amount of duties upon goods, wares, and merchandise imported into the United States, and which shall be exported according to the provisions of this act, there shall be deducted two and a half per centum of such amount, which shall be retained by the respective collectors for the use of the United States, and the residue only shall be the drawback to be paid to the exporters of such goods, wares, and merchandise.

Sec. 11. *And be it further enacted,* That the Secretary of the Treasury is hereby further authorized to prescribe such rules and regulations, not inconsistent with the laws of the United States as he may deem necessary to carry into effect the provisions of this act, and to prevent the illegal re-importation of any goods, wares, or merchandise which shall have been exported as herein provided; and that all acts or parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

CITY SURVEYOR'S FEES.

[Document No. 61.]

BOARD OF ALDERMEN,

March 31, 1845.

The following Report was received from the Street Commissioner in answer to a resolution calling for information relative to the amount paid the City Surveyors, which was laid on the table, and directed to be printed for the use of the members.

CHARLES A. WHITNEY, Clerk.

In compliance with the following resolution which was adopted by the Board of Aldermen on the 21st inst., viz.:

Resolved, That the Comptroller and Street Commissioner, report to this Board at its next meeting, the amount of fees paid City Surveyors from the City Treasury, from the 1st day of January, 1836, to the 1st day of January, 1845; specifying the amount in each year, and the amonnt paid each Surveyor in each year, and the name of such Surveyor.

The Street Commissioner respectfully

REPORTS:

That the following amounts have been paid to the several City Surveyors through his department, as nearly as the same may be ascertained from the books which have been kept in this office within the dates mentioned in the resolution, viz.: to

Daniel Ewen,	$25,005.61
Edward Ewen,	3,413.47
John Ewen,	635.00
Thomas R. Ludlum,	13,092.84
Silas Ludlum,	7,903.89
Isaac T. Ludlum,	5,433.92
Joseph F. Bridges,	13,126.91
Edward W. Bridges,	2,825.68
Edwin Smith,	8,268.97
George B. Smith,	537.12
George W. Smith,	1,229.43
Gardner A. Sage,	11,381.64
Francis P. Vidal,	4,912.79
Francis Nicholson,	6,400.48
J. J. Serrel,	2,614.33
W. H. Whitlock,	851.03
Edward Doughty,	2,087.51
William B. Doughty,	763.85
Samuel S. Doughty,	3,657.56
Roswell Graves,	1,534.99
George C. Schaffer,	420.03
William Dewey,	215.63
John Pollock,	856.88
	$117,169.55

For greater detail reference is made to the annexed statements.

Respectfully submitted,

SAMUEL S. DOUGHTY,

Street Commissioner.

New-York, March 31st, 1845.

The following statement we have compiled from details of the Report of S. S. Doughty, Street Commissioner.

	1837	1838	1839	1844
Daniel Ewen,	5,512.77	7,044.87	5,936.36	820.69
Edward Ewen,	1,000.00	1,016.38	1,227.35	169.24
Thomas R. Ludlum,	2991.22	1,611.35	3,274.17	1,376.13
Silas Ludlum,	1,408.76	2,422.76	1,369.12	227.06
Isaac T. Ludlum,	1,251.47	2,604.20	0,752.00	.....
J. T. Bridges,	4,772,79	2,372.47	2,560.18	505 18
E. W. Bridges,	104.19	122.29	526.74	102.03
Edwin Smith,	2,068.29	645.75	2,441·67	438.04
George B. Smith,	250.00	.....	.....	.....
George W. Smith	.....	.....	20 85	263.89
Gardner A. Sage,	1,081.03	1,175.20	6,231.93	277.32
Francis P. Videl,	1,448.96	691.83	525.39	119,04
Francis Nicholson,	2,453.84	814.26	1,828.00	
J. S. Serrel,	1,455.76	461.18	596.19	
Wm. H. Whitlock,	348.68	190.66	154.36	20.44
Edward Doughty,	758.90	532.61	161.75	499.25
William B. Doughty,	69.99	.....	214.05	29.43
Samuel S. Doughty,	754.01	1,564.27	316.49	156.54
Roswell Graves,	227,00	465.26	116.73	
George C. Schaffer,	330.03	.....	.....	.....
William Dewey,	215.03	.....	.....	.....
John Pollock,	.....	.....	.....	301.12

AUCTION DUTIES.

IN ASSEMBLY, March 31, 1845.

REPORT

Of the Comptroller, in answer to a resolution of the Assembly, of the 11th February, in relation to auction duties.

COMPTROLLER'S OFFICE,
Albany, March 31, 1845.

TO THE ASSEMBLY.

The Comptroller, in answer to a resolution of the Assembly of the 11th instant, requesting him to report "the amount of auction duties which have been annually paid into the treasury from the passage of the law requiring such payments to the present time," respectfully submits the following

REPORT.

The first act for the collection of revenue on sales at auction, was passed in 1784. (Chapter 64 of Session Laws of that year.) This act authorized licenses to be granted to vendue masters by the mayors of the cities of New-York, Albany, &c., and required the payment into the State Treasury of 2½ per cent. on the amount of sales at vendue. From 1784 to 1791, the payments into the treasury by vendue masters averaged about $7,300 for each year, which revenue appears to have been used for the ordinary expenditures of the State government.

The sixth section of the act chapter 27, of the laws of 1791, distinctly appropriates the duties derived from sales at auction, "for the support of the civil government of this State."

In 1792, an act was passed, (chapter 67, of the Session Laws of that year) appropriating two thousand pounds annually from auction duties, to the "Society of the Hospital in the city of New-York."

In 1795, an act was passed (chapter 37 of the Session Laws) which appropriates four thousand pounds annually to the Society of the Hospital in the city of New-York, and repeals the appropriation of the preceding year; and also reduces the duties to 2 per cent.

In 1798, an act was passed (chapter 89) which adds one per cent to the duties on sales at auction, and appropriates the sum received on account of this additional duty, to the support of foreign poor in the city of New-York.

In 1801, an act was passed (chapter 116) which appropriates one-third of the amount received on sales at auction in the city of New-York, for the support of foreign poor in that city, and it appropriates the residue of the duties collected there, and the whole received in other parts of the State, "for the support of the civil government of this State."

In 1817, when the act was passed for constructing the Erie and Champlain Canals, various revenues were set apart and pledged for the payment of the money borrowed, and in the 5th section of the act referred to, it was provided that "all the duties upon sales at auction, after deducting thereout twenty-three thousand five hundred dollars annually appropriated to the Hospital, the Economical School, and the Orphan Asylum Society, and ten thousand dollars hereby appropriated annually for the support of foreign poor in the city of New-York," should belong to the Canal Fund.

These sums were apportioned as follows:

To the hospital,	$22,500
To the economical school,	500
To the orphan asylum,	500
For the support of foreign poor,	10,000
	$33,500

The economical school has not been in operation for many years, and the sum of $500 which was originally paid for the use of this school, is now paid to the Prince Street Orphan Asylum, under the act chapter 69, of the Laws of 1834.

A statement is annexed, which shows the sums paid out of the Treasury for auction duties in each year, from 1784 to 1844, and also the sums paid out of the Treasury for the same period for the use of the hospital, foreign poor, and other objects. The total sum paid into the Treasury on account of sales at auction for 60 years, is $7,660,291.88

Total paid from the Treasury for the use of hospital, &c. 1,811,774.75

Retained in the Treasury, $5,848,517.13

Of the amount thus retained in the Treasury, the sum of $3,592,039.04 has been appropriated to the construction of the Erie and Champlain Canals, and the sum of $2,256,478.08 has been used for the ordinary support of the government.

Respectfully submitted,

A. C. FLAGG.

STATEMENT

Of the amount of duties paid into the Treasury during each fiscal year, from 1784 to 1844, inclusive; and of the amount charged upon such duties and paid from the Treasury during the same time for the support of the New-York Hospital, Foreign Poor, Economical School, and Orphan Asylum in the city of New-York, viz:

Year ending		Am't paid into the Treasury.	Amount paid to hospital, &c.
Dec. 31,	1784	$6,356.46	.....
	1785	11,771.77	.....
	1786	6,473.99	.....
	1787	6,908.84	.....
	1788	5,356.36	.....
	1789	6,675.78	.....
	1790	7,318.39	.....
	1791	8,051.38	.....
	1792	14,605.08	$3,750.00
	1793	21,898.38	1,250.00
	1794	12,594.02	5,000.00
	1795	38,890.30	12,500.00
	1796	14,801.13	12,500.00
	1797	25,135.26	13,875.00
	1798	35,187.96	15,098.00
	1799	47,907.95	29,509.46
	1800	55,942.74	30,992.91
	1801	78,783.69	38,838.61
	1802	66,030.24	34,263.49
	1803	52,776.14	27,599.78
	1804	56,322.69	29,015.69
	1805	47,614.44	29,909.21
	1806	64,879,04	33,955-88
	1807	73,621.80	37,392.00
	1808	66,474.99	29,537.37
	1809	89,636.08	39,303.14
	1810	127,774.01	45,346.19
	1811	107,439.25	60,488.23
	1812	126,962.80	53,699.12
	1813	136,122.18	69,022.32
	1814	86,067.76	50,336.83
	1815	191,475.23	49,455.85
	1816	159,450.01	97,205.89
	1817	203,449.27	70,554.78
	1818	179,967.14	33,500.00
Nov. 30,	1819	144,444.13	33,500.00
	1820	156.477.20	33,500.00
	1821	152,778.02	33,500.00
	1822	181,967.65	35,500.00
	1823	209,631.16	33,500.00
	1824	233,101.53	33,500.00
	1825	253,452.38	33,000.00
	1826	234,237.84	30,500.00
	1827	298,289,65	33,000.00
	1828	257,187.40	35,000.00
	1829	242,552.54	28,000,00
	1830	218,513.66	38,000.00
Sept. 30,	1831	178,276.66	22,375.00
	1832	250,424.02	35,000.00
	1833	212,014.23	31,000.00
	1834	205,337.04	36,000.00
	1835	244,537.24	33,000.05
	1836	274,903.81	36,000.00
	1837	214,458.62	28,000.00
	1838	142,102.35	34,000.00
	1839	225,401.84	38,500.00
	1840	164,621.38	30,500.00
	1841	206,702.11	34,000.00
	1842	200,284.52	27,875.00
	1843	161,123.02	39,125.00
	1844	174,749.36	33,500.00
		$7,660,291.88	$1,811,774.75

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MAY 8, 1845. [VOL. I....NO. 34

PITTSBURG SUFFERERS.

The meeting convened at the Mayor's office on the 19th ult., to consult as to preliminary measures for calling a public meeting in reference to the calamitous fire at Pittsburg, was attended by the following named gentlemen.

Wm. F. Havemeyer, Esq., Mayor elect, Hon. Joseph Sprague, Mayor of the city of Brooklyn, Ex-Mayor's Stephen Allen, Philip Hone, and Cornelius W. Lawrence, James Brown, of the banking house of Brown, Brothers, & Co., George Griswold, of the house of N. L. & G. Griswold, Adam Norrie, of the House of Boorman, Johnson, & Co., Anson G. Phelps of the house of Phelps, Dodge & Co., Caleb Swan, of the house of Stone, Swan & Co., George Newbold, President of the Bank of America, Ex-Aldermen Peter Cooper, Henry Andrew, and Mr. Havens.

Mayor Harper was called to the Chair, and Mr. Havemeyer, the Mayor elect, was appointed Secretary. Hickson W. Field, Abraham G. Thompson, and John R. Murray Esqrs. sent messages to Mayor Harper stating that sickness prevented them from attending, and at the same time expressing their approval of the objects of the meeting. It was a meeting of good men.

When we looked upon this group of citizens assembled in the Mayor's Office, we could not help contrasting this body of men with those which have for years composed our City Councils, and felt a wish that the affairs of this great City Government could be confided for a single year to these same individuals.—What a blessing such an investment of power would be to the people.

The contributions which have grown out of this meeting exceed $21,000. Messrs. WOOLSEY & WOOLSEY, the proprietors of the very extensive sugar refinery in New-York, gave $600. BROWN, BROTHERS, & Co. gave $500, NATHANIEL and GEORGE GRISWOLD $500. JAMES LENOX Esq., $500. There were other donations of a similar amount. We have not a list of all the donations. The application to the citizens, more generally, would have greatly increased the amount. MAYOR HARPER is entitled to thanks for moving in this good work, and also the gentlemen who aided him by their ready response to his call.

THE FERRY QUESTION

Public Ferries and public Roads are both designed for the same end, viz. to accommodate the people.—Ferries are not a property in the corporation of a city any more than a weigh house or a public street, but ferries require regulations by a general law. The statutes of this State make provision for ferries where the land is owned on the shore adjoining the water, but such a ferry as the Brooklyn and New-York ferries come not within this regulation for at each end the ferry terminates in a public highway. Fulton Street in Brooklyn and Fulton Street in New-York are of this class.

The Legislature should provide that any ferry boat which is sufficient for the transportation of passengers and carriages, carts, &c., should have liberty to land at any public wharf in New-York or Brooklyn free of charge, on condition of transporting passengers for one cent, and carts and carriages for three cents. The East River is a public highway, and so is Fulton Street in New-York and Brooklyn. There is no private property between these two cross roads. It is said the Legislature cannot interfere with North River Steamboats for the safety of Passengers.—North River Steamers are mere ferry boats, although they are licensed by the Government of the United States, and so can the Fulton Ferry boats obtain licenses from the government of the United States, and the boats are already subject to the inspection of the United States officers as to the boilers, tiller ropes, &c.

TAXES IN THE CITY OF NEW-YORK.

The amount of Taxable property returned by the assessors in 17 Wards of the City of New-York in 1844. is as follows:

Real Estate,	$171,936,591.18
Capital of Incorporated Companies,	28,964,512.45
Personal Property,	35,058,944.15
	$235,960,047.78

The amount of this property in the Croton Water District is $224,108,713.98.

The amount in the Watch District is $228,283,-316.98.

The amount in the Lamp District is $227,770,293.98.

The amount of property returned by the Ward Assessors as not being subject to the Croton Tax is that which is situate north of a line running from the North River through the centre of 23d Street to Lexington Avenue, through the middle of Lexington Avenue to 28th Street, and through the middle of 28th Street to the East River, and of persons residing to the North of that line, and is $11,856,334.00. The northern line of the Croton Water District is a geographical limit, and therefore an arbitrary line.

There is no justice in taxing a resident on the south side of 23d Street for the Croton and exempting his neighbor who lives but 100 feet from him on the north side of that street.

The tax should be assesed upon those who enjoy the benefits of the Croton without regard to geographic lines.

Land should not be taxed for the Croton, but buildings and merchandise should be taxed to the extent of the benefit enjoyed.

The tax should be so imposed as not to injure the value of property in the city by driving wealthy citizens out of it. We know of one dwelling in New-York which rented for fifteen hundred dollars per annum, but the occupant is unwilling to rent it any longer in consequence of the high taxes on personal property which he will be subjected to.

If the entire tax was imposed upon real estate the additional per cent would be trifling. The Taxable property as returned by the assessors including incorporated companies, and excluding the personal property of Individuals, is in round numbers about two hundred millions of dollars. The amount of the annual tax last year, say $1,960,000.00 in round numbers.

This sum assessed upon two hundred million of dollars, would amount to a per centage of 99 cents upon the one hundred dollars.

A permanent Board of Assessors who should be vested with the power of Assessing the Croton tax upon buildings and merchandize, and of supervising the Ward Assessors in their assessments upon individuals for personal property, would produce a reform in the system of Taxation of incalculable advantage to the city.

Something should be done in the matter of Taxes by the citizens independent of the Corporation. It is now a most difficult subject and requires a careful and deliberate discussion and thorough examination.

This subject if attended to early may be made the subject of special attention of the New-York delegation at the commencement of the next Legislature, and individuals should be selected as candidates for this especial purpose.

The amount of Taxable property in the First Ward in 1844, by the assessors' return was $54,029,602.89

Fifteenth Ward, 26,033,044.22

The personal property assessed in the 11th Ward but $99,200.00, and in the 13th Ward is but $252,-485.26,

STATE SENATE.

The following named individuals compose the Senate of the State of New-York, viz:

ADDISON GARDINER, President.

FIRST DISTRICT.

Isaac L. Varian, ... 1845.
John A. Lott, ... 1846.
David R. Floyd Jones, ... 1847.
George Folsom, ... 1848.

SECOND DISTRICT.

Abraham Bockee, ... 1845.
Abraham A. Deyo, ... 1846.
Joshua B. Smith, ... 1847.
Robert Denniston, ... 1848.

THIRD DISTRICT.

Erastus Corning, ... 1845.
John C. Wright, ... 1846.
Stephen C. Johnson, ... 1847.
John P. Beekman, ... 1848.

FOURTH DISTRICT.

Edmund Varney. ..... 1845.
Thomas B. Mitchell, ... 1846.
Orville Clark, ... 1847.
Augustus C. Hand, ... 1848.

FIFTH DISTRICT.

George C. Sherman, ... 1845.
Carlos P. Scovil, ... 1846.
Thomas Barlow, ... 1847.
Enoch B. Talcott, ... 1848.

SIXTH DISTRICT.

James Faulkner, ... 1845.
Calvin T. Chmaberlain, ... 1846.
Clark Burnham, ... 1847.
George D. Beers, ... 1848.

SEVENTH DISTRICT.

William Bartlit, ... 1845.
John Porter, ... 1846.
Albert Lester, ... 1847.
Henry J. Sedgwick, ... 1848.

EIGHTH DISTRICT.

Gideon Hard, ... 1845.
Harvey Putnam, ... 1846.
Frederick F. Backus, ... 1847.
Carlos Emmons, ... 1848.

The term of office of a Senator, is four years, and the terms of office of the respective Senators named above, expire with the last moment of the year set opposite their names respectively.

The Lieut. Governor is, by virtue of his said office. President of the Senate, except when he acts as Governor, and then, and in that case, he ceases to be President of the Senate. The two offices being incompatible.

The members of the Senate, together with the Chancellor, and Justices of the Supreme Court, form the Court for the correction of Errors.

Isaac R. Elwood, is Clerk of the Senate, and also Clerk of the Court for the Correction of Errors.

Charles Bryan, is Sergeant-at-Arms.

Senators are required to be freeholders—property, instead of mental qualification.

The salary of the Chancellor is $3000 per annum, and the Justices of the Supreme Court, have each the same compensation. Reuben H. Walworth, is Chancellor. Green C. Bronson, is Chief Justice of the Supreme Court. Messrs. Jewett and Beardsley are Assistant Justices. The per diem pay of a Senator is $3 per day, and mileage to and from his home to the capitol, or the place of holding court. The President of the Senate receives $6 per day for actual service.

RAILROAD STOCKS.

Railroad incoporations without this State present a difficult question as to taxation. Railroads are real estate according to Sec. 2 of page 379, of the Revised Statutes, which declares "that the term 'land' as used in this Chapter, shall be construed to include the land itself, all buildings or other articles erected upon or affixed to the same, and the term 'real estate' and 'real property,' whenever they occur in this Chapter, shall be construed as having the same meaning as the term land thus defined." The cars and funds belonging to a railroad are personal property.

The stock of an incorporated Company is deemed personal property in the disposition and distribution of estate of persons who have deceased, and in our statutes regulating the descent and distribution of estates are so treated.

An incorporated Company has the right by law to deduct their real estate from the amount of their capital stock, and a stockholder has the right to deduct the amount of the stock that he holds in any institution in this State from the amount of his personal property, but he has not the right to deduct stocks in monied institutions without this State.

The Attorney General, Mr. Van Buren, informed us that he has been applied to by the Supervisors of several counties bordering upon Canada, as to the liability of the stock held in the Banks of Canada, and owned by citizens of this State to taxation as personal property.

We do not know that he has yet given an answer, but we presume that he will be governed in this by the provisions of section 3 of page 379, and section 15 of page 383 of the first volume of the Revised Statutes which declares what property is subject to taxation. as follows:

"§ 3. The terms 'personal estate,' and 'personal property,' whenever they occur in this chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations.—They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital as shall not be invested in real estate."

"§ 15. If any person whose real or personal estate is liable to taxation, shall at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estats does not exceed a certain sum to be specified in such affidavit; or that the value of the personal estate owned by him, after deducting his just debts, *and his property invested in the stock of incorporated companies, liable under this chapter to taxation on their capital*, does not exceed a certain sum to be specified in the affidavit, it shall be the duty of the aseessors to value such real or personal estate, or both, as the case may be, at the sums specified in such affidavit and no more." See Sec. 7 on this page.

"§ 4. The following property shall be exempt from taxation:

"1. All property, real or personal, exempted from taxation by the constitution of this state, or under the constitution of the United States.

2. All lands belonging to this State, or the United States:

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them:

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same:

5. The real and personal property of every public library:

6. All stocks owned by the state, or by literary or charitable institutions;

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth Title of this Chapter:

8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars: and,

9. All property exempted by law from execution:

§ 5. If the real and personal estate, or either of them, of any minister, or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

§ 6. Lands sold by the state, though not granted, or conveyed, shall be assessed in the same manner as if actually conveyed.

§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individal for such stock." See § 15

LEGISLATION.

The very frequent assembling together of Legislative bodies to enact laws, is highly injurious to the public interest and extremely detrimental to the welfare of the people.

Laws to be salutary and useful, should be permanent. It sometimes happens that it is impossible to foresee the effect which a particular statute will have until it is put in practise, and such cases are sometimes exceptions to any general rule, but there are great principles which should form the basis of all statute laws.

The rights of persons and the rights of property should be the subject of constitutional law, and no legislature should alter or change such laws by becoming the violators of these important provisions.

One great difficulty exists in reference to legislative bodies, and this difficulty arises from hasty legislation.

Many laws are hastily passed and approved by the Executive without careful examination, which if properly scrutinized would be returned to the house in which the bill originated, and would never encumber the statutes and involve individuals in litigation.

It was a common practice with the colonial Legislature of the Province of New-York to refer important bills to the Attorney General for examination, and such a reference was a great aid to the Governor and Council whowere to give, or refuse their assent thereto.

Under the constitution of 1777 the Governor and Council were allowed to retain a bill passed by the Legislature near the close of the session, and if objectionable, to return it to the next Legislature, with objections. This was a most salutary provision, and should never have been abrogated.

Under the present Constitution, a bill retained by the governor until after the adjournment of the Legislature becomes a nullity, and therefore the executive must sign it if passed the last day, as great numbers of bills are, without reading or understanding its contents properly.

In 1844 Col. Young, the Secretary of State, sent a communication to the house of Assembly of this State informing that body that a law which had been enacted by the Legislature was in such a shape that it could not be executed. The Legislature were under the necessity of passing a resolution to amend the act. What a commentary this upon Legislation.

JUDICIARY.

The judiciary department of a government is more important than either the legislative or the executive.

A government so organized that one man, or one body of men possess all its powers, is called absolute.

In the organization of our government it is intended that the powers of the government shall be separated. That the legislative shall be distinct from the executive, and that both shall be distinct from the judiciary, but the difficulty exists in defining what are Legislative, Executive, and Judiciary powers. If the judges of the courts through ignorance or design set up their will as a substitute for the law, they exercise all the powers enumerated above and thus become despots.

In the organization of the Court for the correction of Errors, one of the Legislative branches of the government constitutes the Court. The Chancellor and Justices of the Supreme Court are members of that Court, but the number of these judiciary officers is but four, while the Legislative members number thirty-two.

The great number of decisions of the Supreme Court and Court of Chancery which are reversed by the Court for the Correction of Errors, is a mournful commentary upon human judgment.

The members of the Court for the Correction of Errors, with the exception of the Judiciary members, are not required to give a reason for the decision which each member pronounces.

AMENDMENT OF THE CONSTITUTION.

The adoption of a fundamental Law by a Free People is a solemn act of those who will be selected to discuss its provisions and to agree upon its details but few will remain many years to witness its operations, it therefore will be made for the guidance and government of those who are yet unborn.

There are great principles in government which are unchangeable and these principles should form the basis of the Constitution.

In the administration of a government under a written Constitution local difficulties will frequently occur which could not be forseen by the framers of the fundamental law, hence the difficulty of framing a general law to reach every particular case.

Difficulties of a serious nature frequently grow out of the peculiar phraseology of the various provisions of a Constitution, therefore care should be taken in the framing of so important a law to have the language so plain that it cannot be misinterpreted.

The great distinction which is claimed by the citizens of the United States as existing between our form of government and those of many of the civilized nations of Europe, is, that in the United States the Executive, Legislative and Judiciary powers are separated and exercised by distinct bodies and the Constitutions of the individual States composing the Union must be in conformity with these great principles.

In the Constitution of the State of Massachusetts it is provided that the Judiciary shall not exercise the powers of the Legislative department of the government. This is a very important provision and should by all means be incorporated into the Constitution of this State.

It is but very recently that a solemn question was raised in reference to the exercise of an extraordinary power by the Justices of the Supreme Court of this, State. The exercise of this power, we have remarked was extraordinary, and besides it involved immense patronage and moreover vast pecuniary liabilities of individual citizens.

At the time this question was raised the Supreme Court bench was composed of Samuel Nelson, Chief Justice, and Esek. Cowen and Green C. Bronson, Assistant Justices. The two Assistant Justices after hearing argument of counsel decided that this exercise of power was a violation of the Constitution. The Chief Justice dissented. Shortly after the decision Mr. Justice Cowen departed this life, and Samuel Beardsley was appointed to fill the vacancy. The question was ordered to be re-argued, and Mr. Justice Beardsley gave the casting vote, reversing the decision of the previous bench. Mr. Beardsley delivered the opinion of the Court which was that of the Chief Justice and himself in a very lengthy written document which we have published and reviewed on the same pages. Mr. Justice Bronson also wrote a brief opinion invalidating, we think, most clearly the soundness of the opinion of his learned associates. This will be found also on the same pages together with the argument of Daniel Webster before the Court.

This was a case in which Judicial officers had assumed to exercise a power which it is insisted is not only unauthorised by the Constitution, but is, moreover, prohibited by that instrument, and these very officers are the tribunal which is to determine the constitutionality of the acts of its own members, thus presenting the extraordinary position of a judge deciding his own case.

Mr. Justice Beardsley holds that the power exercised by the Justices of the Supreme Court in the highway proceedings, which are the proceedings involved in this question, are a judiciary power, and that very view of it involves an absurdity, for it would follow that any power confered upon a judiciary officer becomes a judiciary power from the fact of its being conferred upon an individual holding a judicial office; hence, if the Justices of the Supreme Court of this State were vested by law of the legislature with the command of the militia of this State, such a command would be the exercise of a judiciary power, being only an extension or enlargement of the power by the Court, and not a new power.

This presents a matter for the deliberate investigation of each individual member of the contemplated convention, and being one of vast importance we shall furnish each individual with the Municipal Gazette containing these matters in a connected form.

EXTENDING CANAL STREET.

The destruction of the Bowery Theatre has opened anew the proposition to extend Canal Street. The law passed by the Legislature in 1839, is a restriction on any new proceeding for opening Streets in the city of New-York, independent of the difficulty in the exercise of highway powers by the Justices of the Supreme Court.

Judge JEWETT the newly appointed Justice of the Supreme Court, is said to be one of the ablest real estate lawyers in the State, and it is therefore to be presumed that he will not consent to perform the office of Highwaymaster while he holds the office of Justice under the Constitution of this State now in existence. Chief Justice BRONSON has already expressed his opinion as to the prohibitory provision of the Constitution in respect to the exercise of street powers by the Judges, and in so clear and unanswerable a manner as to place the question beyond all doubt.

Whatever is needful to be done in reference to Canal Street will require to be proceeded in by the State Legislature independent of the Supreme Court, or Chancellor of this State.

The law of 1839 gives the control of the proceeding as to the confirmation of the Commissioner's Report to two classes of persons, viz. those composing a majority of the awards, or a majority in the amount of the assessments, may appear and object, or both, and if either to the extent of a majority in amount do so object, the court are compelled to discontinue the proceedings in toto.

The application for the appointment of Commissioners must be on giving 20 days notice, of a certain form, and in certain places, of the intention to apply for the appointment of Commissioners. The application must be made to the Court in Albany or New-York, and in certain months of the year.

The act passed March 7, 1793, in relation to John Street, is a good pattern bill for Canal Street. This act appointed Henry Rutgers, John Broome, Daniel McCormick, John Stagg, and George Goffman, Commissioners a majority of whom were authorised to act, and also provides for a jury of merchants to assess the damages for the land required to be taken. We here give the act entire, as follows:

CHAPTER 42.

"*An act for improving John Street in the third Ward of the city of New-York, and for vesting the Right of the People of this State, to the lands left for Streets, in the City of New-York, in the Corporation of the said City.*—Passed 7th March, 1793."

"WHEREAS it has been represented to the Legislature that it is necessary that the lower end of John Street, in the third ward in the city of New-York, commonly called Golden-Hill Street, should be enlarged and widened; Therefore,

"1. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That from and after the tenth day of May, which will be in the year of our Lord one thousand seven hundred and ninety-four, the said Street which now is only twelve feet four inches wide, at the intersection thereof with Queen Street between the houses of Moses Rogers and Thomas Pearsall, shall be enlarged and widened as follows, to wit: beginning on Queen Street aforesaid, at a point eight feet eight inches east of the south-west corner of the front of the house of the said Thomas Pearsall, and running thence by a straight line to a point three feet two inches east of the north-west corner of the rear of the same house of the said Thomas Pearsall, and from thence in a straight line to the north-west corner of the lot of ground of the said Thomas Pearsall on Golden-Hill Street aforesaid. And that on the south-west side of the said street, the same shall be enlarged and widened, by a direct line to be drawn from the north-west corner of the new house, lately built by the said Moses Rogers, through the houses and lots of ground of Daniel Tooker, John Harrison and John Sproson, to the south-east corner of the dwelling house of Alexander Crawford; and to the end that reasonable satisfaction may be made for such parts of the said lots as may be necessary for the purposes aforesaid, the mayor, aldermen and commonalty, of the city of New-York, in common council convened, shall and may treat and agree with the respective owner or owners thereof, or with the person or persons respectively interested therein, or with his, her or their respective agent or agents, or legal representative or representatives; and if such person or persons, either any or all of them shall refuse to treat and agree in manner aforesaid, then, and in such case, it shall and may be lawful, to and for the mayor or recorder, and any two or more aldermen, by virtue of this act, by a precept under their hands and seals, to command the sheriff of the said city and county of New-York, to impannel and return, and he is hereby commanded to impannel and return a jury of merchants, being freeholders, to appear before the mayor's court of the said city, at any term thereof, not less than three weeks from the date of such precept, to enquire of and assess the damages due, or that shall accrue to such owner or owners respectively, of such houses and lots of ground, and to notify him, her or them, by notice, to be left at his, her or their most usual place or places of abode, if they respectively shall reside in the said city and county, but if not, then on the premises respectively, that may be supposed to be in charge to such jury, at least fourteen days before the return of the said precept, to appear before such mayor's court, at the day and at the place in such precept to be specified, which jury being first duly sworn, faithfully and impartially to inquire into and assess the damages in question, and having viewed the premises, if necessary or required by any or either of the owner or owners, agent or agents, or legal representative or representatives thereof, shall enquire of and assess such damages, and recompense respectively, as they shall, under all the circumstances, judge fit to be awarded to the owner or owners, of such respective houses or lots of ground, for their respective losses or damages, according to their several and respective interests and estates therein, and the verdict of such jury, and judgment of the said mayor's court thereupon, and the payment of the sum or sums of money, so awarded or adjudged to the owner or owners thereof, or tender or refusal thereof shall be conclusive and binding to all intents and purposes, against the said owner or owners, his, her, and their respective heirs, executors, administrators and assigns, claiming any estate or interest of, in, or to the said houses or ground. And it shall be thereupon lawful, to and for the said mayor, aldermen and commonalty, of the city of New-York, and their successors, to cause the same ground to be converted to and for the purposes aforesaid.

"2. *And be it further enacted,* That it shall and may be lawful, to and for Henry Rutgers, John Broome, Daniel M'Cormick, John Stagg, and George Goffman, or a majority of them, upon a full and equitable consideration of all the circumstances attending the same, to determine what part or portion of all and every of the said sums of money so to be paid, ought to be borne by the said common council, in consideration of the general convenience to the citizens of the said city; and what part or portion thereof, specifying the sum, ought to be borne and paid by individual citizens, whose estates in the said street and vicinity thereof, will become advanced or increased in value by such improvements, and to make a just and equitable assessment of the last mentioned sum, among the owner or owners of all the houses and lots in the vicinity thereof, according to the benefit they may respectively be deemed to acquire or receive thereby, and that the said persons respectively, before they shall enter upon the execution of their trust be duly sworn, before the said mayor or recorder, to make the said estimate and assessment, fairly and impartially, according to the best of their skill and judgment, and a certificate in writing, of such estimate and assessment being returned in writing, subscribed by the said persons so appointed, or a majority of them, or a majority of the survivors of them to the said common council, and ratified by them, shall be binding and conclusive, upon the owner or owners of such houses and lots, so to be assessed respectively, and the said owner or owners respectively, shall thereupon become and be liable and chargable, and they are hereby required, upon demand, to pay to such person, as shall be authorized by the said common council to receive the same, the sum at which each such respective house or lot, shall be so assessed, to be employed and applied for and towards the payment of such losses and damages, as may have arisen in consequence of the enlargement and alterations hereby intended to be made, to the owner or owners thereof respectively, so as aforesaid, by the jury respectively to be assessed, and in default of payment thereof, or of any part thereof, it shall and may be lawful, to and for the said mayor, recorder, and aldermen, of the said city, or any three of them, of whom the mayor or recorder, always to be one, by warrant, under their hands and seals, to levy the sum and sums of money so assessed, by distress and sale of the goods and chattels, of the owner or owners of such house and lot so assessed, and refusing or neglecting to pay the same, rendering the overplus, if any there be, after deducting the sum assessed, and the charges of distress and sale, to such owner or owners respectively, or his or their legal representative or representatives; and if it should so happen, that such owner or owners, shall have no goods or chattels to satisfy the assessment aforesaid, that then and in such case the same shall be deemed a debt due, from the owner or owners thereof, his, her, or their lawful representative or representatives, to the mayor, aldermen and commonalty, of the said city, and shall be payable to them within three months after such assessment, and moreover shall become a charge or lien and prior incumbrance upon such house and lot of ground, into whose hands or possession the same shall then be, or at any time thereafter shall come or descend; and the respective owner or owners of such houses and lots of ground respectively, at the time of such assessment, shall thereupon become and be respectively liable and chargable, and they are hereby required to pay to the treasurer or chamberlain, of the said city for the time being, who is hereby authorized to receive the same, to the use of the said corporation, the sum at which such houses and lots of ground shall be so so assessed as aforesaid, and in default of payment thereof, the same shall and may be recovered at the suit of the said treasurer or chamberlain, in any court of record, within this state, with costs of suit, and no such action or suit, shall be abated or discontinued by the death of the treasurer or chamberlain, of the said city, or by his resignation or removal from office. but shall be continued and prosecuted to effect by his successor in office.

"3. *And be it further enacted,* That all the estate, right, title, interest, claim and demand whatsoever, of the people of this state, of, in and to all lands at any time heretofore left for streets or highways, in the city of New-York, by any person or persons whomsoever, shall be, and hereby is vested in the mayor, aldermen and commonalty, of the city of New,York. and their successors, for the use of streets and highways."

THE ROCK FORMATIONS OF MANHATTAN ISLAND.

We have before us a statement of the depth of several wells which have been sunk in the city of New-York and of the distance at which rock was reached from the surface.

At the corner of Perry and Factory Street a well was sunk to the depth of 200 feet. The rock was reached at the depth of 70 feet, and the boring continued in the rock 130 feet.

Near 16th Street and the 7th Avenue a well was sunk to the depth of 120 feet. The rock was reached at the depth of 20 feet, and the boring continued in the rock 100 feet.

At the Deaf and Dumb Asylum near 50th Street a well was sunk to the depth of 112 feet, all the way in the rock.

The Manhattan well in Mercer Street near Bleeker Street was sunk to the depth of 448 feet. The rock was reached at the depth of 42 feet.

At the corner of Avenue D and 5th Street a well was sunk to the depth of 100 feet, and rock struck at the depth of 95 feet.

At the City Hall the well has been sunk to the depth of 90 feet without reaching the rock.

At Trinity Church Yard a well has been sunk to the depth of 26 feet, and terminates on a rock.

At the low tide the rock is bare at the lower side of the Battery.

At Union Place the rock is even with the present surface.

The well sunk at Washington Market reached the rock at the depth of 70 feet.

The well sunk at Holt's Hotel reached the rock at 126 feet and the boring was continued in the rock 500 feet. At Fulton Market the rock was reached at the depth of 130 feet. At Columbia College the rock was reached at the depth of 80 feet.

It appears from these perforations made at various places in the city of New-York, that the Island of New-York has for its base a rock formation. It is a gneis rock.

CHALK FORMATIONS.

The extensive chalk formations found in France and England are a wonderful display of the geological features of our earth.

I have examined several large masses of chalk which have been imported from Europe. and have numerous nodules of flint which I have taken from large lumps of chalk. Those which come from chalk brought from the Isle of Wight, are dark, and these from chalk brought from France are of a light color. Some of these fl nt nodules are very hard, and others less so, and the chalk appears to have penetrated the nodules of the latter description an eighth of an inch or more.

I obtained from a lump of chalk a nodule of Iron weighing nine ounces. This Iron has the same shape as the flint nodules and is pure metal.

I have also three fossils which I obtained from large lumps of chalk. One of these fossils is perfect, the others were broken before the body became fossilized. The one which is perfect measures 2 inches in width, 2¼ inches long, and 1¼ inch thick. It is a perfect head, and weighs 2¾ ounces. The shell of this head is a perfect enamel, and is about one-sixteenth of an inch thick, and when broken shows a glossy fracture. The inside is filled with solid chalk. I have been unable to discover in this head the organs of sight. The mouth is small and there is but one nostril which is in the centre above the mouth. The throat is visible where the head connected with the neck.—The embossing on the original surface of this head is retained in great perfection, and resembles that which is seen upon the skin of the Dog Fish. The whole is perfectly white. On the top of the head are five depressions about half an inch in length, and one-eighth of an inch in width, and one sixteenth of an inch in depth in the centre; each of these are intersected at right angles by 33 groves ¼ of an inch long, and about the one hundredth part of an inch deep. These 5 indentations meet at the centre on the top of the head. One runs toward the neck, and each of the others describe the points of the compass midway between the cardinal points. I am inclined to the opinion that this fossil is only a part of the animal and that it was connected with a body like that of the head of the tortoise, but nevertheless it may be the entire animal for nature presents such a vast variety that we cannot determine the fact by comparison with what are now alive on the earth. The other fossils which are broken, present the shells only, and retain only a part of the original shape, and appear to have been bruised.

One of these is like a common turtle shell. By what process the beds of chalk have been deposited we are unable to conjecture, and the extensive examinations of these stratas seem to have thrown no light upon the subject. It is probable that the condensation of carbonic acid gas is the origin of the chalk formation, and the fossils which are found embedded in chalk, present the same illustration that vegetable substances do that are found embedded in stone coal. The former being condensed carbonic acid gas, and the latter, being condensed hydrogen gas.

I have among my collections a bottle of Petrolium from one of the western mineral tar springs. This fluid could be forced into the pores of wood and that wood afterwards becoming crystalized would form a bituminous coal. Petrolium is found quite abundant in some sections of the United States. About thirty years ago it was met with in boring for salt water at Kanhawha in Virginia, at the depth of three or four hundred feet, and often several barrels of it was collected from one well. Recently none has been met with in these borings, but the wells which have been sunk to the depth of near one thousand feet give vent to an immense body of carburetted hydrogen which rises with the salt water in a column near one hundred feet above the surface. Seams of bituminous coal are passed in these borings. A particular description of these will be found in this volume.

THE COPPER MINES OF LAKE SUPERIOR.

It is represented that vast stores of copper underlay the surface of the country bordering upon Lake Superior. Lake Superior is north of latitude 46°, and occupies a deep basin, Its surface is about 75 feet above that of Lake Erie, and about 640 feet above the surface of the bay of New-York, but its bottom is about 250 feet lower than the surface of tide water. If the falls of St. Mary and those of Niagara, were entirely removed, still Lake Superior would remain the greatest Lake on the face of the globe. The depth of the waters of Lake Superior are estimated at 900 feet. The barriers which confine the waters of the great lakes in their respective basins are narrow and may undergo changes in the process of time which may produce vast revolutions on the surface of the earth in that section of the Globe. If the rocks which compose the falls of Niagara were removed the falls of the Sault of the St. Mary, would be proportionably increased, and the great cataract thus change its location. The St. Croix river which empties into the Mississippi through Lake St. Croix below the falls of St. Anthony heads in a boiling spring of about two acres in extent, and the river Brule which has its head in the same spring, runs into Lake Superior.

What a fountain this to furnish its fluid at the same time the to Gulf of Mexico and the Gulf of the St. Lawrence. This boiling spring is in north latitude about 46° 30′, and west longitude about 91° 45′. The climate on the shores of Lake Superior is cold, and therefore a favorable section of the world for the production of minerals to supply the more temperate agricultural districts, which will create an exchange of commodoties which will be the basis of an extensive trade in the process of time. If copper is as plenty in this section of the world, as represented, it will soon become as cheap as iron.

WILD RICE.

I have a small quantity of wild rice presented to me by a kind friend in Upper Canada during my visit to that country in the summer of 1844. This grew in Rice Lake in which the river Trent has its head. This wild rice is collected by the Onotanaba Indians and brought into the white settlements and sold. At the dinner table of the house of a friend it was served up as a desert, and was a most delightful dish. This wild rice is a very abundant product of the lakes in the high northern latitudes, and gives sustenance to wild geese which are seen every spring shaping their course in their flight to that region of the globe, to pass the summer. The Indians in gathering this rice run their bark canoes through it, and with a pole turn the heads of the rice over to the inside of the bark canoe and with a stick beat out the grain which falls to the bottom of the canoe.

Some of the grains of the wild rice are near ¾ of an inch in length and are of a dark color, almost black. Nature has provided in the extensive region where the wild rice is most abundant the means of sustaining the lives of the numerous wild fowls which feed upon it. and even the human species when traversing these regions find it almost their sole dependence.

The wild rice takes root in the mud at the bottom of Lakes and ponds of water where the mud is deep, and grows to a great height under water and several feet after it rises above the water.

AN ANCIENT TOWN.

On the southerly bank of Big Barren River, near Bowling Green, State of Kentucky, is the remains of an ancient town. I visited this locality in 1814, and examined this ancient site. At this place the River makes a bend describing an obtuse angle which gives to the observer standing upon this ancient site a view of the river for half a mile up its stream and an equal distance, down. The site forms the surface of a bluff which is about 100 feet above low water. This surface of the bluff is a few hundred feet broad, and declines gradually as its distance from the river increases.—On the opposite side of the river the land is flat and not elevated more than fifty feet above low water.—When I visited this place it was enclosed within the boundaries of a large farm. I stopped for breakfast at the house of the owner, who was an old settler, and spent some time with him, and he accompanied me over the grounds. The foundations of buildings were visible on both sides of a street near 100 feet wide. In the rear of the site the owner had planted an orchard which he afterwards attempted to improve by ploughing up the ground to a considerable depth, in doing which he discovered immense quantities of human bones which appeared to have been placed there in bulk, and which were reposing immediately under the surface. When I crossed the river it was quite low, and I forded the stream on horseback and on reaching the southern shore I looked up to the fork of a Sycamore tree 30 or 40 feet above the ground where the roots of a tree were hanging which had lodged there during a great fresh. On the opposite side of the River I examined several ancient mounds some of which were opened and found filled with human bones. There is no written history which presents any record of the rise or downfall of this ancient town. Itself, alone, is its historian and discovers the trace of a ruin.

THE ROLLING FORK OF SALT RIVER.

It was on a summer day that I was travelling on horseback in the near vicinity of the rolling fork of Salt River at a time when rain showers were frequent when I met a traveller who had but a few minutes before crossed the river, the banks, of which I was then approaching. He accosted me, saying, that unless I put forward with all speed I would be too late to ford the river, as it was rising rapidly when he crossed. only ten minues previous. I adopted his advice and urged my horse forward. reached the river, and forded the stream without difficulty, and travelled on its opposite bank for a considerable distance as the road led that way. Before I had travelled half a mile from the ford, the river was ten feet deep. This fork is a fitful, fretful stream and has a rocky bed; it rises among the mountains and is often a most impetuous mountain torrent, but it soon runs out. It is rightly named, but its title has a most imposing sound in the ears of a stranger traveller who is journeying toward it in the bosom of a forest.

MULDOW'S HILL.

This highland is crossed by the great road leading from Danville, Ky., to Nashville in Tennessee. It is on the easterly side of green River. I have crossed it often on horseback and generally dismounted and filled my pockets with curious petrefactions which are plentiful on its surface. The wonder is how came they in such a place, and upon the surface of the ground. Every thing is wonderful,—how little do things that are constantly in view attract our notice or interest our minds.

HUDSON RIVER.

We have before us Hasler's Chart of the Hudson River, opposite New-York.

The depth of the water in a line drawn from the foot of Courtlandt Street to the Rail Road Pier at Jersey City gives us the least depth on the Jersey City side, 16 feet, and as the greatest depth near the New-York side, 50 feet. Beginning at the first sounding stated, on the New-York side, as follows: 28, 30, 31, 32, 37, 44, 50, 49, 44, 34, 33, 32, 31, 30, 28, 27, 26, 25, 23, 21, 18, 16, 18.

A line drawn from Canal Street to the nearest part of the Jersey shore would pass the same depth of water in the same distance from the New-York shore as from the foot of Courtlandt Street.

A line drawn across the river from the Great Kill Road to the Jersey shore exactly opposite would pass over water 66 feet in depth, about half way and in the middle of the River.

Between the foot of Rector Street, Morris Street and Battery Place, and the Jersey shore opposite these Streets respectively, the deepest water is 56 feet, and is near the New-York side. Between Castle William, and Gibbet Island, the deepest water noted is 77 feet.

EAST RIVER.

Between Fulton St. in New-York and Fulton St. in Brooklyn, the deepest water in a straight line is 43 feet, and 30 feet the least depth in the soundings noted.

Between Whitehall, in New-York, and the foot of Atlantic Street, Brooklyn, the deepest water noted is 37 feet, and the shallowest, 12 feet.

The deepest water in the River between Main Street in Brooklyn and Catharine Street, New-York is 53 feet, and between Main Street, Brooklyn, and Market Street, New-York, is 71 feet.

Nearly opposite Rivington Street there is one place in the river 72 feet deep.

Between Governor's Island and Whitehall the deepest water is 43 feet, and the shallowest 9 feet.

A BRILLIANT MORNING.

At an early hour I took a walk on Brooklyn heights to enjoy a morning view from that silicious cliff, the base of which is washed by the tides of the Atlantic, which visit our pretty Bay.

The trees which shade the path in which I walked to this charming place were newly dressed in green foliage, the young buds were gently expanding, displaying their white and crimson tints surrounded by deep green borders, the blossoms were also upon the trees in great profusion, giving out to the moistened amosphere their sweet fragrance in the odour of a rich perfume. In this atmosphere there was an aqueous vapor floating and it was as thin as air, and possessed the brightness of a crystal gem I inhaled this balmy fragrant atmosphere—it had a sweet which could be tasted—it was a gentle stimulant, a pure beverage—and I drank the ærial aqueous fluid at every breath, and felt revived, for I had passed a night in sleep so profound that during its continuance my mental faculties were all suspended.

The sun was not yet risen but the eastern horizon was lighted up by its near approach, and the curtains of the new born morning presented an array of magnificence and beauty in every fold of the resplendant aqueous drapery, tinged with golden purple, spangled with red and fringed with a deep border of the mysterious light of celestial fire.

The waters of the pretty bay were still—were quiet—all nature seemed to be at rest, and engaged in her devotions—for silence was visible—and silence is the essence of spiritual homage. It is the tribute of a morning thought that bows down in the heavenly temple, that takes the lowest seat in the celestial court, which is the homage of adoration. It is only the inner man that is the true worshipper.

Two pretty birds broke silence and commenced their sweet singing upon a pretty tree filled with pretty flowers,—it was a pretty place to sing a pretty song, and it was a song of love—a morning anthem. This feathered pair were happy. I judged so, for their song was cheerful—their lively notes were charming music, and were inscribed upon an atmosphere of balmy fragrance, to be gathered to the celestial archives, presenting an illuminated page in the heavenly record. I asked myself, who learned the birds to sing? There is but a single answer to this query. It is written in the volume of inspiration, illuminates its earliest page, reaches back to a time ere man was formed, to a day beyond that on which his body became the tenement of a living soul, and to the *second* in the annals of time. On that day the celestial luminary paid its *second* visit to this terrestrial surface, and it was then the feathered race possessed this earth in harmony and love, and it was then when its morning shone with intrinsic brightness that the feathered songsters chaunted their first morning anthem in sweet hallelujahs to the praise of the King of Kings. It was the first song on earth, and it was full of praise, for it was full of harmony. No human eye beheld the beauty of that morning—yet it was not unseen—nor unchronicled. A pen—the pen of Inspiration—dipped in the fountain of all knowledge—inscribed its record upon a virgin page, a precious treasure, a regal gift. and we possess the copies of that record.

While looking around me upon the broad field within the reach of human eyesight, I beheld a distant grove—a lovely woodland dressed in lively green—it is "GREENWOOD," a city of the dead,—there silence reigns in solemn stillness—the treasures of the dead are there—the loved and the blessed are there—and when the resurrection morning shall kindle up its light, a morning anthem will ascend from this city of the dead in a song of praise to Him who made the world,—to him who planted the germ of that brilliant morning.

DARK SPOTS UPON THE SUN.

Several large spots upon the sun's disc have recently been noticed which are estimated to be 20,000 miles in diameter. Science affords no means of determining the cause, or the nature of these obscurations, nor are we able to determine what influence they have upon the climate of our earth. The solar orb is computed to be about 96,000,000 miles from us, and the moon one four hundredth part of that distance, and we are as ignorant of the nearer, as of the more distant luminary. Some eminent astronomers express the opinion that the moon is without an atmosphere, and others, that its mountains are volcanic, but we have no means at present of determining the correctness of either of these conjectures. Even the knowledge of the interior of our own planet one mile below its surface is a perfect blank in written history. We reckon that the fixed stars are suns and several of these bodies have disappeared within the last 200 years, for they are no longer visible from our earth. If my recollection serves me right in this, La Place, states, that one of the fixed stars was seen to be in a state of combustion for about six months, and then entirely disappeared leaving its place a perfect blank in the heavens. What an event to contemplate! The human mind is filled with wonder and with awe when dwelling upon the contemplation of such a spectacle,—beholding the mighty conflagration of one of the great luminaries of the firmament, so vast in extent that there is scarce space enough between our earth and the sun for it to pass through, were it to take such a path for its orbit.

We understand but little of what we see, and although knowledge is progressive in many branches of science from long continued, careful observation, yet all we learn seems to make us sensible of the vastness of our ignorance. Since the commencement of the present century we have discovered four terrestreal bodies moving through space that the inhabitants of earth were wholly ignorant of 50 years ago, and these are called the Asteroides. A very learned geologist has suggested that the ærolites, or meteoric stones, which occasionally fall from the atmosphere, come from some one of these asteroides. This cannot be. Others conjecture that the meteoric stones come from volcanoes in the moon. We are by no means certain that there are volcanoes in the moon, and if there are it is by no means probable that the projectile force of these convulsions is sufficient to throw a such body beyond its own surface.

On our own earth as far south as south latitude about 80°, is a volcanic mountain about 12,000 feet high.—Could the light of this terrestrial antarctic taper reach the surface of a body moving through space within the reach of vision, we might possibly discover the reflected light under certain circumstances, and the illuminated surface would, like an evening shadow, have a length of surface and a breadth of path corresponding with the mouth of the crater. In one of the Islands in the Pacific Ocean is a volcano having a crater nine miles in circumference. Persons who are in the habit of traversing high mountains are familiar with the phenomena of the appearance of their own figures in the vapor which curtains the surface forming a cloud on which the morning sun draws the human figure with the solar pencil and paints it in the bosom of the cloud, and of gigantic stature.

We are wholly ignorant of what materials constitute the body of the solar orb, and also of its atmosphere. Under a vertical sun the highest mountains are covered with perpetual frost, and distant from it in the high northern latitudes at the period of our winter solstice, is experienced the greatest cold.

We survey a burning body surrounded by flame—the whole appears to us to be a mass of fire—extinguish the flame and the body which sustained it is as black as jet. Such for example, as a pine knot set on fire. Solar light is wholly different from terrestrial light, but in one respect it is similar, it is accompanied by heat. Phosphoric light has no heat.

I have collected the rays of the sun through water sufficient to kindle a blaze, and I believe that I could do the same through a globe of ice without dissolving the crystalization.

THE BIRD'S NEST.

A friend made me a present of the nest of a pretty bird—it is that of a humming bird. The inside is as soft as velvet and is filled with a substance that looks like floss silk. Its outside surface is ornamented with a vegetable that adheres to rocks. Some of these are as large as silver spangles, and others of the size of a half dime. These are nicely fastened to the outside and forms its outer surface, and seems to have been cemented by some aglutinating substance. It was built upon a little limb of less than an inch in diameter, and its under side is hollowed out so that it sets firmly upon the wood. Since I have owned the nest it has been occupied by a little butterfly in a chrysalis state.

I have also another bird's nest. It was made by the Golden Robin and was supended from a limb.—This is made of linen, and cotton thread and twine, and among the threads is one in a sewing needle. This thread and needle are both nicely arranged in the nest. This nest is lined with hair, and was made near my paternal dwelling a few years since, and the family noticing that the bird was busy collecting the materials for its nest threw ont little fragments of twine and thread, and with these the pretty architect contrived to build the little house in which to rear its young. The Golden Robin is a pretty bird, and sings sweetly in loud but mellow notes.

THE HUMAN MIND.

It is often in extreme old age that the faculties which pertain to the human mind become enfeeblod, and sometimes the mind becomes a perfect wreck—a Ruin. It is a painful spectacle to behold the human mind in ruins while the animal part of the mortal structure remains strong and vigorous, yet such a connection of body and mind sometimes exist. The connection of soul with body is mysterious,—of the ethereal with the material, and the union of the issues of the heart with those of the brain is equally mysterious, yet notwithstanding such is the reality—and of this every intelligent human being has the witness within himself in the testimony of his own bosom. The impulse of the heart is not always seconded, and often subdued by the stronger power and the result of the controversy is often fatal.

Man in his best estate is but a frail being, and it is often that we see a man in prosperity vigorous and confident, when overtaken by adversity a bowed down, feeble, incompetent person.

The human mind requires rest and repose when assiduous cares press heavily upon it.

Man often becomes intoxicated by sanguine anticipations, and it is more often that these end in disappointment and sorrow.

In very old age we rarely find that energy of mind which pertains to lesser years, and it is frequently the case that the strength of body and mind sink gradually together.

A human being in journeying through life from the cradle to the grave is liable to arrive at the termination of his life at every passing moment, for he is ignorant of the extent of the orbit in which he has begun to move. His commencement of life is always a state of helplessness and dependence, a lesson early taught, but poorly learned,—his end, is often preceded by the same state.

THE ANT.

This insect presents a page in the great volume of nature which should be carefully studied. The wise man of the ancients selected this insect as a teacher of wisdom to the sluggard,—an humble schoolmaster, yet notwithstanding, a great practical teacher.

On Tuesday morning, April 29th, at an early hour I noticed great numbers of small ants collected on the flat stones. The gathering appeared to be a general convention, a very active one, and about one-fourth of the members were newly winged and awaiting the approach of the morning sun to give them a buoyancy to fly. Many of those with wings were unable to rise into the air and seemed to have less strength than those without wings, for I noticed that these were aided by the others back to their dwelling. The unwinged Ant possesses great strength as may be most readily discovered in the labor they employ to remove their food to their homes.

This was a parting scene among these insects, for many of the winged insects will be no more seen by those they left behind. The ant is a hated insect, but notwithstanding, is very useful, for they feed upon that which in warm weather would become noxious by decomposition and putrefaction, It is a wonderful display of nature, this change in the little ant that lives beneath the surface of the ground for while night casts its shade, it emerges from beneath the surface to salute the orb of day—to soar upon its rays and traverse the wide atmosphere—the path of the forked lightning—the bosom on which the thunder sleeps—it is thus the most minute as well as the most gigantic unite in displaying the power of the Creator.

MAYORALTY ELECTION.

The votes polled in the different Wards at the Mayoralty election in 1845, are as follows:

First Ward,	2026
Eleventh Ward,	3101
Thirteenth Ward,	2888
Fifteenth Ward,	2577

The Beginning of a Change.

We are indebted to the Hon. ABRAHAM G. THOMPSON, Jr., for the following highly interesting papers:

IN ASSEMBLY, February 24th, 1787.

"A Petition of John Fitch, praying an exclusive privilege for a limited time of constructing vessels to be propelled through the water by the force of steam. Read and referred to Mr. Sickles, Mr. Jones and Mr. Hamilton.

February 27th, 1787.

Mr. Sickles Reported. See the report annexed.—A bill was brought in pursuant to the prayer of the Petition.

"To the Honourable the Legislature of the state of New-York in Senet and assembly convened:

"The petition of John Fitch of Bucks county in the State of Pennsylvania humbly sheweth

"That your petitioner has lately invented a method of propelling vessels through the water by the force of steam which he flatters himself is reduced to a moral certainty and will be a very great improvement on navigation. and that he has a boat nearly compleated to navigate on the river Delaware by the agency thereof.

"That the states of New-Jersey and Delaware have patronized his scheme so far as to give him an exclusiue right for said boats for the term of fourteen years, and the state of Pennsylvania have passed a law for public consideration thereto,—That your petitioner has invented a method of rowing boats by oars worked by cranks which was never heretofore used which applies not only the force of steam but the strength of a horse or any other power to equally as good advantage as men with oars whereby inland navigation must be benefitted nearly as much as the labour of horses is cheaper than the labour of men. Your petitioner therefore humbly prays that your honourable body will take into their consideration said improvement and grant your petitioner such encouragement as in their wisdom shall seem proper. And your petitioner as in duty bound shall ever pray.

JOHN FITCH.

New-York, Feb. 21st, 1787."

REPORT OF THE COMMITTEE.

The Committee to whom was referred the petition of John Fitch, of Bucks County, in Pennsylvania,

REPORT:

That having examined the certificates and other papers presented to your Committee by the said John Fitch they are of opinion that in order to encourage a further improvement in so useful an art, that a bill be brought in for the purpose of granting to the said John Fitch an exclusive right of navigating boats by the force of steam or fire for a certain time, agreeable to the prayer of his petition.

Thomas Sickles of Albany County was the Chairman of the Committee, and Samuel Jones of Queens, Alexander Hamilton of New-York, members.

The above is copied from the original documents. An act was passed March 19, 1787, which will be found on page 31 of this volume.

A petition of James Rumsey on the same subject without date, presented to the Legislature in 1783, and a copy of a letter from General WASHINGTON, recommending the same, dated town of Bath, County of Berkeley, State of Virginia, Sept. 7, 1784.

Rumsey in his petition does not claim to use *steam*, but "MECHANICAL POWERS."

There is annexed to Fitch's letter a printed 18mo., pamphlet entitled "The original steamboat supported or a reply to Mr. James Rumsey's pamphlet, shewing the true priority of John Fitch, and the false datings, &c-, of James Rumsey."

"Philadelphia, printed by Zechariah Poulson, jr., on the west side of Fourth Street, between Market and Arch Streets. MDCCLXXXVIII."

By certificates dated Philadelphia, October 18th, 1788, it appears that Fitch's boat was 60 feet in length and that she went from Philadelphia to Burlington, 20 miles, in 3 hours and 10 minutes, entirely by the force of steam, on the 12th Oct., 1788. These certificates are signed by John Ewing, Robt. Patterson, Andrew Ellicott, Smilie, David Redick, James Hutchinson, F. Y. Matlack, Charles Pittit, J. B. Smith, David Rittenhouse, John Poor, John Ely, Jonathan Heart, Capt. U. S. Regt.

We have met with on account of the misfortunes and the commencement of the enterprise of Mr. Fitch, in a manuscript Volume, in the Library of the Hon. GABRIEL FURMAN, *from which we give the extract below.*

"FITCH AND FULTON.

"Some five or six years ago while searching for materials shewing the history of the introduction of Steam in the navigation of our country, and the effect which it had in causing the rapid settlement of large portions of our territory, and particularly that lying west of the Alleghany Mountains, I, of course, had my attention drawn to the project of Fitch, and in following up that part of American Steamboat History the following interesting account of Fitch's life, as connected with his endeavors to introduce the steamboat upon our waters, fell in my way. It is substantially from Hazard's Register of Pennsylvania, vol. 7, page 91.

"While Robert Fulton was engaged in London under the patronage of his celebrated countryman West, John Fitch, clock maker, was contriving schemes in Philadelphia for the propelsion of boats by steam.—He conducted his mysterious operations at a projection on the shore of the Delaware at Kensington; which among the wise and prudent of the neighborhood, the scores of magicians and their dark works, soon acquired the ominous and fearful title of '*Conjurer's Point.*'

The writer of the article then proceeds to say:—"I often witnessed the performance of his boat in 1788, '89 and 90. It was propelled by paddles in the stern, and constantly getting out of order. I saw it when it was returning from a trip to Burlington, from whence it was said to have arrived in little more than two hours. When coming too, off Kensington, some part of the machinery broke, and I never saw it in motion afterwards. I believe it was the last effort. He had up to that period been patronized by a few stout hearted individuals, who had subscribed a small capital in shares of, I think, £6, Pennsylvania currency, or $16 each; but this last disaster so staggered their faith and unstrung their nerves, that they never again had the hardihood to make other contributions. Indeed they had already rendered themselves, the subjects of ridicule and derision, for their temerity and presumption, in giving countenance to this wild projector, and infatuated madman. The company therefore gave up the ghost,—the boat went to pieces,—and Fitch became bankrupt and broken hearted. Often have I seen him stalking about like a troubled spectre, with downcast eyes, and lowering countenance; his coarse soiled linen peeping through the elbows of a tattered garment.

"During the days of his expiring hopes, two mechanic's were of sufficient daring to work for him—aye, and they suffered in purse, for what was esteemed their confidence and folly. These were Peter Brown, shipsmith, and John Wilson, boatbuilder, both of Kensington. They were worthy, benevolent men, well known to the writer, and much esteemed to the city. Towards Fitch, in particular, they ever extended the kindest sympathy. While he lived, therefore, he was in the habit of calling almost daily at their workshops. to while away time; to talk over his misfortunes, and to rail at the ingratitude, and cold neglect of an unfeeling, spiritless world. From Wilson I derived the following anecdote. Fitch called to see him as usual. Brown happened to be present. Fitch mounted his hobby, and became unusually eloquent in the praise of steam, and of the benefits which mankind were destined to derive from its use in propelling boats. They listened of course, without faith, but not without interest, to this animated appeal; but it failed to rouse them to give any further support to schemes, by which they already suffered. After indulging himself for some time, in this never-failing topic of deep excitement, he concluded with these memorable words,—

"*Well, gentlemen, although I shall not live to see the time, you will, when steamboats will be preferred to all other means of conveyance, and especially for passengers; and they will be particularly useful in the navigation of the River Mississippi.*"

"He then retired, on which Brown turning to Wilson, exclaimed in a tone of deep sympathy, "Poor fellow! what a pity he is crazy!"

"Fitch died in 1893. Brown and Wilson were more prosperous. The both lived to retire from business in easy circumsstances. The former, indeed, became rich, and set up his carriage. That his wealth made no difference with his feelings and disposition, and that he was still the same man who sympathized with poor Fitch, is shown by his subsequent conduct. He was of too noble a spirit to indulge either in luxurious pride or ostentation. The coat-of-arms on the pannels of his carriage, was of his own contriving, and consisted of a muscular hand grasping a sledge-hammer, suspended over an anvil. Motto, "By this I got you."

MORE STEAMBOAT DISASTERS!!

The Steamer Empire, from Albany for New-York, struck on the pier at the foot of 19th Street, and damaged her bows. The passengers were greatly alarmed, and were taken off by the Knickerbocker. The accident occurred on Friday morning the 25th inst., during the heavy fog, and at a very early hour in the morning. No Life Boat on board the Steamer.

Steamer Robert L. Stevens, when near Caldwells Landing, straits of Dunderberg, on her downward passage in the night, broke her engine, throwing her walking beam completely through the pilot house.—The pilot narrowly escaped by jumping out of the window. No Life Boat on board this Steamer.

The straits of Dunderberg is called the "Race," and is an unfathomed gulf, walled up on each side to the height of 1000 feet. It is hoped the echo of the details of these disasters will reach the halls of legislation and reverberate from mind to mind until some action is produced in that body which shall give adequate security against a recurrence of such disasters.

The Knickerbocker on Monday evening the 28th ult., ran foul of some of the River Craft in the night and damaged her upper works. No life boat on board.

The Legislature should provide by law for Life Boats on board of Steamers.

THE RAISING OF THE SWALLOW.

It seems to us that unnecessary delay has been caused in raising the steamer Swallow. The power of one man in raising a body under water is very great. I was interested in a boat sunk several years ago in one of the Western Rivers, and we found no difficulty in raising it, and with despatch too, and the boat after being so raised proceeded with the cargo on board direct to New Orleans. This boat was 70 feet long, 16 feet wide, and 6 feet deep, and had a cargo of about 140,000 lbs weight, consisting of Pot and Pearl Ashes, and Flour. On hearing of the disaster I set out in company with one of my partners in a log canoe, which was paddled by one man, descended the river 60 miles, and on arriving at the place where the disaster occurred we found the boat six feet under water with her cargo. The country around where the accident happened was thinly settled, but in all such places there is a willingness to give aid, and we at once procured two large keel boats run one along each side of the sunken boat, and across these we rigged two Spanish windlesses, one at the stern and one at the bow, and with ropes and chains made fast to the boat below, we raised it to the top of the water, fastened it, and then commenced pumping and baling out the water and soon found where the leaks were and immediately filled them with tow until we could get at the break and repair it. I found in this operation that with a common pike pole I could raise a barrel of Ashes to the top of the water and as soon as it came to the surface two men laid hold of it and raised it on skids and rolled it on shore. In this way we discharged the boat, then repaired, and reloaded, and she proceeded on her voyage to New Orleans and arrived safely without any further accident. The River was much swollen when the accident happened, and the water was running outside the banks where a strong current drew the boat against a large tree, on which the bow struck, immediately filled and sunk. As soon as the boat was reloaded my partner and myself set out through the woods on foot to return. This was on the 17th of March, and, for a wonder in that country, the snow fell during the greater part of the day, yet notwithstanding this we were able by the hour of nine in the evening to walk forty miles, and here we met a man coming with horses to relieve us of walking on foot.

In the western waters the raising of boats is a speedy operation, and necessarily so, for it is often that the river is on the rise or fall, hence it is necessary that what is to be done should be done quickly.

Had the Swallow struck the rocks which border the race at the foot of the Dunderberg, nearly all on board must have perished.

Every steamer should by law be compelled to carry LIFE BOATS.

WRECKS, NAVIGATION OF RIVERS, &c.

The Revised Statutes contain a provision in relation to wrecks. Is it not as competent for the Legislature to provide against the wrecking of Steamboats as it is to enact the laws in question. In the first volume of the Revised Statutes, page 681 is an act entitled "Of the navigation of Rivers and Lakes, and abstruction of certain waters." This act needs amending by requiring steamers to carry life boats.

THE CANAL BRIDGE ACCIDENT.

Some years ago we were at Albany when the draw of the Canal Bridge fell into the Basin and drowned 20 or 30 persons. We were on board of a steamer lying at the dock when the bridge fell, and several persons who had taken passage in the boat were among the persons drowned. The Steamer came away from the dock in the midst of this scene of distress and brought away a lady passenger who on leaving the wharf ascertained that her husband was not on board. She was frantic with the distress she felt at the probability of his having fallen with the bridge into the basin. The Captain of the boat was unwilling to return with her, and the passengers learning this fact demanded that the boat should land her immediately, which was done, and she obtained a carriage and returned to Albany, and there found her husband in the crowd at the Bridge. They were from the State of Ohio. We met them two days after in the Streets of New-York. Such haste should not be tolerated.

From the Philadelphia Chronicle.

HARRISBURGH, Pa., April 11.

"THE BABES IN THE WOODS."

A touching incident occurred among the mountains in the upper end of this county, last week, while the fire was raging in that vicinity. A Mrs. Lupold has been somewhat deranged occasionally, for some time past, but was not considered much out of the way, until, one day last week in the absence of her husband, she left her infant in the cradle, and taking with her two other children, one about five years of age, the other only three, fled to the mountains, and nothing could be discovered of them until Saturday last, when she was found almost famished and nearly naked; but the children were missing. The neighborhood soon turned out to scour the mountains in search of them, but in vain until Monday last, when some men providentially happened to come upon them in one of the wildest regions of that wild country, where no one would have dreamed of looking for them. They had been out four days and four nights,—cold nights, too,—barefooted and half naked otherwise, their clothes being nearly torn off them by the undesbrush, and their little legs blackened by the ashes of the conflagration through which they had wandered, and their flesh a good deal lacerated. They had cried themselves sick, and one of them had taken off its dress to make a bed of; and there they lay, at the root of a tree locked in each other's arms, unable to speak, having eaten nothing, it is supposed, since they left home. The poor little sufferers were taken to the nearest house and comfortably provided for, and said to be doing well. They were found ten miles distant from the place at which their mother was first discovered, and that they did not perish is altogether providential, and almost miraculous.

LIGHTNING.

The House of F. Young, in Hagerstown, Maryland, was struck by lightning on Thursday evening, April 19th, the inmates struck down, and a cradle containing an infant overturned. A stove was also overturned. No one was injured. The rafters and timbers under the floor were much torn. *A lightning rod costing a single dollar would have protected this building.*

A negro woman was killed by lightning on Saturday night the 5th of April, in Perry County, Ala.

On the 5th of April the lightning struck a hickory tree in the front of a house in Westville, Miss., and killed three persons, one aged 11, another 15, and another 19 years, who had taken shelter under the piazza to avoid the rain. Several other persons who were there, were struck down, but were restored by the free use of cold water thrown plentifully upon them.

A barn belonging to A. Van Tyle, in Manchester, Mich., was struck by lightning on Thursday, April 17th, and with its contents, including a span of horses was desttoyed.

On Thursday the 17th of April a barn was struck by lightning in Dickinson township, Cumberland Co. Pa., and with its contents entirely consumed.

On the fourth of April, Wesley Joy was killed by lightning in Macoupia County, Illinois.

The storm on Friday the 25th of April passed Hunting Creek, near Alexandria at between five and six o'clock in the afternoon. In passing the creek it raised a column of water twenty feet into the air. Trees, chimneys, &c., were blown down, and a carriage was overturned and broken to pieces, and some ladies who were in the carriage were bruised and injured.

At about seven o'clock on Friday evening, says the National Intelligencer, Washington City was visited by a thunder storm. The lightning struck the dwelling of Mr. Quigley, at the Navy Yard, descended the chimney, and shivered a mantle piece and the china which was upon it to atoms. A son and daughter of Mr. Quigley who were in the room at the time were severely stunned. The young lady so much so that she did not recover until the next day. The young man recovered in a few hours.

A Cow, near the residence of Mr. Quigley, was killed instantly. Here is an evidence of the division of the electric discharge in the destruction of the mantle piece and china and killing of the cow.

A rain storm mixed with hail, accompanied by heavy thunder and vivid lightning passed over the city of Baltimore from west to east about 6 o'clock on Friday evening. The lightning struck the dwelling house of R. B. Richardson, Esq., on Monument Street. Damage not stated,

The barn of Mr. Jacob Hoff, of Straban township, Pa., was struck by lightning on Friday evening and consumed with all its contents.

Also a barn in Cordues township, Pa., was struck the same evening and burnt.

The barn of Col. Lewis, in Hagerstown, Md., was struck by lightning on Friday evening.

The storm passed in the neighborhood of Anapolis, Maryland, on Friday evening, the wind doing great damage.

At York, Pennsylvania, the storm was violent. The office of A. & E. Denmead & Co., was struck by lightning; in the shed for framing bridges were several persons, one named William Wilson was killed, and another person stunned.

This storm passed over the city of New-York abont half past 8 o'clock on Friday evening, accompanied by thunder, lightning and rain.

Baltimore is in latitude 39°, 17′, 23″, longitude 76° 37′, 20″; New-York is in latitude 40°, 42′ 40″, longitude 74°, 1′, 8″. The speed of the storm was therefore greater than that of a locomotive.

At Southfield, Mass., a barn was struck by lightning on Friday evening, and with its contents of hay, cattle, &c. destroyed. A new house in Long Meadow was struck the same evening and injured, and also the Rail Road Bridge at Enfield, a few minutes after the cars had passed over it. These three towns are in the same vicinity.

At Cookesville, Md., a house was struck, and two persons killed. Also at Hanover, Pa., a house was struck and one person killed; and Fitzwilliam, N.H., the large meeting house was struck, the rod broken to pieces, and the house injured, all on the evening of the 25th ult.

ICEBERGS, &c.

The ship Sheridan on the 4th of April in north latitude 45°, west longitude 46°, 45′, fell in with large quantities of field ice, extending as far as the eye could reach. On the 5th, in latitude 45°, longitude 48°, 38′, fell in with a number of large icebergs.

Ship Gladiator, April 2, latitude 44°, 40′, longitude 47°, 20′, run into some fields of ice during a thick fog, sailed to the south east and in latitude 40°, 30, was surrounded by ice.

Ship Flordinta, April 9th, latitude 44°, longitude 49°, fell in with large fields of ice. April 10, latitude 43°, 30, longitude 51, saw several large icebergs.

Snow fell at Chicago on the 7th of April. Snow fell at Hudson on the 7th of April. There was a north east snow storm at Quebec on the 8th of April. Snow fell abundantly at Dover, State of Maine, on the 8th of April. A snow storm commenced early on the 4th of April, at Quebec and lasted until noon. Snow fell at Albany on the morning of the 4th of April between the hours of one and two o'clock.

In 1842 the icebergs run every month from March to September, both months inclusive.

In 1843 no ice was seen by vessels crossing the Atlantic, until late in July, and but three vessels reported seeing icebergs during the spring and summer of that year.

In 1842 the ice in the Hudson River broke up on the 4th of February, and in 1843 on the 13th of April and the present year on the 24th of February.

The first icebergs reported in 1842 was on the 14th of March, and in 1845 on the 2d of April.

Quebec is in north latitude 46°, 48′ 49″; west longitude 71°, 10′, 45″.

Chicago is in north latitude about 42°; west longitude about 87°.

Hudson is in north latitude 42°, 14′; west longitude 73°, 86′.

Dover Maine, north latitude about 45°, longitude about 69°.

EARTHQUAKE.

On Friday the 7th of April, at about 52 minutes past 3 o'clock P. M., an earthquake was felt at the city of Mexico which lasted from two to four minutes. Mexico is in latitude 19°, 25′, 40″ north; longitude 101°, 25′, 30″ west, and is 7426 feet above the sea. It has a mean temperature of about 65° Farenheit's scale, which is 5°, less than that of Savannah, Ga. and about 16° greater than that of the city of New-York, which latter we assume to be about 50°.

On referring to our meteorlogical notices of April, in this number of our paper, it will be seen that on 7th of April, there was a snow squall on the Hudson River on the 7th of April, and also at Chicago, Ill., there was a severe snow storm on the same day and on the 8th a snow storm was raging at Quebec, in Canada, and Dover, in Maine, and the icebergs were floating in latitude 44° north, longitude 48° west.

The ground on which Mexico is built is wet and swampy, the original city was called Tenochtitlan, and was built upon a group of island in Lake Tezcuco. Some of the large buildings of Mexico are erected upon piles. The water of this lake is salt. From the Lakes in the same neighborhood sulphuretted hydrogen gas issues abundantly. There are several volcanic mountains in the neighborhood of Mexico and of great height.

There were less severe shocks felt between 6 and 8 o'clock the same evening. Several large buildings were reduced to ruins by the first shock and several lives were lost.

Is our country disposed to go to war with a people whose capitol is shaken by the commotion of the elements? Shame on such a spirit.

THE DISTANT PAST....THE MYSTERIOUS FUTURE.

The distant past, except the brief records on the page of the volume of inspiration, is a blank on the page of history.

The events of future time remain sealed up and hidden from the view of mortals, and will only be developed as the earth revolves and opens each successive diurnal page in the mighty volume.

The human mind is incompetent to estimate the annual revolutions which yet remain to be performed by this Youthful Planet, the temporary dwelling place of the human race, and the great cemetry in which their ashes are to repose, until the last moment of time shall be completed.

Human knowledge is limited and imperfecct, and we have no scale by which to measure the faculties of the human mind or to determine its qualities.

Man is an etherial being, inhabiting a material frame so nicely organized that he is unable to comprehend that union of body and soul which exists in his own person.

Man cannot comprehend himself—he cannot estimate the powers of his own mind, nor sum up the gifts which have been bestowed upon him by the author of his existence, but when circumstances place him in a situation to require the exercise of extraornary power, he finds that he possesses faculties that before were undiscovered and which only require to be cultivated and improved to be made useful.

F. R. TILLOU.

Alderman Tillou of the Fifth Ward was a member of the Common Council in 1843 and 1844. In the Board of Aldermen he pursued an independent course and rendered a service in this, which will be long and kindly remembered. Alderman Tillou should be applied to forthwith to become a candidate for the Legislature, and means should be forthwith taken to ensure his election. Alderman Tillou is both honest and capable. His services in the Legislature for a single session would be invaluable.

CHAPEL STREET SEWER.

The Chapel Street sufferers have had another report made in their favor and it is like the three preceding reports of 1839, a unanimous Report. This Report fully sustains Alderman TILLOU's Report of 1844, and silently but most severely rebukes that of Mr. Brady and Mr. Lee, which was not borne out by the premises upon which they founded their conclusions.

[Document No. 22.]

BOARD OF ASSISTANT ALDERMEN.

April 24th, 1845.

The following Report from the Special Committee on the subject of the Chapel Street Sewer was received, laid on the table, and ordered to be printed.

THOMAS R. WHITNEY, Clerk.

The Special Committee to whom was referred the annexed memorial, &c., in relation to the Chapel Street Sewer, respectfully

REPORT:

That they have investigated the subject referred to them, both personally and by an examination of witnesses, and the voluminous testimony taken before a former committee, and from all these sources they have ascertained the following facts:

That there have been two sewers built in Chapel Street at the expense of the owners of the adjoining property. That the present sewer does not answer the purpose for which it was built, and that the owners of property have been heavily assessed without receiving a corresponding benefit.

Your Committee cannot but think that the Common Council should partially remedy some of the evils complained of, as an act of mere common justice, and recommend the adoption of the following resolution:

Resolved, (If the Board of Aldermen concur), That the Street Commissioner is hereby directed to take the proper measures for constructing a sewer in Chapel and Thomas Streets, suitable to the wants of that section of the City, (the present sewer to be taken up,) said sewer to be built at the expense of the city.

MOSES TUCKER,
W. BLACKSTONE,
JOSEPH A. DIVVER, } Committee.

UNITED STATES JUDGE.

Chief Justice Nelson, of the New-York Supreme Court, was nominated by President Tyler, one of the Judges of the Supreme Court of the United States, and unanimously confirmed by the Senate.

CLERK OF THE U. S. CIRCUIT COURT.

Mr. Gardner, brother-in-law to Ex-President Tyler, has been appointed Clerk of the Circuit Court of the United States, by Judge Nelson.

U. S. CONSUL FOR LIVERPOOL.

William Paxson Hallett, Esq., Clerk of the Supreme Court of this State was nominated by President Tyler, Consul for the Port of Liverpool in England.

U. S. DISTRICT ATTORNEY.

Robert Emmet, Esq., was an applicant for the office of United States District Attorney. B. F. Butler, Esq., was appointed.

SOLOMON TOWNSEND.

The praise of a man is in himself,—and his works are the record. The Individual whose name heads this humble column, was a member of the house of Assembly of this great State, and the active member in the passage of the act which restrained the assessment depredations in this great city and saved to its Citizens hundreds of thousands of dollars. We allude to the law of May 14th, 1840, in relation to the assessment of real estate for visionary improvements.

The same individual was the active member in the passage of the law which makes every tax-payer his own Collector, a law which saves fifty thousand dollars per annum to the city and which demonstrates the fact that the more simple the machinery of government is, the more useful and beneficial its administrations, to the people. We often hear the remark, what can one man do alone?—here is the reply—a conclusive answer.

THE NATIVE PARTY.

The native party have gained strength by their recent defeat in the city of New-York. Adversity is an excellent schoolmaster. The natives mistook their own strength, and made the same mistake that each of the other great parties have done. The Native party as rigid reformers, are strong, but as politicians, are of no force. In their appointments to office they should have selected the best men in the community without reference to political distinctions. Such a course would have given ability and confidence to the departments of the city government. We said before the election, that the energies of the public chest have uniformly been directed to the succession of the party in power. The result of such a course is never problematical. The watch expenses should have been reduced by the natives to one half the expenditure, and the assessment abuses should have been remedied. They should have published monthly statements of their expenditures and contracted for the public printing at the lowest rates. These measures of reform would have given satisfaction to the greatest number of the good men of both parties. The Native party have now the opportunity of watching the acts of the present Common Council and of selecting their candidates to the Legislature with a care and caution that will ensure success. The nomination should not be given to persons who want the place, but they should be made in a body, and present such names as both Democrats and Whigs will approve of, for it is evident that they have hereafter, as heretofore, to look to the good men of other parties for support. If thirteen good men are selected to form a ticket, each man selected will consent to be candidates on the condition that the consent of all those nominated can be obtained. Good men will be willing to be candidates, provided you give them good men for associates.

ANCIENT BUILDINGS.

There are but few buildings in the city of New-York that can be called ancient. The Walton House in Franklin Square was at the time it was built considered a splendid dwelling, and many persons visited it on that account. It stands now a monument of the changes which have taken place in the style of building in New-York, and also of the change in the commerce of the city, for this building was built of brick imported from Holland.

WALL STREET.

This Street has been entirely rebuilt within a few years. In 1680 this Street was called Cingal Street.

A METEOR.

A Meteor of great brilliancy is noticed by the Cherokee Advocate as having been seen on the night of the 16th March. After it disappeared an explosion was heard like the discharge of a large cannon, and which jarred the houses in the neighborhood. It was no doubt a meteoric stone or aerolite, and but for the thinness of the population in that part of the country could no doubt be found.

The light of the fire of the Bowery Theatre, which was consumed on Friday evening, 25th ult., gave to the clouds for a limited extent a color of a bright and beautiful tint, and resembled that produced by the solar rays in a cold atmosphere.

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MAY 24, 1845. [VOL. I....NO. 35.

TAX LAWS.

We give on the second page of this day's paper the entire tax laws now in force for the Assessment of Taxes. We have published it thus early for the examination of Tax Payers.

The law in relation to incorporated companies is also contained in the series.

NEW BOARD OF ASSISTANTS.

John S. Gilbert,	1st Ward.
J. C. Albertson,	2d "
G. M. Ogden,	3d "
George H. Purser,	4th "
Lyman Candee,	5th "
John Foote,	6th "
Nathaniel Pierce,	7th "
A. MaClay, Jr.,	8th "
Wm. Quackenbush,	9th "
Neil Gray,	10th "
Jacob Miller,	11th "
Thomas Spofford,	12th "
Nathan Roberts,	13th "
Edward Nichols,	14th "
James D. Oliver,	15th "
James I. V. Westervelt,	16th "
Wm. H. Cornell,	17th "

BOARD OF SUPERVISORS.

The Board of Supervisors of the City and County of New-York is composed of the following persons

Wm. F. Havemeyer, Mayor.
F. A. Tallmadge, Recorder.

Oliver Charlick,	Aldermen	1st Ward.
James C. Stoneall,		2d "
Egbert Benson,		3d "
Joseph A. Divver,		4th "
Emanuel B. Hart,		5th "
Thomas S. Henry,		6th "
Thomas Connor,		7th "
Richard T. Compton,		8th "
Theodorus Van Tine,		9th "
Bernard J. Messerole,		10th "
Charles I. Dodge,		11th "
David S. Jackson,		12th "
David D. Briggs,		13th "
Thomas B. Tappan,		14th "
Wm. V. Brady,		15th "
William Seaman,		16th "
Crandal Rich,		17th "

OLD BOARD OF SUPERVISORS.

Alderman Drake, Chairman of the Committee on Annual Taxes, reported in favor of paying D. D. Williamson, Comptroller, the sum of $2,132.00 for receiving tax monies in 1842, The Comptroller was less than six weeks employed in receiving tax money during which time he was paid an annual salary of $2,500 per annum, for his services. The Receiver of Taxes is only entitled to 2,000 for a whole year's services.

In 1843, the Board of Supervisors allowed Mr. Williamson $1000 for the same services. This sum is an addition, or $3132.00 for six weeks service, equal to $27,144.00 per annum, a sum which exceeds the salary of the president of the United States. The report of the tax committee was adopted.

TAX ASSESSMENTS THIS YEAR.

The Ward Assessors elected in April were sworn into office on the 13th of this month, and are required by law to complete their assessment on or before the 15th of August. Between the 15th and 20th of August the Board of Assessors are required by law to convene and at this meeting may increase the assessment of any individual on personal property.

On the 20th of August the Ward Assessors are required by law to give public notice that they have *completed* their assessments and that a copy of their assessment roll has been deposited with one of their number for the inspection of persons assessed where it will remain open for 20 days, during which time any person assessed may make objections to the assessment. If a person assessed for real estate deems the valuation too high he can make oath to the true value, and the assessors are bound by law to assess it at the sum sworn to by the owner.

If a person assessed for personal property deems the amount too high, he can require the same to be reduced to such sum as he is willing to make affidavit to as being over and above his just debts, deducting therefrom any personal estate exempt from taxation.

The New Tax Bill.

The Bill for taxing funds, produce and merchandize belonging to strangers, and for taxing surplus funds belonging to incorporated companies, and for taxing citizens of other counties of this State in the city of New-York for personal property passed the house of Assembly, but was not acted upon in the Senate. It therefore has not become a law. Hon. A. G THOMPSON, jr., of the Assembly did not vote for this bill.

THE FERRY BILL.

The Ferry Bill passed the Senate by a vote of 26 to 3, and the house by a vote of 86 to 22, and was promptly signed by the Governor.

The width of the East River at the Brooklyn Fulton Street Ferry, is 2193 feet. If a tier of piers and docks should be extended into the river from both New-York and Brooklyn, 450 feet on each side, to a width of 500 feet, the length of the Ferry would be reduced to 1193 feet, and both the Ferry and the navigation would be improved, and the value of the property thus acquired would supply both New-York and Brooklyn with Croton Water free of expense. Splendid docks could be thus made for the Liverpool Packets and store houses could be placed upon these piers which could be used free of the expense of cartage.

OLD BOARD OF ASSISTANTS.

The old board of Assistants adjourned at 12 o'clock at midnight on Monday the 12th of May. At that moment their term of office expired.

CHAPEL STREET SEWER.

The Board of Assistants adopted the Report of the Special Committee recommending the removal of the Chapel Street Sewer and the constructing of a new Sewer at the city expense.

OLD BOARD OF ALDERMEN.

The old Board of Aldermen held over till noon on the 13th of May. twelve hours after the term of office of the members had expired. Mayor Harper also held over and administered the oath of office to the mayor elect. We regret the necessity of recording this act of our most worthy and excellent Ex-Mayor.

TAXES OF 1845.

The Croton, Watch, Lamp and Contingent Tax, will this year be 84 cents on the one hundred dollars. The State Tax will be but 6 cents, upon the hundred dollars, making in all 90 cents on the $100. Increase of City Tax, 9 cents, decrease of State tax, 5 cents. This will be the largest Tax ever assessed in the city of New-York.

WARD ASSESSORS FOR 1845.

Wards.	
1	John C. Allsteadt, Joseph S. Palmer.
2	James B. Garretson, Samuel Waterbury.
3	James E. Wood, Thomas C. Bartine.
4	William Corbitt, John D. Keating.
5	Sampson Moore, Samuel Dixon.
6	John Green, Matthew Murray.
7	David Lyon, David P. Arnold.
8	George Paulding, Daniel Wilson.
9	Joseph D. Baldwin, James L. Miller.
10	Edward D. Drummond, Edmund Anderson.
11	Chistopher McGary, Andrew R. Jackman.
12	John Flynn, John P. Dodge.
13	Cornelius B. Timpson, James H. Cooke.
14	Thomas Raven, Thomas Hassett.
15	George Riley, Joseph Britton.
16	Jehu Mott, James Casidy.
17	George Brown, George H. Ross.

NEW CORPORATION OFFICERS.

David T. Valentine, Clerk of Common Council,
John T. Stewart, Receiver of Taxes.
James T. Brady, Counsel of the Mayor, &c.
John Ewen, Comptroller.
Elias L. Smith, Street Commissioner.
Richard I. Smith, Assistant Street Commissioner.

CHAMPLAIN CANAL.

This Canal is 64 miles long, 40 feet wide at the top, 28 feet wide at the bottom, four feet deep, has 21 locks and cost $1,179,872.00. From the summit level of this Canal there is a fall toward Lake Champlain of 54 feet, to tide water in the Hudson River, 134 feet, this brings the surface of Lake Champlain, 80 feet above tide water.

The Champlain Canal has been paid for by the auction duties, and the Onondago salt duties. The State has been the fiscal agent to collect and disburse the money but the great public irrespective geolographical lines have supplied the means. The consumers of Onondago Salt, and of goods sold at auction, are the contributors to the expense.

The packet boats on this canal leave Troy at 11 A. M., and arrive at Whitehall at about six o'clock next morning, travelling all night. The fare is one dollar and twenty-five cents, besides thirty-seven and a half cents for meals. The rock formation through which the canal passes, is slate or black shale, and I noticed some lime stone near the canal.

LIGHTNING.

In our last paper we noticed the transactions of the thunder storm of the 25th of April and to that account we have to add that a barn in Washington County in this State, was struck by lightning and consumed. At Newton, Sussex County, New-Jersey the dwelling house of a methodist clergyman was struck the same evening and injured. These two cases show a great width of the path in which the storm travelled.

rated company liable to taxation on its capital, shall not be taxed as an individual, for such stock.

TITLE II.

Of the place and manner in which Property is to be assessed.

Art. 1.—Of the place in which property is to be assessed.
Art. 2.—Of the manner in which assessments are to be made, and the duties of the assessors.
Art. 3.—Of the equalization of the assessments, and the correction of the assessment rolls.

ARTICLE FIRST.

Of the place in which Property is to assessed.

Sec. 1. Persons to be assessed in town or ward where they reside, for lands in such town.
§ 2. If land be occupied by another person, it may be assessed in name of either.
§ 3. Unoccupied lands, not owned by residents, denominated "lands of non-residents."
§ 4. Where land to be taxed, when divided by division line of towns.
§ 5. Persons to be assessed where they reside, for all their personal property.
§ 6. Real and personal property of incorporated companies, where assessed.

Land where taxed.

§ 1. Every person shall be assessed in the town or ward, where he resides when the assessment is made, for all lands, then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

§ 2. Land owned by a person residing in the town or ward where the same is situated, but occupied by another person, may be assessed in the name of the owner, or occupant.

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided.

How if divided by town line.

§ 4. When the line between two towns or wards divides a farm, or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line.

Personal estate where taxed.

§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all such personal estate in his possession, or under his control as trustee, guardian, executor, or administrator; and in no case shall property so held, under either of those trusts, be assessed against any other person.

Property of corporations.

§ 6. The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several towns or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorized to pay the last preceding dividend, resides.

ARTICLE SECOND.

Of the Manner in which Assessments are to be made, and the Duties of the Assessors.

Sec. 7. Assessors may divide their town or ward into districts
§ 8. To ascertain number of taxable inhabitants and amount of taxable property.
§ 9. Form of assessment roll.
§ 10. Manner in which persons are to be assessed as trustees, &c.
§ 11, 12, and 13. Manner in which lands of non-residents are to be designated in roll.
§ 14. When necessary, assessors to have survey made of non-resident lands.
§ 15. Persons liable to taxation may make affidavit as to value of their property; its effect.
§ 16. Trustees &c. may make the like affidavit.
§ 17. Where such value is not specified by affidavit, assessors to estimate it, and how.
§ 18. Last section applies to all assessments under this Chapter, unless otherwise directed.
§ 19. Assessment rolls when to be completed, where to be left; notices to be put up.
§ 20. What notice to specify.
§ 21. Assessment roll may be inspected during the twenty days specified in notice.
§ 22. Assessors to meet and review assessment; assessments how reduced.
§ 23, Persons may show, other than by their own affidavit, error in assessment.
§ 24. Persons holding personal property as agents, not to be taxed in certain cases.
§ 25. Affidavits under this Article to be made before assessors; where filed.
§ 26. Assessors to sign assessment roll and attach certificate; form of certificate.
§ 27. When and to whom assessment rolls are to be delivered.
§ 28. Assessors to follow instructions of comptroller.
§ 29. Penalty of $50 upon assessor for neglect of duty.
§ 30. If any assessor shall omit to perform his duties, other assessors to perform them.

Assessment districts.

§ 7. The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward.

Inquiry to be made.

§ 8. Between the first days of May and July, in each year, they shall proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants in their respective towns or wards, and also all the taxable property, real or personal, within the same.

Assessment roll.

§ 9. They shall prepare an assessment roll, in which they shall set down in four separate columns, and according to the best information in their power:

1. In the first column, the names of all the taxable inhabitants in the town or ward as the case may be:
2. In the second column, the quantity of land to be taxed to each person:
3. In the third column, the full value of such land, according to the definition of the term land, as given in the first Title of this Chapter:
4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

Trustee, guardian, &c.

§ 10. Where a person is assessed as trustee, guardian, executor, or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him, in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character.

Lands of non-residents.

§ 11. The lands of non-residents shall be designated in the same assessment roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

§ 12. If the land to be assessed, be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows:

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded:
2. If they can obtain correct information of the subdivisions they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest:
3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation:
4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity:
5. If such quantity be a full lot, it shall be designated by the number alone; if it be a part of a lot, the part must be designated by boundaries, or in some other way, by which it may be known.

§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows:

1. They shall enter in their roll the name or bounds

ries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions, as the case may be;

2. They shall set down in the proper column, the quantity and valuation as above directed;

3, If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient; but if a part only is liable to taxation, that part or the part not liable, must be particularly described;

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed; and if they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part;

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors;

6. The assessors shall then complete the assessment of the tract, and shall deposite the map in the town clerk's office, for the information of future assessors. And the expense of making such survey and maps shall be immediately repaid to the supervisor, out of the county treasury; and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

Survey of non-resident lands.

§ 14. Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

Affidavit of value of property.

§ 15. If any person whose real or personal estate is liable to taxation, shall, at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit; or that the value of the personal estate owned by him, after deducting his just debts, and his property invested in the stock of incorporated companies, liable under this Chapter to taxation on their capital, does not exceed a certain sum to be specified in the affidavit, it shall be the duty of the assessors to value such real or personal estate, or both, as the case may be, at the sums specified in such affidavit, and no more.

Ib. by trustees, &c.

§ 16. If any trustee, guardian, executor or administrator, shall specify, by affidavit, the value of the property possessed by him, or under his control, by virtue of such trust, after deducting the just debts due from him, and the stock held by him in incorporated companies liable to taxation, in that capacity, the assessors shall in like manner value the same, at the sum specified in such affidavit.

Rule of valuation.

§ 17. All real and personal estate liable to taxation, the value of which shall not have been specified by the affidavit of the person taxed, shall be estimated by the assessors at its full value, as they would appraise the same in payment of a just debt due from a solvent debtor.

Qualification.

§ 18. The preceding section shall be followed in all assessments made under this Chapter, except where the assessors shall be specially required by law to observe a different rule.

The following sections have been modified by section 1 of the act of April 11th, 1842. See page 494 of this paper.

Roll when to be completed; notice.

§ 19. The assessors shall complete the assessment rolls on or before the first day of September in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall also forthwith, cause notices thereof to put up at three or more public places in their town or ward.

Contents of notice.

§ 20. Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number to be designated in such notice, at some place to be specified therein, where the same may be seen and examined by any of the inhabitants of the town or ward during twenty days; and that the assessors will meet on a certain day, at the expiration of such twenty days, and at a place to be specified in such notice, to review their assessments, on the application of any person conceiving himself aggrieved.

Inspection of roll.

§ 21. The assessor with whom such assessment roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

Assessors to meet and review assessments.

§ 22. The assessors shall meet at the time and place specified in the notice, and on the application of any person conceiving himself aggrieved by their assessment, shall review such assessment. And when the person objecting thereto, shall not previously have made affidavit concerning the value of his property, pursuant to the fifteenth and sixteenth sections of this Title, the assessors shall, on the affidavit of such person, made as provided in those sections, reduce their assessments to the sum specified in such affidavits.

Ib..10 Wend. 195.

§ 23. If the person objecting to the assessment, can show, by other proof than his own affidavit, to the satisfaction of the assessors, or of a majority of them, that such assessment is erroneous, the assessors shall review and alter the same, without requiring any such affidavit.

Affidavit by agent..See § 3, Title 5, post and Title 1.

§ 24. Where any person, in possession of personal property liable to taxation, shall make affidavit, that such property, or any part thereof, specifying what part, is possessed by him as agent for the owner thereof, and shall disclose in such affidavit the name and residence of the owner, the assessors, if it shall appear that such owner is liable to be taxed under this Chapter, shall not include such personal estate in the assessment of the property of such possessor.

Affidavits before whom made.

§ 25. The affidavits specified in this Article, shall be made before the assessors, or one of them, either of whom is hereby authorized to administer an oath for that purpose; and the assessors shall cause all such affidavits to be filed in the office of the town clerk.

Certificate to assessment roll.

§ 26. If no objection be made to their assessments, or immediately after the assessors shall have disposed of the objections, the assessors, or a majority of them, shall sign the assessment roll, and shall attach thereto a certificate, in the following form, which shall also be signed by them: "We do severally certify, that we have set down, in the above assessment roll, all the real estate, situated in the [town or ward, as the case may be,] according to our best information; and that, with the exception of those cases in which the value of the said real estate has been sworn to, by the owner or possessor thereof, we have estimated the value of said real estate, at the sums which a majority of the assessors have decided to be the true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor: and also that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in the said roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable; and that with the exception of those cases in which the value of such personal estate has been sworn to by the owner or possessor, we have estimated the same according to our best information and belief."

The following section has been modified by the first section of the act of April 11th, 1842. See page 494 of this paper.

Roll to be delivered.

§ 27. The roll, thus certified, shall, on or before the first day of October in every year, be delivered by the assessors of each ward, in the city of New-York, to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting.

Duty of assessors.

§ 28. The assessors in the execution of their duties, shall use the forms, and pursue the instructions, which shall from time to time be transmitted to them by the comptroller.

Ib..6 Cowen 480.

§ 29. If any assessor shall wilfully refuse or neglect to perform any of the duties required of him, by this Chapter, he shall forfeit, to the people of this state, the sum of fifty dollars.

Ib.

§ 30. If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment roll, the name of such delinquent assessor, stating therein the cause of such omission.

ARTICLE THIRD.

Of the Equalization of the Assessments, and the Correction of the Assessment Rolls.

Sec. 31.—Assessment rolls to be examined by board of supervisors of county.
32.—Board may alter the description of the lands of non-residents.
33.—To estimate the tax to be paid on valuations of real and personal estate.
34. To add up and set down the aggregate valuations of real and personal property.
35. To cause a copy of corrected assessment roll to be delivered to each supervisor.
36. To cause a copy to be delivered to collector of every town, &c.
37. Warrant of supervisors to be annexed to copy delivered to collectors; its form.
38. Account of rolls and warrants delivered to collectors, to be sent to county treasurer.
39. Warrant to be varied so as to conform to the laws respecting cities.

Supervisors to examine assessment roll.

§ 31. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or ward, bear a just relation to the valuations in all the towns and wards, in the county; and they may increase or diminish the aggregate valuations of real estates, in any town or ward, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary, to produce a just relation between all the valuations of real estates in the county; but they shall, in no instance, reduce the aggregate valuations of all the towns and wards, below the aggregate valuation thereof, as made by the assessors.

Lands of non-residents.

§ 32. The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents, as may be necessary to render such descriptions conformable to the provisions of this Chapter; and if such alterations cannot be made, they shall expunge the descriptions of such lands, and the assessments thereon, from the assessment rolls.

Tax to be set down.

§ 33. They shall also estimate and set down in a fifth column, to be prepared for that purpose, in the assessment rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

Aggregate valuations.

§ 34. They shall also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards, as corrected by them; and shall cause their clerk to transmit to the comptroller by mail, a certificate of such aggregate valuations, showing separately, the aggregate amount of real and personal estate in each town or ward, as corrected by the board.

Corrected assessment roll.

§ 35. They shall cause the corrected assessment roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who shall deliver the same to the clerk of their city or town, to be kept by him for the use of such city or town.

Corrected assessment roll.

§ 36. The boards of supervisors of the several counties in this state, shall cause the corrected assess-

omitted to be furnished, the sum of two hundred and fifty dollars: and it shall be the duty of the comptroller to furnish the attorney-general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties hereby imposed.

Suit therefor.

§ 5. If any company, that shall be prosecuted for any such penalty, shall pay the costs of prosecution and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not wilful, may, in his discretion, discontinue such suit.

Companies how assessed.

§ 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies, liable to taxation in their respective towns, in their assessment rolls, in the following manner:

1. They shall insert in the first column of their assessment rolls, the name of each incorporated company in their respective towns or wards, liable to taxation on its capital, or otherwise: and under its name, they shall specify the amount of its capital stock paid in, and secured to be paid in; the amount paid by such company for real estate, then belonging to such company, wherever the same may be situated; and the amount of its stock, if any, belonging to the state, and to incorporated literary and charitable institutions.

2. In the second column, they shall enter the quantity of real estate owned by such company, and situated within their town or ward; and in the third column, the actual value thereof, estimated as in other cases.

3. In the fourth column, they shall enter the capital stock of every incorporated company, (excepting manufacturing and turnpike corporations, and marine insurance companies,) paid in, and secured to be paid in; after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of this state, and to incorporated literary and charitable institutions.

Valuation of stock.

§ 7. The assessors shall insert in the column mentioned in the preceding section, the cash value of the stock of all manufacturing and turnpike corporations, (to be ascertained by the assessor, by the sales of the stock, or in any other manner,) deducting therefrom the items mentioned in the preceding section: which value, thus ascertained, together with the value of the real estate of such corporations, shall constitute the amount on which the tax of such corporations shall be levied.

Preceding section extended.

§ 8. The provisions of the fifteenth section of the second Title of this Chapter, shall be, and are hereby extended to the incorporated companies in the two preceding sections named; and the president, secretary, or other proper officer, may make the affidavit required by said section.

Company when to be exempted.

§ 9. If the president or other proper officer of any incorporated company named in the assessment roll, shall show, to the satisfaction of the board of supervisors, at their annual meeting, within two days from the commencement thereof, by the affidavit of such officer, to be filed with the clerk of the board, that such company is not in the receipt of any profits or income, the name of such company shall be stricken out of the assessment roll, and no tax shall be imposed upon it. And the assessment of every monied or stock corporation, authorized to make dividends on its capital, from which no such affidavit shall be received, shall be conclusive evidence, that such corporation was liable to taxation, and was duly assessed.

Stock how assessed.

§ 10. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, and by the previous sections of this Title, shall be assessed and taxed in the same manner as the other real and personal estate of the county, unless such company shall be entitled to commute under the next section, and shall elect so to do; in which case, no tax shall be imposed by the board of supervisors on the property of such company.

Commutation.

§ 11. All companies employed wholly or principally in manufacturing, and all marine insurance companies, whose nett annual income shall not exceed five per cent on the capital stock paid in, and secured to be paid in, shall be entitled to commute for their taxes, by paying directly to the treasurer of the county in which the business of the company is transacted, five per cent upon all such nett income made by such company during the preceding year.

Certain companies exempt.

§ 12. All turnpike, bridge, or canal companies, whose nett annual income shall not exceed five per cent on the capital stock paid in, and secured to be paid in, shall be exempted from taxation.

Requisites to exemption.

§ 13. To entitle any such company to the exemption aforesaid, the president and secretary, or some two officers of the company, shall make affidavit, stating the capital stock paid in, and secured to be paid in, together with the income and profits, and the total expenditures, during the preceding year, of such company; which affidavit shall be delivered to the assessors of the town, at the time of making their assessments.

Ib.

§ 14. The president, or other proper officer of each company electing to commute, shall make affidavit before some officer authorized to take affidavits, stating the amount of such nett income; and on filing the same with the clerk of the board of supervisors, at their annual meeting, within two days from the commencement thereof, accompanied by the receipt of the county treasurer, acknowledging the payment of the proper commutation, such board of supervisors shall impose no tax on the property of such company.

Taxes to be stated and collected.

§ 15. The amount of taxes assessed on all incorporated companies liable to taxation, and not electing to commute, shall be set down by the board of supervisors, in the fifth column of the corrected assessment roll, and shall form a part of the monies to be collected by the collector.

Duty of supervisors.

§ 16, The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuations of the real and personal estate in their county, a statement, showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in, and secured to be paid in, by each; the amount of real and personal property of each, as put down by the assessors, or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the boards of supervisors shall certify such fact to the comptroller, with their returns of the aggregate valuations of real and personal estate.

Duty of collector.

§ 17. The collector shall demand payment of all taxes assessed on incorporated companies, from the president, or other proper officer, of such companies, and if not paid, shall proceed in the collection and payment thereof, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of monies collected by him. And the collector's receipt shall be evidence of the payment of such tax.

Taxes how paid.

§ 18. Such taxes shall be paid out of the funds of the company, and shall be rateably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

Proceedings if taxes cannot be collected.

§ 19. If the collector shall not be able to collect any tax assessed upon any incorporated company, he shall return the same to the county treasurer, and at the same time, make affidavit before the county treasurer, or some other officer authorized to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the company, and that such officer had refused to pay the same, or that he had not been able to make such demand, as the case may be; and that such company had no personal property, from which he could levy such tax.

Ib.

§ 20. The county treasurer shall thereupon certify such facts to the comptroller, who shall pass to the credit of such county treasurer the amount of all

taxes so returned and certified, as in the cases of taxes on the lands of non-residents.

Attorney-general to file bill in chancery.

§ 21. The comptroller shall furnish the attorney-general, with the names of all companies refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively; and the the attorney-general shall thereupon file a bill in the court of chancery, for the discovery and sequestration of its property.

Powers of chancellor.

§ 22. The chancellor on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for the purpose of satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company, and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings, as he shall deem necessary, to compel the payment of such tax and costs.

Further remedy.

§ 23. The attorney-general may also recover such tax, with costs, from such delinquent company, by action in any court of record in this state.—*Revised Statutes, vol. 1, page 402 to 406.*

TITLE VII.

Provisions to subject certain debts due to non-residents to taxation.

Sec. 1. Certain debts due to non residents, deemed personal property, and liable to taxation.
2. Assessors to ascertain them; to make preparatory roll; its contents.
3. To inspect books of records, &c. without charge.
4. May administer oaths and examine witnesses.
5. To deliver preparatory roll to county treasurer by 1st July in each year.
6. Agents of non-resident creditors to furnish list of debts to assessors.
7. Penalty of $500 for refusal.
8. County treasurer to transmit lists of non-resident creditors for other counties.
9. To prepare lists of debts owing to non-residents by inhabitants of his county and transmit them to assessors of towns.
10. Assessors to complete their rolls from these lists; entries how to be made.
11. Time for completing rolls extended to 1st September; when to be delivered to supervisors.
12. How creditors or their agents may have rolls corrected.
13. Rolls to be laid before supervisors; debts contained therein liable for taxes.
14. When duplicate lists to be delivered; supervisors may correct rolls.
15. Collector may receive tax on such debts from the debtor; to be a set-off, &c.
16. If not paid, may be raised by distress and sale of goods of non-resident.
17. If not collected by collector, county treasurer to issue warrant to sheriff.
18. What taxes warrants may include.
19. Schedule annexed to warrant; their contents.
20. Warrants a lien from time of levy; duty and authority of sheriff.
21. Proceedings against sheriff for neglect to return warrant.
22. If warrant unsatisfied, bill in chancery may be filed.
23. Court to sequester property to pay tax and costs.
24. Several county treasureas may unite in one bill.
25. Subpœna when served on agents of non-residents.
26. Compensation of county treasurers; how paid; do. of assessors.
27. When debts due by residents of other states may be deducted.
28. Debts owing to Connecticut school fund exempted from the act.

Debts of non-residents taxable.

§ 1. All debts owing by inhabitants of this state, to persons not residing therein, for the purchase of any real estate, or secured by mortgage on real estate, shall be deemed personal property within the town and county where the debtor resides, and as such, shall be liable to taxation in the same manner, and to the same extent, as the personal estate of citizens of this state.

Assessors to ascertain them, and make preparatory roll.

§ 2. The assessors in each town and ward, while engaged in ascertaining the taxable property therein, and before the first day of June in each year, shall, by diligent enquiry, ascertain the debts of the description mentioned in the first section of this act, owing by the inhabitants of their several towns and wards to non-residents of this state, and in a preparatory assessment roll, to be made by them for that purpose, shall state and designate the said property according to their best information, in four separate columns, as follows:

Its contents.

1. In the first column, the names of the creditors respectively to whom such debts are owing:

2. In the second column, the names of any known agents of such of the said creditors, with the places of residence of such agents respectively:

3. In the third column, the amount of every debt owing to such creditor, of the description mentioned in this section, stating separately the amount owing by each debtor:

4. In the fourth column, the names of the persons by whom such debts respectively are owing, and the town and county of their residence.

Assessors to search clerk's office without fee.

§ 3. For the purpose of making such statement, and for the purpose of making any assessment required by law, the assessors of any town or ward shall be permitted, without being required to pay any fee or charge whatever, to inspect the books kept by the clerk of their county, or in the city of New-York, by the register thereof, in which mortgages are registered or recorded, or in which any contracts for the sale of land are recorded; and to inspect all unrecorded mortgages and contracts left with such clerk or register, and to take such extracts therefrom as they shall deem necessary.

Assessors may administer oaths.

§ 4. The assessors of any town or ward, or any of them, may administer an oath to any person whom they may think proper to examine, to make true answers to such questions as shall be put by such assessors touching the subjects of inquiry directed by this act; but this section shall not extend to those cases where a list of debts shall have been furnished by the agent of any non-resident creditor, according to the provisions of this act.

To prepare roll for treasurer.

§ 5. As soon as the assessors shall have completed their preparatory assessment rolls, and on or before the first day of July in each year, they shall cause a fair copy of the same to be made out, which shall be certified by them, or a majority of them to be correct, according to the best information they can obtain, and shall deliver the same to the county treasurer of their county.

Agent to furnish list of debts...Its contents.

§ 6. If there shall reside in any county of this state, an agent of any non-resident creditor, having debts owing to him of the description mentioned in the first section of this act, he shall, on or before the first day of June in each year, furnish to the county treasurer of his county a true and accurate list of debts of the description mentioned in the first section of this act, which were owing on the first day of January preceding, to the principal of such agent by any inhabitant of this state, arranging such list according to the town and county of the residence of the debtor, specifying therein the name of each debtor, the town and county in which he resides, and the amount owing by him; which list shall be verified by the oath of such agent, to be taken before any commissioner of deeds or justice of the peace.

Penalty for refusal.

§ 7. Any such agent who shall refuse or neglect to furnish such list, shall forfeit the sum of five hundred dollars to the use of the county in which he resides, to be sued for by the treasurer of such county in his name of office, and to be recovered upon proof that the principal of such agent had debts owing to him by inhabitants of this state, of the description mentioned in the first section of this act, and that the existence of such debts was known to such agent.

List of debts to be made by the county treasurer...Its form and contents...To be certified...And sent to treasurer of other county.

§ 8. The county treasurer who shall receive the certified statements of the assessors of his county, shall immediately make out from the said statements so furnished to him by the assessors, and from the lists received by him from the agents of non-residents, a list of the debts appearing on such statements and lists to be owing to persons not residing in this state, by inhabitants of any other county than that of such treasurer, for each county in which any such debtor resides; the said list shall be a transcript of so much of the original statements and lists furnished as above provided, as relates to the debts herein required to be stated, and the particulars thereof shall be arranged in the said lists, in the same manner as herein directed in respect to the preparatory assessment rolls of the assessors. In case it shall appear that the same debt has been returned by any assessors in their preparatory assessment rolls, and also in any list furnished by an agent of any non-resident, the county treasurer shall transcribe only one of such entries in the lists herein directed to be made by him. The lists thus made shall be certified by such county treasurer to be correct abstracts from the statements and lists furnished to him according to the provisions of this act. The list made for each county shall be transmitted by or before the fifteenth day of July in each year, by mail, to the county treasurer of such county.

Treasurer when and how to prepare list for town assessors in his own county.

§ 9. Every county treasurer shall, as soon as he shall have received such abstracts from the other county treasurers, prepare from the said abstracts, and from the preparatory assessment rolls furnished to him by the assessors of his country, and the lists furnished him by the agents of non-residents, a list of all debts appearing from the documents aforesaid to be owing to persons not residing in this state, by inhabitants of any town of his county, for each town in which such debtors reside; the said list shall be a transcript of so much of the said documents as relates to the debts herein required to be stated, and the particulars thereof shall be arranged in the said lists in the same manner as herein directed in respect to the preparatory assessment rolls of the assessors. If it shall appear that the same debt has been returned by any assessors in their preparatory assessment rolls, and in any list furnished by an agent of any non-resident, or in any abstract furnished by another county treasurer, the county treasurer shall transcribe only one of such entries in the abstracts herein directed to be made. Such lists shall be certified by such county treasurer to be correct abstracts from the documents furnished to him according to the provisions of this act. The list for each town shall be transmitted by or before the tenth day of August, in each year, to the assessors of such town or one of them.

Assessors to complete roll and enter therein debts of non-resident creditors.

§ 10. From the list thus furnished them by their county treasurer, the assessors of every town and ward shall correct and complete their assessment rolls, by entering in the same the debts appearing by such list to be owing to persons not residing within this state, by any inhabitants of their town or ward; which entries shall be made under the names of the respective non-resident creditors, and the amount owing by each debtor shall be entered in a separate line, and the particulars of such entries shall be arranged in the same manner as herein before directed in respect to the preparatory assessment rolls of the assessors.

The following section is modified by section one of the act of April 11th, 1842. See page 494 of this paper.

Time extended for completing and delivering rolls to supervisors.

§ 11. The time prescribed by law for completing assessment rolls in the several towns and wards in this state, is hereby extended from the first day of August to the first day of September in each year; and upon the assessment rolls being completed, the assessors shall proceed in the manner now required by law, in respect to giving notice thereof, the leaving the rolls with one of the assessors and their meeting together to correct such rolls; and the time prescribed by law for delivering such certified rolls to the supervisors, is hereby extended to the first day of October in each year.

Creditor relieved by showing debts not collectable.

§ 12. At the meeting of the assesors to correct their rolls, pursuant to the notice given by them, any creditor whose name shall be inserted in such rolls, or his agent, may, by his own affidavit or other proof, adduce testimony to the said assessors to show that any error exists in the said rolls, or that any part of any debt therein stated is desperate and not collectable; and the said assessors shall review and alter the said rolls according to the facts so established; but no reduction of the amount of any debt shall be made at the instance of any non-resident creditor whose agent shall have refused or neglected to furnish the list herein required of him.

Supervisors to assess taxes on non-resident debts.

§ 13. The assessment rolls thus completed shall be

an actual levy shall be made upon any property by virtue thereof; and the sheriff, to whom such warrant shall be directed, shall proceed upon the same, in all respects, with the like effect and in the same manner as prescribed by law in respect to executions against property, issued by a county clerk upon judgments rendered by a justice of the peace, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.

When Sheriff may be proceeded against.

§ 21. In case of the neglect of any sheriff to return such warrant, according to the directions therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment, in the same manner and with the like effect, as for similar neglects in reference to an execution issued out of the supreme court in a civil suit, and proceedings thereon shall be the same in all respects.

When treasurer to file a bill in chancery.

§ 22. If any such warrant shall be returned unsatisfied in whole or in part, in respect to any non-resident, the county treasurer, under the directions of the board of supervisors of his county, may file a bill, in his name of office, in the court of chancery, whatever may be the amount so remaining unsatisfied, against such non-resident and his agents, and any other person having the care or possession of any property of such non-resident, for the discovery and sequestration of such property.

Chancellor may order property sequestered.

§ 23. On the filing of such bill, or on the coming in of the answer thereto, or upon such bill being taken as confessed, or the allegations therein being established, the court of chancery shall order such part of the property of such non-resident to be sequestered, as shall be necessary for the purpose of satisfying the taxes in arrear, imposed as aforesaid, upon the debts owing to such non-resident, with the costs of prosecution, and may order and direct such other proceedings as may be necessary to compel the payment of such tax and costs.

Several treasurers may unite in one bill.

§ 24. The county treasurers of several counties may, under the direction of their respective boards of supervisors, unite in one bill against the same party, for the collection of taxes imposed on debts owing to non-residents, although such taxes may be payable to different county treasurers.

Subpœna may be served on agent.

§ 25, Where non-residents who are parties to any bill filed according to the provisions of this act, shall have any known agent residing in this state, for the sale of their lands, or for receiving the purchase money on such sales, the court of chancery may, in its distinction, make an order that the service of the subpœna issued on the filing such bill, upon such agent, shall be deemed sufficient to entitle the complainant to an order for the principal of such agent to appear and answer such bill.

What county, and what town charges.

§ 26. The expenses of county treasurers, and such compensation as their board of supervisors shall allow them for their services, in executing this act, shall be county charges, and the expenses and charges for the services of assessors, under this act, shall be town charges, and audited and paid as such.

When inhabitants exempt from assessment on debts taxed in other states.

§ 27. Whenever it shall satisfactorily appear to the assessors of any town or ward, by the oath of any inhabitant of this state, or by other proofs, that any debts due to such inhabitant, by residents in any other state, are by the laws of such state subject to taxation, and have been actually taxed in such state within twelve months preceding, it shall be the duty of such assessors to deduct the amount of such debts from the personal estate of such inhabitant.

Duty of comptroller.

§ 28. The comptroller shall prepare instructions and forms for the execution of this act, and shall cause a sufficient number of copies thereof and of this act to be printed and distributed to the assessors, county treasurers and clerks of the boards of supervisors of the state.

Connecticut school fund exempted from act.

§ 29. [Orig. sec. 1.] The act entitled "An act to subject certain debts owing to non-residents to taxation," passed April 27th, 1833, shall not be so construed as to subject any debt owing to the school fund of the state of Connecticut to taxation under the provisions of the said act.—*Revised Statutes, vol.* 1, *pg.* 411 *to* 417.

Section 14 *of pg.* 411 *vol.* 1 *of the Revised Statutes.*

What cities deemed towns.

§ 14. (Sec. 8.) Every city not divided into wards, for the purpose of choosing Supervisors and Assessors, shall be deemed to be a town within the provisions of this Chapter.

Extract from act of 1842:

"*An Act respecting the collection of Taxes in the city and county of New-York.*"—Passed April 11, 1842.

"§ 1. The Assessors annually chosen in each ward of the city of New-York, shall on or before the fifth day of June next, after being chosen, proceed to assess the property in their respective wards according to law, and shall complete the assessment according to law on or before the fifteenth day of August next following, and make out one fair copy thereof to be left with one of their number on or before the twentieth day of August next following, and shall thereupon according to law give notice of having completed such assessment, and that a copy thereof is left with one of such assessors, (naming him,) where the same may be seen and examined by any of the inhabitants from the said twentieth day of August to the tenth day of September following, both inclusive, and that they will meet at the expiration of the said tenth day of September at a place in said notice to be specified to review their assessment on the application of any person conceiving himself aggrieved, and such proceedings shall thereupon take place as is by law provided. And such assessors shall sign the said assessment roll, and deliver the same on or before the twentieth day of September next ensuing to the Comptroller of the said city, who shall deliver the same to the supervisors of the said city at their next meeting, and that for any neglect, omission, or refusal to perform the requirements of this section, the party offending shall be liable to the penalties mentioned in the eleventh section of the Act passed April 23, 1823, entitled, 'An act for the assessment and collection of taxes.'

Extract from the act passed May 2*d*, 1844, *providing for the collection of erroneous taxes:*

§ 2. The Board of Supervisors in and for the city and county of New York, may at any meeting of said Board, at which the Mayor or Recorder shall be present correct any erroneous assessment which may have been made by the Assessors of either of the wards of the said city for the year 1843, and may also correct any erroneous assessment which shall hereafter be made by any such assessors as aforesaid, provided application for such relief shall be made upon assessments in 1843, within three months after the passage of this act, and in all other cases within the period of six months after the assessment rolls shall have been returned as required by law, and provided also proof is made to the satisfaction of such board of Supervisors, by the affidavit of the applicant or other legal evidence that the said erroneous assessment did not result from any neglect on the part of the person or persons applying for relief.

The following is the copy of an act passed May 14*th*, 1845.

An Act to enable the Receiver of Taxes in the city New-York and the Comptroller of the said city to collect the taxes remaining unpaid.—Passed May 14th, 1845, by a two-third vote.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be the duty of the Receiver of taxes in the city ot New-York to collect all arrearages of taxes due and payable prior to the first day of October, one thousand eight hundred and forty-three, with interest thereon, and to enforce the payment thereof by distress and sale of the goods and chattels of the person against whom said tax has been assessed; and the provisions of the act entitled "An act for the collection of taxes in the city of New-York," passed April 18, 1843, so far as the same relates to distress and sale of goods and chattels for the payment of

taxes, shall be in full force, and applicable to the collection of such taxes under this section.

§ 2. In all cases where the said Receiver shall proceed by distress and sale of the goods and chattels of any person, for the payment of any tax due and payable as well before as after the said first day of October, one thousand eight hundred and forty three, it shall be lawful for him to authorize and empower the officer making such distress and sale, to collect in addition to the tax and interest thereon, the costs of such distress and sale.

§ 3 It shall be lawful for the Comptroller of the city of New-York to sell any lands or tenements in said city for the payment of any tax due thereon. prior to the first day of October one thousand eight hundred and forty-three, and all the provisions of article third of the said act entitled "An act for the collection of taxes in the city of New-York," passed April 18, 1843, shall be applicable to such sale, and the prior proceedings to effect the same.

§ 4. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

§ 5. This act shall take effect immediately.

State of New-York, }
Secretary's Office. }

I have compared the preceding with an original act of the legislature of this State on file in this office and do certify that the same is a correct transcript therefrom and of the whole of said original.

ARCH'D. CAMPBELL.
Dep. Sec. of State.

Albany, May 16, 1845.

THE ADIRONDACK MOUNTAINS.

I have recently made a tour among these mountains which are the highest lands in this State. There is but little difference in the elevation of the highest peaks of the White Mountains in New-Hampshire above the highest peaks of the Adirondack Mountains of New-York. The North River, which empties itself into the bay of New-York, has its head in the Adirondack Mountains, in a meadow which is elevated about 4,750 feet above the level of the Ocean. The Au Sable in its south branch heads in the same meadow with the North River, and discharges its waters through Lake Champlain into the River and Gulf of St. Lawrence. The peaks of the Adirondack are now covered with snow. The highest of these peaks is 5,467 feet above tide water.

These mountains are doubtless more ancient than time, and probably have had a greater elevation than at present, for they have been in use and subject to the constant wear of the elements for about 6000 years.

The first mention made of mountains by the inspired penman, is in the brief record of the deluge. The waters of the deluge it is stated covered the hills and afterwards the mountains, and after the waters subsided the Ark rested upon the mountains of Ararat. It is therefore evident that the mountains were not the offspring of the deluge.

There is no marks of subterranean convulsions in the high lands of the Adirondack, nor is there any thing in the appearance of the surrounding country but what may be presumed to have resulted from the great changes produced by the deluge.

I intend to explore these mountains as soon as the warm weather has removed the snow from the high peaks. During the day time there is not so great a difference in the temperature of the atmosphere on high mountain peaks as compared with the common surface, as in the night.

THE AU SABLE RIVER.

This River empties into Lake Champlain a short distance north of Port Kent. The west branch heads to the west of the highest peak of the Adirondack Mountains and the south branch to the east of the same height. The south branch heads in the same meadow with the North River, and at an elevation of about 4,750 feet above the level of the sea. The south and west branches unite at a place called the Au Sable Forks, five miles west of Clintonville. At and below Keeseville, the Au Sable runs deep in the bowels of the earth. The rock in which it has cut a deep and narrow channel is a sand stone formation. In some places the chasm which the river passes through is 150 feet deep, and not to exceed fifty wide. I noticed in a great number of places that these chasms are intersected by deep and narrow fissures in the rocks, and at first view appear to have been rent by some terrible convulsion, but on close examination I am satisfied that these fissures have been cut by sand and water.

Among these sand rocks are grooves of an inch in depth, evidently made by the water. This process is still going on. I noticed a strata on the river bank near the shore, the surface of which was grooved and the water from a spring was coursing down these grooves to the river, and deepening them continually. While at Sampson Pond examining the white sand beach, I stepped upon a timber that extended into the water ten or twelve feet to examine the pebbles and sand thrown up, and in this sand about four inches under water, I noticed the same grooves in the sand as I saw in the sand rock at Keesville, and the shape of them seemed to correspond with the curve of the waves on the surface of the water which were formed by the wind. Much of the water holds agglutinating substances in solution sufficient to cement the sand and form it into rock. About a mile and a half below Keesville the Au Sable falls over a rock precipice, about forty feet. At the side of this fall is a curve in the rock fifty feet deep cut in the rock nearly in the form of a semi-circle, and about thirty feet across. About 100 rods or more further down the River, is another fall, of 60 feet. It was about 5 o'clock P. M. when I came to the part of the river. The spray was rising to a height of near 200 feet in the atmosphere, from the narrow chasm into which the river plunged. I passed over a bridge above the fall, and crossed a pasture fence to a point on the cliffs about 200 feet lower down the river, and from this point the first glimpse I got of the prismatic colors produced by the sun upon the ascending spray, was of that portion which composed the red ray—it was a most beautiful painting—it appeared like a belt of ornamented fire—it was too resplendant for mortal eyes to look upon, and I felt amazed and almost overwhelmed in beholding this beautiful color for I saw it through a narrow and deep chasm in the rock by which I was at first view prevented from seeing but the one color.

From these falls I continued my walk along the bank of the river for half or three quarters of a mile to a place called the natural bridge. At this point there is a flight of stairs leading from the top of the rocks to the water. I descended them a few steps and found they were much broken and out of order, and as I was alone I thought it most prudent to avoid testing the strength of them. Here there is a fissure in the rock which comes to an apex at the top and widens as it increases in depth. I passed over this fissure and along the river bank until I found my path terminated in the lower end of an Island which was separated by a wide fissure at its lower extremity, I therefore retraced my steps and recrossed the chasm where I came upon the Island.

At this place the river is very narrow, not exceeding 20 feet. On a level with a flat rock at the foot of the stairs I have spoken of, is a sort of second bank, forming one side of a rock chasm through which the river passes. Over this chasm some boys who were daring, laid two poles of about five or six inches in thickness, and crossed over upon them to the opposite side of the chasm. A clergyman from Whitehall came here during last summer with two young ladies and undertook to cross on these poles. He passed over with one young lady safely, but the other refused to go. He then returned to conduct the lady back, and had proceeded with her a part of the way when he became spell bound, fell into the chasm, and was no more seen alive. The young lady by some unaccountable and mysterious means saved herself from falling and reached the place she set out from in safety. Her escape was miraculous—providential. The body of the clergymen was found three days after the accident a few rods below the poles. It was raised from the bottom by the discharge of fire arms into the chasm.

I have followed up the west branch of the Au Sable to the High Falls. These falls are in the bosom of a forest, at the base of a mountain peak which has a snow capped head reared 4,855 feet above the level of the sea—it is in a mountain gap, called the narrows. These falls are over granite rock and the chasm into which the water plunges is fringed with trees of evergreen species and they are therefore almost a stranger to sunshine. It is about seven miles to the nearest house to the west and two miles to a house to the east, to the north and south are mountains piled high in the air. The falls are therefore in a secluded spot. The water breaks over a precipice of about 60 feet in height and falls into a chasm the walls of which are more than vertical, for they lean over, and when I approached near the verge I laid hold of a green sapling and held fast by that while I surveyed the broken sheet of water. The sound of such a water fall in such a place has a charm, for it is a wild and romantic spot for such a cataract. Lake Placid is six miles distant from this cataract—that is a quiet sheet of water and well deserves its name and contrasts widely in its habits with its noisy neighbor, the forest cataract. We travelled along the rocky banks of the Au Sable down the stream below the fall for half a mile some of the time under the cliffs and at others, on its brow. The river this distance is a broken current and full of falls, among which I noticed one of peculiar beauty. A rock having three rounded sides projects down stream about the middle of the river in a a plate of about two feet in thickness, and about ten feet above the water while its upper side is joined to the rock bottom, and on this the water runs and falls in an undivided sheet from its three sides. It looks like an artificial fountain. These falls have an elevation of 1427 feet above the level of Lake Champlain. I examined the strata of rock which the water had cut through in this mountain gap and found it to be granite. Some parts of the chasm made by the water is worn into fanciful shapes by round stones which have been put in motion by the water and which have for a great length of time been kept in motion by it. I examined the fragments of rock brought down by the water and also the stratas in the rock severed by the river in cutting its channel, and found no metallic veins visible. About two hundred feet below these falls, I came to a large cake of ice laying upon the rocks—it was very clear and I broke off a piece of it to quench my thirst.

The temperature of the water of the Au Sable as denoted by my thermometer immersed in the river was 52° of Farenheit. At 5 o'clock of the morning of the 14th of May the atmosphere was 50°, and the river two degrees warmer. At 12 at noon on the 13th of May, the atmosphere air had a temperature of 88° and the river water at that hour 52°, being 36° cooler. The High Falls have a very hard rock for a wall and a hard rock for the river to cut a channel through, it is owing to this fact that it does not present the deep gorges that are seen in the sand stone rock below Keesville. The sand stone being softer is more easily cut away by water carrying minute grains of sand along with it.

THE SARANAC RIVER.

The Saranac River heads west of Mount Seward, in the upper and lower Saranac Lakes, and in the near neighborhood of Racket River and Long Lake. The upper and lower Saranac Lakes are full of little islands. This is what is called the south branch; another branch of the river heads among the mountains in Franklin and Belmont townships. I crossed this river about two miles above the Forks on a raft which we constructed of five logs, which we paddled over to the opposite shore. The rock formation as developed by the trees blown down by the wind in the excavations made by the broken roots at the point we crossed, is sand stone. About five miles below this is the Bedford Glass works, but these are not now in operation. This species of sand stone was used for making glass and was found to be of an excellent quality for that use. The Saranac enters into the Lake at Plattsburg. Above Union Falls, which are three miles above where we crossed the river, the Saranac is navigable for several miles, by canoes. The upper Saranac Lake has an elevation of 1554 feet above the waters of Lake Champlain. The river affords abundant water power, and as this region of country is richly stored with iron ore the means of reducing it is ample. In all my equiries for salt licks in this region, I heard of but one, and that is doubtless more of a sulphur than a saline water. I met with several hunters and trappers who have traversed the wilderness region at the heads of this river, and they inform me that there are no salt licks hereabouts.

MINERAL DEPOSITS.

The mineral deposits in the vicinity of the Au Sable and Saranac Rivers have been but little examined.

Yellow and White Birch, Rock and Soft Maple, Bass, Elm, Pine, White Cedar, Tamarack, Fir Balsam, Balm of Gilead, Spruce and Hemlock are the principal timber here. On the pine plains between the Au Sable and the Saranac the Norway pine grows to a great height. This pine plains land is not esteemed here for agricultural purposes but it seems to me that they are wrong in this. The pine plains of Upper Canada were formerly considered poor lands but now are extensively cultivated and found productive, and therefore, valuable. The great height of the Norway pine upon these lands, I think, indicate a good soil. On the plains near Black Brook I visited a lime kiln, built upon a lime stone formation. I obtained several pretty geological specimens here which I have not yet examined. The carburet of Iron is here found imbedded in the rock; there is also sulphate of Iron and mineral amianthus, &c. &c. This lime stone quarry belongs to Mr. Wilkins. We have not room in our present number for farther remarks, and as I shall revisit this section of this State, I will in a future number describe this locality more in detail.

LAKE CHAMPLAIN.

This Lake is 110 miles long, and from half a mile to twenty miles wide, in one place it is less than 40 rods wide, and is estimated to contain 567 square miles. The shores of this lake present a variety of scenery. Mountains lift their venerable heads high in the air both to the east and west, while on the north the country is a dead level at and beyond the termination of the lake. There are several Islands in this Lake, some of which are well cultivated and productive. When I passed down the lake a strong north wind prevailed, and the water of the south end of the lake was very turbid and filled with clay held by it in suspension. When the water becomes quiet this clay will be precipitated and thus a new deposit of earth formed. From the appearance of the water, I should judge that a column of twenty inches in height would, on remaining quiet for ten days, deposit one inch of compact sediment. It is thus clay is piled up. Near Essex, on the New-York side is a rock which extends out into the lake, called "The Split Rock." This rock has a large fissure in it of great depth through which the water flows. It is supposed to have been rent by some great convulsion, but I do not see any thing in its appearance which indicates a greater change than is visible in the sand stone in the banks of the Au Sable, below Keesville, which are no doubt the result of the action of sand and water. The competition in the steam navigation of Lake Champlain is a very spirited. I passed down the Lake from Whitehall to Port Kent in the very commodious steamer Whitehall, for 25 cents, and had I continued on to St. Johns in Lower Canada, only the same fare would be charged for the whole distance. This is a beautiful boat, and its Commander deserving of all praise. His kind attentions to passengers—his industry and attention to his business, make his boat a pleasant and safe conveyance. He has his family with him on the boat. I noticed a lady passenger on board the boat with several small children. When the boat arrived at Whitehall the captain took one of the children in his arms and carried it to the stage. Such kind attentions, deserves mention. Stages are in waiting when the boat arrives at Whitehall to take passengers to the hotels, and at the hotels to convey them to the packet boats free of charge, and only twenty-five cents is charged for breakfast. Such was the charge at the American, where I took breakfast. The same course was pursued at Port Kent. The Francis Saltus, a new boat upon the Lake, is extensively patronized. Heretofore the boats on the lakes charged five dollars, and this high price brought out the Saltus. The Saltus is a fast boat, and I have no doubt a very good boat. The geological formations on the western, New-York side of Lake Champlain, may be stated as follows. Commencing at the south end of the Lake with Post Tertiary, then Calciferous Sand Rock, next Pebbly Beach, Potsdam Sand Stone, Gneis, Potsdam Sand Stone, Gneis, Potsdam Sand Stone, Trenton Lime Stone, *Crown Point.*

Postdam Sand Stone, Calciferous Sand Stone, Primitive Lime Stone, Gneis, Post Tertiary, Potsdam Sand Stone, Post Tertiary. *West Port.*

Redish Porphyry, Slate, Chazy Lime Stone, Trenton Lime Stone. *Essex.*

Slate, Hyperthene and Dykes, Potsdam Sand Stone, *Port Kent.*

Post Tertiary, Slate, Trenton Lime Stone to Canada line.

The mountains back from the Lake abound in minerals, the most valuable of which is Iron.

During my tour I collected about two hundred pounds of geological specimens of various kinds some of which are beautiful.

THE ROADS IN ESSEX, CLINTON, AND FRANKLIN COUNTIES.

The Roads in these counties are but tolerable. From the Lake to Keesville, is four miles—from that to Clintonville, six miles, thence to New Sweden two miles, and from that to the Forks of the Au Sable, three miles. From the forks of the Au Sable to Union Falls on the Saranac, is fifteen miles. From the Forks of the Au Sable to the High Falls in the mountain notch, is 12 miles. Beyond Hasbrook's forge there are no inhabitants for nine miles. From Hasbrook's forge to Long Lake is about 30 miles. The path to Long Lake is by marked trees. Long Lake is the head of Racket River, one of the most noisy streams in this section of the country.

I travelled several miles with Major Baker of Keesville on his return from the wilderness in which he had been travelling about four weeks, collecting furs. He passed through the Lakes, Ponds, and Rivers in a Cedar Canoe weighing 70 lb. His canoe, he and the man he had with him transported by hand over the carrying places, together with their provision, furs, &c. They encamped in the woods at night, and he informed me that he did not see or hear a wolf or a panther during the whole tour. There is less danger in the woods at night in this wilderness region than on board a North River Steamer as the boats have been recently managed. Major Baker obtained one Beaver Skin in the tour. The Beavers are rapidly disappearing. There are a few Moose in in this region, and now and then the hunters and trappers get hold of a panther. The Deer are plenty and seem to increase in proportion as the Wolves decrease. During the last year, a young man who was employed to attend upon several sable traps lost his way in the woods, and became bewildered, and it was about four days before he was found. When a person once loses the way in the woods he is very apt to become bewildered and then reason seems almost to cease its guidance. The human mind is wonderfully constituted, and man is often bewildered when not in the woods.

There is in the mountain atmosphere and mountain water of this region a gentle stimulant—it is powerful, for it is full of life. In breathing the air and drinking the water of this region of country, I found a newness of life—exercise here is medicine to the body, and it is food for the mind, for every step opens a new leaf in the volume of nature, full of instruction, and full of charms. From one of the lofty peaks of the Adirondack may be counted more than thirty lakes and ponds, and also the heads of six rivers which are born in these mountains which are a great store house of the clouds.

The lightning is not very destructive here. I have not during my tour met with a tree in the forest which has been scathed by lightning. The mountain tops here have an influence upon the clouds in discharging the electric fires.

In the woods on the north side of the Saranac I met with several little patches of winter snow.

There is a large business done in lumbering in this region. Lumber is a crop that requires an age to produce it, and when exhausted, the country is impoverished, for the price it bears is but a poor compensation for the labor bestowed upon it. The returns of agriculture are annual and the benefits of these products to the farmer, and also to the country, are great, and are continuous.

A stage runs daily from the lake to and from the Au Sable Forks. The fare is 75 cents. Beyond this there are no public conveyances. The roads are worn deep into the sand by the numerous wagons which travel these roads with iron, lumber, ore, nails, &c. This is an interesting portion of the State and will become rich and important. It has not had its share of public improvements. Public improvements made here would add greatly to the value of the lands in this section of the State, would increase its population, augment its wealth and bring into use the vast mineral stores deposited here which now lie almost dormant.

FREE BANKING.

We place before our readers the opinion of the Supreme Court of this State in relation to free Banking Associations formed under a general law of the Legislature of this State passed in 1838. This opinion is from the pen of Mr. Chief Justice BRONSON.

There have been three adjudications upon the question which is involved in this case, in three different proceedings in the Court for the Correction of Errors, but a quere is raised whether, that court was properly constituted at the time judgment was pronounced.

The Constitution is as follows:

"The Court for the trial of Impeachments, and the Correction of Errors, shall consist of the President of the Senate, the Senators, the Chancellor, and the Justices of the Supreme Court, or the major part of them; but when an impeachment shall be prosecuted against the Chancellor, or any Justice of the Supreme Court, the person so impeached, shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in Chancery shall be heard the Chancellor shall inform the Court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought, on a judgment of the Supreme Court, the Justices of that Court shall assign the reasons for the judgment, but shall not have a voice for its affirmance or reversal." Sec. 1, Art. 5, Constitution of 1821.

In two of the three cases referred to, the vote taken was a very small one. In the case of the Exchange Bank of Albany, we believe but 11 Senators were present.

In the case of the Lockport Canal Bank, and Lockport Trust and Banking Company, but 19 Senators were present.

On page 417 of this volume, is a copy of a letter addressed to us by Senator Jones, a member of the Court for the Correction of Errors. We here give this letter entire as follows:

"ALBANY, Feb. 18, 1845.

"My Dear Sir,

"I would state in reply to your letter that the case of the 'Board of Supervisors of the county of Niagara *vs.* The People, *ex. rel.*, Wm. G. McMaster,' came before the Court for the Correction of Errors upon a writ of Error brought from the Supreme Court ordering that a peremptory writ of mandamus issue to the Supervisors of Niagara County, commanding them to restore to the assessment rolls of the town of Lockport, the assessment of the Canal Bank of Lockport, and the Lockport Bank and Trust Company. The only important question involved in this decision was, 'Were the two institutions above named, *monied or stock Corporations?*' If this should be decided as such by the Court for the Correction of Errors, then the reversal of the decision of the Supreme Court would necessarily follow. The judgment of the Supreme Court, however, was affirmed as follows:

"For Affirmance—Messrs. Bartlett, Corning, Johnson, Lawrence, Lester, Mitchell, Porter, Scott, Scovil, Smith, Varney.

"For Reversal—Messrs. Backus, Bockee, Jones, Platt, Rhoades, Sherman, Varian, Works.

"Yours, very respectfully,

"D. R. FLOYD JONES."

"E. MERIAM, Esq.

The case of the Exchange Bank of Albany, only involved a question touching the regularity or legality of a replevin.

These are the cases which the learned Chief Justice, BRONSON refers to in his opinion, and in which he says that he had not seen the opinion given in these cases, and he was not probably aware that the Court was thus constituted, as the letter of Senator Jones states.

The vesting of power in a body composed of several classes of officers, is of frequent occurrence.

In England, the Mayor, Recorder, Aldermen and Common Councilmen are often empowerod to do certain things, or to determine certain questions in their assembly, when convened as a body—but should only the Aldermen and Common Councilmen meet in the Council Chamber, althongh forming a majority of the persons composing the assembly, the assembly would not be deemed as organized without the attendance of the other two, unless some special statute allowed of the organization of a part in the absence of the other classes.

This section of the Constitution is too plain to admit of any other construction than the one we here give it and such is the language and the spirit of the clause.

It is not our purpose to discuss the question of constitutionality or unconstitutionality of the general banking law; or to discuss the restriction contained in the tenth section of the first article of the Constitution of the United States; nor to discuss the question involved in the passage of the law authorising contracts between the State and the Free Banks in reference to State stocks and the registry of bank notes, in consideration of stipulated guarantee, &c.

In the case of *Striker* vs. *Kelly*, recently decided in the Supreme Court, involving the validity of the seizure and confiscation of lands for a visionary paper improvement, the Court held what we conceive to be a very different doctrine from that here put forth. Mr. Justice Beardsley in that case delivered the opinion of the Court. Mr. Justice Bronson dissented.

It was urged by Mr. Webster, Counsel for General Striker, that the proceedings in question were void.

Mr. Webster said:

"There is another question respecting the legality of seizing, arising out of the charter, which I cannot omit stating. By the 7th section of the amended charter, it is provided that the boards shall meet in separate rooms, choose clerks, &c., and each board shall keep a journal of its proceedings. The doors shall be open, except when the public welfare requires secresy; and all resolutions or reports of committees which shall direct any improvement or involving an appropriation of public money, or taxing or assessing citizens shall be published, immediately after the adjournment of the board, in all the papers employed by the corporation: and it goes on to say that the question, in all such cases, shall be taken by ayes and nays."

The learned judge Beardsley in delivering the opinion of the Court in reference to this point says:

"*It may be that the resolution for opening this avenue should have been passed by ayes and noes: laws of* 1820, *p.* 125 § 7. *But the statute is directory, and the act of the Corporation is not a nullity because it was not passed in that form.*"

Now let us compare this provision of the City Constitution, that is to govern and control the Common Council, with the provision of the State Constitution, which is to govern and control the State Legislature.

The ninth section of the sixth article of the State Constitution, is as follows:

"The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys, or property for local or private purposes; or creating, continuing, altering, or renewing, any body politic or corporate."

We apprehend that but few persons can be found that would give any other than the same construction to each and both these provisions, and yet Mr. Justice Beardsley gives to each provision a different construction—one is deemed by the court to be directory, and the other mandatory.

Courts in their decisions should be governed by settled principles, otherwise they will find endless difficulties and evils growing out of their adjudications.

The question here is are the free banks bodies "politic or corporate," and if they are so, whether the assent of two thirds, &c., is required?

Fluctuations in judicial decisions in our State have become alarmingly numerous of late, and the numerous judicial opinions which are contained in this volume, contrasted together, are a sad *memento* of the feebleness of human judgment.

IMPORTANT DECISION OF THE SUPREME COURT OF THE STATE OF NEW-YORK ON THE GENERAL BANKING LAW.

DE BOW VS. THE PEOPLE.

Error to Ontario General Sessions. De Bow was indicted in the court below for passing, and having in his possession with intent to pass certain forged and counterfeit bank notes. In some of the counts the charge was that he intended to defraud the Bank of Warsaw. The defendant pleaded not guilty. On the trial, the district attorney gave evidence of the defendant's acts; and also gave in evidence certain articles of association, entered into by several individuals on the 28th December, 1838, in pursuance of the "act to authorize the business of banking," by which the associates proposed to establish a bank in the county of Genesee by the name of the Bank of Warsaw. The association never went into operation or issued any bills. The defendant insisted that the act under which the association was formed was unconstitutional and void, because it was not passed by a vote of two thirds of the members of the legislature; and that the Bank of Warsaw was not a body capable in law of being defranded.

The court decided that the association was capable in law of being defrauded, and admitted the articles in evidence. The defendant requested the court to charge the jury, that the defendant could not be convicted of having counterfeit money in his possession with intent to pass the same with intent to defraud the Bank of Warsaw, and to charge that there was nobody existing in law by the name of the Bank of Warsaw capable of being defrauded. The court refused so to charge. The defendant excepted to the several decisions of the court, and the jury found him guilty. The court sentenced the defendant to five years in the state prision, and a record of the judgment having been filed, the defendant now brings error.

A *Worden*, for the prisoner.

T. M. Howell, district attorney, for the people.

By the Court, BRONSON, Ch. J.—It is a part of the crime charged upon the defendant, and of which he has been convicted, that he intended to defraud the Bank of Warsaw. That was an association formed under the general banking law of 1838; and if the law was not a constitutional exercise of power on the part of the Legislature, it follows that there was no such legal being as the Bank of Warsaw to be defrauded, and the defendant has been improperly convicted. The objection was taken on the trial that the law did not receive the assent of two thirds of the members of the Legislature, and was consequently void. The question of validity is directly and necessarily presented, and we cannot, if we would, turn aside from considering it. As we have thus cast upon us the most delicate and important duty which we are ever called upon to discharge, and as of consequences of unusual magnitude may hang on our decision, I do not regret to find that the question before us has already been virtually settled; and that too, by the court of last resort. I do not mean that the precise point in relation to the validity of this law has been decided; but I do mean that every step in the argument on which the question turns has been directly and necessarily adjudged by the Court for the Correction of Errors.

By the fundamental law the people have declared, that the "assent of two thirds of the members elected to each branch of the Legislature shall be requisite to every bill" "creating, continuing, altering, or renewing any body politic or corporate." [Art. 7, §9.] And no bill can be deemed to have been passed in that manner unless so certified by the presiding officer of each house. (1 R. S. 156, § 4.) Knowing, as we do from the inspection of the original engrossed bill on file in the Secretary's office, that the general bank law was not passed as a two-thirds bill, it would seem not to be necessary to go beyond the inquiry, whether associations formed under the law are bodies politic or corporate—for if they are, the law was not passed in such a manner as to give it validity. But beyond the question of corporation or not, two other points have been discussed in the course—first, whether the constitution extends to all corporations; and second, in what way should the question be tried whether the law received the requisite number of votes. Should it be matter of averment to be tried by a jury, or is it the business and duty of the court to ascertain and declare whether any supposed law was duly enacted? I shall not go into a general discussion of these questions, for the reason that I have done so on former occasions, and because I deem the questions now settled.

It was never doubted that the two-thirds clause of the constitution extended alike to all corporations, until it was said in *The People* vs. *Morris*, (13 Wend. 325,) that it did not extend to *public* corporations such as cities and villages. When the license had

assent of two-thirds of the members shall be requisite to every bill creating *any* corporation.

The second question which remained for some time unsettled was, how shall it be ascertained whether bills falling within the two-thirds clause of the constitution were passed by the requisite number of votes. (*See Thomas* vs. *Dakin*, 22 *Wend.* 9; *Warren* vs. *Beers*, 23 *ib.*. 103; *The People* vs. *Purdy*, 2 *Hill* 31.) But that doubt has been resolved by the court for the correction of errors, and it is now settled that it is the business of the court to determine what is statute, as well as common law; and for that purpose the judges may and should, if necessary, look beyond the printed statute book, and examine the original engrossed bills on file in the office of the Secretary of State; and it seems that the journals kept by the two houses may also be consulted, (*Purdy* vs. *The People*, 4 *Hill*, 384.) I do not refer to the mere *dicta* of those who delivered opinions. The point was directly and necessarily involved in the decision which was made. The court did look beyoud the printed statute book, and, on finding that a law altering the charter of the city of New-York was not certified as having passed by a two-thirds vote, it was deemed not to have been so passed, and was for that reason adjudged null and void.

If the two-thirds clause of the constitution extends alike to all corporations, and if it is the business of the court to inquire and determine whether laws falling within the clause received the requisite number of votes, then knowing as we do that the general banking law was not passed as a two-thirds bill, nothing remains of this case but the inquiry whether these banking associations are bodies politic or corporate. It has never been doubted by this court, or by any member of it, either before or since the decision in *Warner* vs. *Beers*, that they are corporations; and that they are as completely so as any other body which was ever brought into existence. (*Thomas vs. Dakin*, 22 *Wend.* 9, *Delafield vs. Kinney*, 34 *id.* 345. *The People vs. The Assessors of Watertown*, 1 *Hill* 616. *Willoughby vs. Comstock*, 3 *id.* 339. *The People vs. The Supervisors of Niagara.* 4 *id.* 20. *Matter of the Bank of Dansville*, 6 *id.* 370.) And although some attempts have been made to controvert this doctrine, no judicial officer, whether lawyer or layman, has ever yet ventured upon the unqualified assertion that these companies are not corporations.

Some have first reasoned themselves into the belief that the convention did not mean—as its language plainly imports—to reach all corporations; and have then concluded that these general law banks are not corporations, *within the spirit, intent, and meaning of the constitution.* These, or some other qualifying words have constantly been employed by those who wish to take this class of banks out of the influence of the fundamental law. In *The People vs. The Assessors of Watertown*, (1 Hill 616) I attempted to bring this question to the very plain and simple test of comparing one of the general law banks with one of the safety fund banks having a special charter; and I hazard little in saying, that any intelligent and right-minded man who will make the comparison for himself will come to the conclusion, that so far as relates to the essential attributes of a corporation there is not a shadow of difference between the two. If one is not a corporation, the other is not; indeed we have no corporations.

But I will not again enter in the discussion of the question. It is enough that it has been expressly decided by the court of last resort that the general-law banks are corporations. and as such are subject to taxation on their capital like other monied corporations. (*The Supervisors of Niagara vs. The People, December*, 1844. *Albany Exchange Bank vs. Boardman, December*, 1844.) I have not seen the opinions which were delivered in the Court of Errors; but I know that in the first case, if not in the last, the point must have been directly and necessarily adjuged, that the general-law banks are corporations.*

It is said that the Court of Errors only decided that these banks are corporations *within the meaning of the tax law*, and not that they are such within the meaning of the constitution. There is nothing in this argument. The court decided that these banks are corporations of the particular kind or species mentioned in the tax law; to wit, "monied or stock corporations deriving an income or profit from their capital or otherwise." (1 R. S. 414, § 1.) That necessarily affirmed that they were corporations; and the constitution is not confined to any particular kind or species of corporations; but includes the whole genus. The words are "any body politic or coporate." No judge could ever respect himself after holding that these banks are corporations within the meaning of the tax law, and yet that they are not corporations within the meaning of the constitution.

It is also said that the Court of Errors decided in (*Warner vs. Beers*, 23 *Wend.* 103,) that these banks are not corporations within the spirit and meaning of the constitution. That case was not argued in this court: but judgment passed as a matter of course on the authority of *Thomas vs. Dakin*, (22 Wend. 9,) which presented the same questions. It was there held—1. That these banks are corporations, and that a two-thirds vote was essential to the validity of the laws under which they had their existence. 2. That the Legislature might by general laws provide for the creation of an indefinite number of corporations; and, 3. That was to be presumed on the record before us that the general banking law had been passed by a two-thirds vote. On these grounds judgment was rendered for the plaintiff, and that judgment was affirmed by the Court of Errors.

It is impossible to maintain that this judgment of affirmance could amount to a decision against the corporate capacity of the banks. It comes much nearer affirming, what this court had decided, that the banks are corporations. It is true that two or three members of the court of review gave different reasons for the conclusion at which they arrived, from the reasons which had conducted this court to the same result. But who can now say what reasons operated with the nineteen or twenty other members of the Court of Errors who voted to affirm our judgment? For aught that appears, they thought as we did, that these banks were corporations; but that the question whether the law had passed by a two-thirds vote did not arise.

I am well aware that a resolution was passed more than two weeks after the case had been decided, declaring that these banks "are not bodies politic or corporate *within the spirit and meaning* of the constitution." This proceeding was noticed in *The People vs. The Assessors of Watertown*, (1 Hill, 616.) And for the present occasion I think it enough to say, that neither the court for the correction of errors, nor any other court, can settle a point of law by passing a resolution, when there is no case before it for adjudication. The case was decided by affirming our judgment on the seventh of April; and it was not until fifteen days afterward, on the twenty second of April, that the resolution was adopted. It was brought forward for the very reason that the case itself decided nothing to the purpose. The resolution was an extra-judicial proceeding, and is entitled to no higher consideration than though it had been passed by the same individuals in any other place, instead of the Senate chamber. It is entitled to some weight as expressing the views of several gentlemen of great respectability on a question of public importance;—but I protest against it being brought forward as a judicial decision, to govern as a precedent in other cases.

But suppose the resolution is to stand as the judgment of the court. Then, taken in connection with the opinions which were delivered, the court evidently conceded that these banks are corporations; but on the authority of *The People vs. Morris*, denied that they came within "*the spirit and meaning* of the constitution." Now the whole of this legal heresy was, as I humbly conceive, directly overruled in *Purdy vs. The People*, (4 Hill, 384.) There was much greater difficulty in saying that these monied corporations were not within the constitution, than there was in holding that public corporations were not within it. And since the court of last resort has decided, not by an extra judicial resolution, but by an adjudication precisely on the point—that public, as well as well as private corporations are within the constitution, it is in vain to talk any longer about

the authority of *Warner vs Beers* on this question. If that case decided at the first any such thing as is claimed for it, the precedent has since been plainly overuled by the same court which made it. And I repeat the constitution is now restored to its original reading.

One word more upon this case of *Warner v. Beers*. If it decides that these banks are not corporations, it was directly overruled by the judgment of the same court in *The Supervisors of Niagara v. The People*. If it decides the court can disregard the explicit language, and go upon what it chooses to consider the "intent and meaning" of the constitution, and thus save some corporations from the influence of the two thirds clause, then it was directly overruled by the judgment of the same court in *Purdy v. The People*.

We are then brought to the following results, all founded—not upon mere *dicta*—but upon the express adjudications of the court for the correction of errors. 1. It is the business and duty of the court to examine and decide whether any law falling within the two-thirds clause of the constitution, received the requisite number of votes to give it validity. If it did not, the supposed law is utterly void. 2. Associations formed under the general banking law are corporations. And 3. The constitution extends to all corporations. The conclusion is obvious. Having examined and ascertained that the general banking law did not have the assent of two-thirds of the members of either house, it follows that so far as it authorized the forming corporations or associations, it is utterly void: and the banking companies which have been organized under it have no legal existence.

The counsel for the people spoke with great earnestness of the consequences which must result from holding this law unconstitutional. It is easy to see that results of vast moment hang on our decision; and did I entertain a single doubt, I would pause and reflect still further. But I have never for a moment supposed that the law and the constitution could both stand together. If others can reconcile them, I shall not regret it. But if they find it necessary to trifle with the constitution in order to uphold the law, I cannot be a co-laborer in such a work, whatever consequences may follow. We are of opinion that the law cannot be supported, and consequently that the defendant was improperly convicted.

Judgment reversed.

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* See editorial remarks prefacing the opinion of the Court.

SUPREME COURT.

Cleaning Street Contract.

In 1842 the Common Council of New-York contracted out the cleaning of the streets of the city for five years at the rate of about 64,500 per annum.

Other offers were made by responsible individuals to clean the streets for about one-third that sum, and by others for about two thirds that sum, and also by others for sums greater than the one accepted.

It was the duty of the Common Council to take the lowest bid provided that the persons offering to contract were able to fulfill, as was the fact.

The contract was entered into at $64,500 and to the great dissatisfaction of good men of all parties irrespective of party, who were to contribute in taxes for the payment.

The succeeding Common Council repealed the ordinance authorising the contract and refused to pay the Contractors and for that wrong the contractors brought this action against the corporation; their counsel P. A. Cowdrey, Esq., interposed several demurrers which were argued before the supreme court, and the demurrers were sustained as appears by the opinion of the court delivered by Ch. Justice Nelson which we here give after premising the same with some remarks which we deem called for under the peculiar language which forms this opinion.

By reference to page 4 of this volume it will be seen that as early as October 1, 1691, the Colonial Legislature passed an act in relation to cleaning streets in which they recite in the preamble that "And for as much as the filth and soil of the said city lying in the public streets thereof doth often prove a common nuisance unto the inhabitants and traders to and from the said city." This act was repealed in 1787, and a new act passed in its place, containing nearly the same recital, and on the 9th of April 1813, a third act was passed on the same subject. The act of 1787 see Ante. p. 5, authorised the cleansing of the Streets. The act of 1813 which is now in force, see Ante. p. 6, provides for cleansing the streets under proceedings which are to be preceded by an estimate of the expense, and an assessment of the benefits upon the owners and occupants of all the houses and lots deemed to be benefitted thereby, &c., and such proceedings are to be had by the Mayor, Aldermen and Commonalty, which the counsel of the corporation holds, is represented by the act of the Common Council.

Now the question arises, is the execution of this law by the Common Council, the exercise of a legislative power?

The opening, amending, pitching, cleansing, &c., of Streets are authorised by the same act of the Legislature and directions are given in this act how the Mayor, Aldermen and Commonalty shall proceed.

The Supreme Court have repeatedly been called upon to adjudicate upon questions arising under this law and their opinions in great numbers thereupon will be found in this volume, showiug a fluctuation of judicial decisions, or rather *dicta*, which is alarming in the extreme.

At one time the Court held the act of the Common Council under this act to be Legislative, at another time, to be judicial, and at another time it is something else.

The opinion given by Chief Justice Nelson in the Elmendorf Chapel Street case, where the Corporation made a contract under the very same law in reference to that particular street and paid the contractor five prices for the work, contrasts widely with this opinion of the Court, which is below. That opinion will be found in this volume 'p. 177. The opinion given by the supreme court in the Striker case, written by Mr. Justice Beardsley, in which Chief Justice Nelson concurred, and from which Mr. Justice Bronson, dissented, will be found on pages 393 to 422 of this volume.

The question, touching the New-York and Brooklyn ferries, is discussed briefly in the opinion of the Court which we give below. We do not see what that question has to do with this street contract, and the crowding it in here is very queer—but is put on the same footing as *fowling*, fishing and hunting, and that footing is the right position beyond all doubt.

The best commentary we can make upon the adjudications of the supreme court touching street questions is to put their opinions together, side by side in the same volume.

If the power vested in the Mayor, Aldermen and Commonalty by the 175th and 176th sections of the act of April 9th, 1813, is a legisiative power we should like to know if the same power which is given to the Supreme Court of Judicature of this State by the 177th section of the same act, can be deemed a *judicial* power?

The Common Council in making this contract for cleansing the streets of the city of New-York performed precisely the same duty that the Supreme Court of Judicature of this State performed in appointing Commissioners, &c. The former, for *cleansing*, the latter for *opening* Streets.

The Court say, the sweeping of the streets in the city of New-York is a part and parcel of the *legislative* and *executive* power of its officers.

This view of the particular character of the power must be tested by the opinion of the *Striker case*, delivered by Mr. Justice Beardsley and concurred in by Chief Justice Nelson. In the Striker case the Court say: "Regarding this, as I do, as a new power thrown upon the Supreme Court, and not as a new office conferred upon the Justices of that Court." *And again the Court say:* "But if I am correct in what has already been advanced, the statute of this State devolved nothing upon the Justices of this Court as individuals, but delegated judicial powers to the Court to be exercised in a judicial way. The power here given to the Court was to appoint commissioners of estimate and assessment and to confirm their report. The same act gives power to the Mayor, Aldermen, and Commonalty to appoint assessors and to confirm or ratify their assessment. Both perform the same kind of duties, but that of the one is termed judicial and that of the other, legislative. According to this doctrine if the Supreme Court of this State were vested with the command of the militia of this State, the new office would be deemed only an enlargement of the powers of the Court.

OPINION OF THE COURT.

The Mayor, Aldermen, and Commonalty of the City of New-York

ad.

Joseph Britton and others.

NELSON, Ch. J. The Charter of the City of New-York confers upon the defendants many powers and privileges that belong to them in common with private companies or individual citizens, which they hold and enjoy in the capacity of a private corporation. Thus they are declared to be able in law, and capable to sue and be sued, implead and be impleaded, &c., in all manner of actions, suits, complaints, pleas, causes, &c., in as full and ample a manner as any citizen; and shall be persons capable and able in law to purchase and hold, messuages, houses, buildings, lands and tenements, in fee or for life or years, or in any other manner; and also, goods and chattels, and all other things of what kind or quality soever; and shall and may give, grant, demise. assign, sell, or otherwise dispose of the same as to them shall seem meet and proper.

"The Charter also conferred upon them the ferries on both sides of the East River, and all others then or thereafter to be erected, and established all round the island, and all fees and perquisites appertaining and belonging thereto; also, all the ground between high and low water mark within given distance on Long Island, and all the waste unpatented and unappropriated land within the limits of the city, together with the rights of dockage, wharfage, and all rents, issues and profits arising or growing out of the same; also all rivers, creeks, coves, ponds, &c., fishing, fowling, hunting, &c., and all mines, minerals, &c., within the limits of the city.

"These grants and many others that might be enumerated, constitute a large mass of private rights and interests, in various descriptions of property, real and personal, corporeal and incorporeal, held and enjoyed by the city in the same way, and in common with any citizen upon whom like property and franchises might have been conferred; and within the limit of the grant the defendants may deal with the property, in their management and disposition of the same, in any way that would be lawful for an individual owner; and any contracts or engagements, entered into in the course of such management and disposition, would be as obligatory upon them as upon an individual.

We had occasion to examine this subject more at large in the case of Baily *vs.* These defendants (3 Hill 531,) in which case we held that the grant of the Legislature authorising the city to furnish the inhabitants with pure and wholesome water by means of the Croton Aqueduct, was the grant of a special private franchise, made as well for the private emolument and advantage of the city, as for the public good; and that the defendants *quoad hoc* were to be regarded as a private company, and to be dealt with accordingly. That they stood upon the same footing in this respect as would any person or body of persons, upon whom the like special franchise had been conferred.

The rights and privileges thus granted, are altogether distinct and different from those with which the defendants are invested under the Charter as a municipal body. The latter class comprises a large body of political powers, granted solely for public objects and purposes, with which the private interest and estate of the defendants, strictly speaking, have no concern; these powers are conferred for the benefit of the city as a community, and the end sought to be attained, its good government.

On looking into the Charter it will be found to embrace an extensive grant of political power, legislative, executive and judicial, which, so far as granted, represent these great departments of the State government, and which are lodged with the defendants in their capacity as a municipal corporation. The legislative power is conferred upon the Common Council. That body is empowered "to frame, constitute, ordain, make, and establish, from time to time, all such laws,

In the case of the Presbyterian Church *vs.* These defendants, (5 Cow. 538,) it was expressly determined that the Corporation could not abridge its legislative powers by contract. That was an action for breach of a covenant of quiet enjoyment, which the city had entered into in leasing a lot of land to the plaintiffs. An ordinance had been afterwards passed by the Common Council concerning the health of the city, by which the plaintiffs were prohibited from the use and enjoyment of the property for the purpose for which it had in part been conveyed. This was relied on as a branch of the covenant. The Court say they (the Corporation,) had no power, as a party, to make a contract which should control or embarrass their legislative powers and duties; that their enactments in their legislative capacity were to have the same effect upon their own individual acts as upon those of any other persons or the public at large.

Again, the Court remark there is a seeming inconsistency in maintaing that the ordinance constituted no breach of the covenant, where both were made by the same party. But the solution was, that the defendants had no powers to limit their legislative discretion by covenant, and they were estopped from giving that answer.

The same doctrine was laid down in the case of Gorlie *vs.* The Corporation of Georgetown (6 Wheaton, 593). "A Corporation," Marshall, Ch. J., observes "can make such contracts only as are allowed by the acts of incorporation. The power of this body to make a contract which should so operate as to bind its legislative capacities forever thereafter, and disable it from enacting a by-law which the Legislature enables it to enact, may well be questioned. We rather think that the Corporation cannot abrogate its own legislative powers." See also 7 Cow. 588, Stuyvesant *vs.* The Mayor, &c. of New-York.

If the foregoing view be correct, of which I cannot entertain a doubt, then the pleas constitute a complete defence to the action. Take the covenant in question in any point of view presented, either as proceeding from and founded upon a public ordinance of the Common Council, or as private contract entered into between them and the plaintiffs, involving subject matters belonging to their legislative duties, the subsequent legislative act of that body had the effect to repeal the one, and abrogate and annul the other. The remaining question is one of pleading. The third and fourth counts I am of opinion are defective, in not averring the performance of the covenants and stipulations on the part of the plaintiffs, assumed by them to be kept and performed as a condition precedent to any right or claim to the stipulated compensation for their services.

Judgment for the defendants on all the demurrers.

*Note by the Editor.—The learned judge has omitted to recite the following section of Montgomery's charter:

"And whereas, divers questions, doubts, opinions, ambiguities, controversies and debates have arisen and been made as well upon and concerning the validity and force of said recited grant of writing," &c. &c. &c. &c. "by reason of the variety of names," &c. &c. &c. "and reason of the before recited grant or instrument," &c. &c. "made in the governor's own names respectively, when they should have been made in the respective names, stiles and titles of former Kings and Queens," &c., and he has also omitted to state that Montgomery's charter was made in Gov. Montgomery's own name, instead of the name of the King, and that said charter was never ratified by the King, or by any of his predecessors, nor by any of his successors.

ASSESSMENT SALES

For Assessments made under Sec. 175 and 176 of act of April 9th 1813, 2 R. L. p. 407.

The first law passed by the Legislature of this State authorising the sale of land for assessments in the city of New-York is the act of April 12, 1816, which is to be found on page 386 of this volume.

By the second section of this act it is provided that whenever any assessment upon lands or tenements, which shall have been made and confirmed according to law, shall not have been collected, and the collector shall have made affidavit that he has demanded the money two several times of the owner or owners residing in the said city and that they have either neglected or refused to pay the same as the fact may be; or shall make affidavit that the owner or owners cannot upon diligent enquiry be found in said city, then and in such case only, it shall and may be lawful for the Mayor, Aldermen and Commonalty to take order for advertising the said lands and tenements, or any of them for sale, in two or more public newspapers, printed in said city for three months, once in each week, and by such advertisement the owner or owners of such lands respectively shall be required to pay the amount of such assessment, so remaining unpaid together with interest thereon, at the rate of 7 per cent per annum to be calculated from the time of confirmation to the time of payment with charges of such notice and advertisement to the treasurer or chamberlain of said city, and notice shall be given by such advertisements, that if default is made in such payment that the lands and tenements will be sold at public auction on a day and place therein to be specified, for the lowest term of years at which any person or persons shall offer to take the same in consideration of advancing the said assessment and the interest thereon as aforesaid to the time of sale together with the charges of notice and advertisement and the thereafter mentioned certificate, lease and advertisement, and all other costs and charges accrued thereon.

We have here the foundation of the legislation in reference to the sale of lands for assessments. Here then is the starting point of examination into the law in reference to assessment sales.

This act only authorises sales for unpaid assessments in such cases in which the assessment has been made and confirmed according to law.

This act provides for two classes of owners, viz. 1. Owners residing in the city of New-York; and 2. Owners who cannot upon diligent enquiry be found in the said city.

The Mayor, Aldermen, and Commonalty on the affidavit of the Collector that he has demanded the assessment at two several times of the owner residing in said city and that such owner has refused or neglected to pay the money, shall take order for advertising in the cases provided for in the first class, and in reference to the second they shall take the same order in reference to these owners which the collector makes affidavit that they cannot upon diligent enquiry be found in said city.

The law, we here repeat applies to but two classes of persons, viz.: owners of whom the collector has made two several demands, and who have refused to pay—or who have neglected to pay—and also owners who cannot upon diligent enquiry be found in the city.

Should an assessment be made to a person not the owner, then such an assessment cannot be collected by a sale of the land for it is not one of that class provided for by this act as being "made and confirmed according to law."

The act authorising assessments for sewers, and cleansing and scouring, and pitching and paving streets, making wells and fencing lots, requires that the assessors shall make a just and equitable assessment among the owners and occupants of all the houses and lots intended to be benefitted thereby in proportion as nearly as may be to the advantage which each shall be deemed to acquire. (§ 175 of 2 R. L. p. 407.)

The Legislature have in the act of 1816 guarded the owner of the land against the sale of his premises for an assessment made upon the tenant for it is evident that cases may occur in which both the owner and occupant may be benefitted and especially as Sec. 175 of the act of April, 1813, authorises an assessment for sweeping, (cleansing) scouring the street, as well as pitching and paving, for says the preamble of the act of April 16, 1787, of which the act of 1813 is a re-enactment, "whereas the dirt and soil lying in the streets doth often prove a common nuisance, and very prejudicial to the health of the inhabitants of the same city." The assessment although made upon the tenant, becomes a lein upon the land of the landlord who is owner, but the land cannot be advertised for sale until the money has been demanded twice of such owner, (not of the tenant or occupant) and he has refused or neglected to pay, or that the owner cannot upon diligent enquiry be found in the said city, and an affidavit to that effect has been made by the collector. The affidavit of the collector must be a substantial and bonafide compliance with these two requirements of the statute. The affidavit of the collector is the foundation of the order for advertising.

The next step is the sale which is to take place on the day and at the place named in the notice of advertisement. After the sale the Mayor, &c., are to give the purchaser a certificate in writing describing the lands and tenements so purchased the term of years for which the same have been sold, the sum paid therefor, and the time when the purchaser will be entitled to a lease. Subsequent to granting this certificate at least six months before the expiration of two years from the day of sale, the Mayor, &c., shall cause an advertisement to be published once in each week for four weeks successively, in a newspaper printed by the printer of this State, and also in a public newspaper printed in the city of New-York that unless the lands be redeemed by a certain day they will be conveyed to the purchaser. And if the person claiming title to the lands shall not within two years of the above mentioned certificate pay to the Street Commissioner for the use of the purchaser the sum mentioned in such certificate together with the interest thereof at the rate of 20 per cent. per annum from the date of the certificate the Mayor, &c. shall execute to the purchaser a lease of the said premises under the common seal of the city for such term of years for which they shall have been sold, "and such lease shall be conclusive evidence that the sale was regular according to the provision of this act."

The lease is only evidence that the sale was regular, that it took place on the day, and at the place named in the advertisement and notice, and is not even prima facie evidence of an assessment having been made, or any demand upon the owner, or of any legal proceeding being had after the sale. It is the sale alone that the lease is evidence of.

The assessment roll should set forth all the proceedings on which it is founded, and should state whether the persons assessed are owners, or occupants, or both. The collector is bound to find the owner of the land or to make affidavit that he has made diligent search and that he cannot be found in the city. A compliance with this provision is imperative. If the assessment should be made to a person not the owner, a demand of such person so improperly assessed, would not authorize a sale, nor would a sale under such circumstances be valid.

The sales by the street commissioner for assessments were only conditional, declared so to be by his published printed conditions of sale. The decision that a lease in such a case is conclusive evidence, &c. is a palpable absurdity.

SALES FOR ASSESSMENTS

For opening Streets, Avenues and Public Squares and for extending, enlarging, altering or improving any Street or Public Place.

It will be seen by the act of April 9, 1813, Sec. 177—that an assessment for paving or altering or setting curb or gutter in a street or flagging the sidewalks on a street must be proceeded in by Commissioners appointed by the Supreme Court.

These assessments are by sec. 178 of the same act required to be made to the respective owners, lessees, parties and persons respectively, entitled unto or interested in the said respective lands, tenements, &c.

In cases where the owners are unknown, or not fully known, the commissioners are required to state generally, &c.

Here it will be perceived is a marked difference as to the manner of assessing from that provided for in the 175th section as to cleansing, scouring, pitching and paving of streets, building of sewers, &c. &c., but there is no distinction made in the law as to proceedings which are to form the basis of the proceedings for taking order of sale for unpaid assessments, and the other proceedings subsequent to the sale.

The money must be demanded by the collector of the owner two several times, and although the owner may refuse to pay on the first demand, yet notwithstanding such refusal, a second demand must be made and then the collector must make an affidavit that he has demanded the money of the *owner* (not of the person assessed as owner or occupant,) but of the owner.

This law is definite and particular and it must be strictly construed for it is the only actual notice to the owner.

If the owner neglects to pay, the collector must make an affidavit to that fact, and the affidavit must be particular. A general affidavit will not answer, it must be a particular return that the money was demanded twice and that he neglected to pay.

If the owner cannot be found then the collector must make affidavit that he has made diligent enquiry for the owner and that he has been unable to find him.

If the collector on being called to the witnesses stand should state that he was mistaken in the ownership of the property, then his return would be void and a new demand would have to be made of the actual and bonafide owner at the time of the demand.

This power to sell for an assessment is one of the most extraordinary powers known in our laws, and one which has so great a stretch of authority that it tramples down the fundamental law.

The collector is bound to be as careful in finding the right and the true owner and in making his return as a sheriff would in serving a writ and making a return thereon.

We cannot believe that our government is to be overthrown by departing from the strict construction of our statute laws. On strict construction alone depends the security of the foundation of civil liberty.

We cannot believe that our Courts will sustain a single assessment sale in the city of New-York, for we do not believe that there is one in which the officers have complied with the law.

The statute has imposed a particular duty on the person appointed to collect assessments, This duty is to seek the owners of the property—such owners as he cannot find, and those he can find, constitute the whole. There are but two classes, and these embrace all, and it is no compliance with the law to leave a notice of demand at the dwelling of the owner or person last assessed, for the law requires two separate and distinct demands and states particularly of whom it shall be made and that it shall be twice made, and, says Chief Justice Savage, where the statutes point out a mode that must be strictly pursued or the statutes is not complied with. Property often changes owners after an assessment is made, and it would not be a compliance with the statute to demand the money of the person who had been owner—he must demand of the then owner and if he cannot find him on diligent enquiry, he must so state in his return on the assessment.

It is a proper question to put to a collector, what measures did you take to ascertain the ownership of the property?

A sheriff might with as much propriety levy an execution on lands once belonging to an individual against whom he has an execution, and which that individual has sold before the judgment was obtained, as for a collector to demand the assessment of a man because he had owned the land, or because he was assessed as owner. An assessment is not a lien until it is confirmed according to law, the date of confirmation fixes the period when the lien commences.

An assessment sale may be void and the assessment good, but if the assessment is void the sale is void of course.

An assessment made to an estate must be demanded of the executor or executors if more than one, or of the heirs each and every one having any interest as owner in the lands, or of the devises, as the case may be.

It is often that assessments are imposed upon land belonging to several owners in the name of one of the owners—such an assessment is not made according to law, for the Commissioners are required to do one of two things in one class of proceeding, viz. to assess to the parties or persons respectively entitled unto or interested in the said respective lands, tenements, &c., or to state generally if the interest cannot be ascertained. With regard to assessors in certain other improvements they are to assess to owners and occupants and such assessment becomes in both cases a lien upon the land of the owner, and both assessments must be demanded of the owner before the corporation can take order to sell.

KANHAWHA SALINES.

We addressed a letter to the Post Master, at Kanhawha, Va., in reference to the Kanhawha Salines, and have in reply received a newspaper printed at Charleston, county of Kanhawha, Va., edited by E. W. Newton, Esq., containing a printed copy of our letter and the printed reply of the editor,—for which courtesy and attention we are much obliged.

From the Kanhawha Republican, June 11, 1845.

KANHAWHA SALINES AND GAS WELLS.

"NEW-YORK, May 1, 1845.

"*Dear Sir:* I send to three addresses in your place some newspapers, containing accounts of the salt formation, gas springs, &c., and also several to yourself, hoping that they may be found useful.

"I am extremely anxious to ascertain the temperature of the water which rises in your deepest wells, for the aid of science. Can you name to me any individual in your place to whom I can address a letter upon that subject?

"The abundant gas which underlays your place, presents a very interesting and important fact—for I presume it is entirely covered by water; and such being the fact, there is no danger to be apprehended from the electric discharges from the clouds. In Kentucky, near the banks of Green River, a body of hydrogen gas was reached in boring for salt water, which was ignited by a torch, and being mixed with atmospheric air in the cavities below, it exploded, throwing up rocks, and uprooting large trees. This happened in a limestone region, and no water overlaying the gas. You have no limestone, unless that rock has been reached in recent deep borings.

"During my travels in the Canadian forest last summer, I found that the hydrogen gas underlays an extensive range of country in these northern latitudes, but it is in all cases covered by water.

"Many scientific gentlemen express the opinion that the temperature of the earth increases in the increase of depth. My investigations hitherto have not convinced me of that fact, for I find a variation on this continent which seems to contradict that theory. In Europe, an increase of heat has been found, and on that continent there may be local causes to produce this result.

"The newspapers represent some of your wells at 1,500 feet; I presume this is an error. 1,000 feet is the extent of the former borings. If the depth of 1,500 feet has been reached, it would follow according to the theory of increased heat, that the water should test by the thermometer near 80° of Fahrenheit's scale. The estimate is that the increase of temperature is 1° for every 55 feet descent. Assuming the surface at 53° of mean temperature, the depth of 1,500 feet would give even greater heat than 80°—and at this rate, at the depth of 225 miles, the heat would be sufficient to fuse iron—giving to the centre of our globe a heat of almost inconceivable intensity. We know that above our heads, the cold is intense at a given elevation. I have found in my mountain tours that the decrease was about 1° to 130 or 140 feet. This decrease is demonstrated by the perpetual frost on high mountains.

"I have been informed that the gas at the Kanhawha Salines encrusts the surface it strikes upon, forming a species of enamel. Have you any information upon this point?

"I shall feel very grateful for a reply.

"Yours, with great respect,

EBEN. MERIAM."

"POST MASTER, Kanhawha Salines, Va.

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"In answer to the inquiries contained in the above letter, which has been placed in our hands by the gentleman to whom it was addressed, we remark: There has been no misrepresentation in the newspapers in relation to the depth of the salt wells. Several of them are from 1,200 to 1,600 feet. Mr. C. REYNOLDS assures us that his well is 1,650 feet, and that below the *surface of the rock*, which is nearly twenty feet below the surface of the earth. One of Messrs. DICKINSON & SHREWSBURY'S, by accurate measurement, is 1,500 feet.

"As to the increase of temperature, we answer, it has never been tested; and we believe cannot be by putting down the thermometer. But there are abundant evidences that there is no increase of the temperature at the depth reached in any of the wells. First, the water that is driven or forced up from all the wells is very cold. At one, of the depth of 1,500 feet, and which is tubed 700 feet, so as to exclude all the water, fresh or salt, to that depth—and it is quite certain that all the water comes from the depth of 1,500 feet, for at that depth the stream of salt water was struck—the water is as cold as that of the very coldest spring water, such as gushes out from the base of our mountains. Second, the workmen at the furnaces in warm weather, are in the habit of filling jugs with river water, and immersing them in the cisterns of salt water, as it is thrown up. The water in the jugs soon becomes, not quite so cold as ice water, but as cold as the coldest spring water. Third, the gas which comes from the lowest depths of the wells, with the water, if not, according to the supposition expressed in the above letter, from beneath the water, is as cold as a northern blast in winter. To be exposed to even a moderate stream of this gas, in tubing the wells, is extremely disagreeable to the workmen. In the hottest day it chills them through in a short time.

"These facts every body here considers conclusive, that the temperature does not increase in proportion to the depth below the surface of the earth.

"That the gas forms incrustations resembling enamel on the surface against which it strikes, we think is all a mistake.

"The formations on the sides of the furnaces in which gas alone is burnt, are certainly curiosities. These furnaces, we stated in a former account, are generally 100 feet long, 6 high, and 4 wide. The whole of this place, when gas is burnt, is filled with a pure flame. In a short time are formed on the sides concresences, firmly adhering to the stone, in appearance like soot, but increasing in the form of moss or sponge, to such an extent as to choke up the furnace. When disengaged in large pieces from the wall, it is found to be a hard, porous body, with veins or fibres running through it, of lighter color than the main body, and which it is almost impossible to pulverize. Whether, if submitted to a chemical analysis, it would prove to be any thing more than common cinder, we do not know."

We remark upon the above reply of the editor of the Republican as follows:

The temperature of the bottom of the well is determined by immersing a thermometer in the salt water as soon as it is raised to the surface, although it may be said that the temperature of the brine is thus determined, and not that of the interior. This mode is practised with the Artesian Well at Paris, the water

If the Court for the Correction of Errors was not constituted as provided by sec. 1, of Art. 5, of the Constitution, then the judgment pronounced was not binding, and these cases still remain undecided.

The former Constitution contained substantially the same provision as to the classes which are to form the Court for the Correction of Errors, as is contained in the present Constitution. It is not necessary to enquire what was the practise under the former Constitution, for practise cannot, however long indulged in, annul that instrument. Amendments to the Constitution cannot be made in that form, and if they could, in the language of Chief Justice Bronson in another case, "written Constitutions of government will soon come as of little value if their injunctions may thus be lightly overlooked and the experiment of setting a boundary to power will prove a failure."

If the Senate alone constitute the Court for the Correction of Errors, and seventeen members of that body form a court, then it follows that although an act is passed by a two-third vote of both branches of the Legislature, a majority of a quorum of the Senate, being but 17, may by a vote of nine members repeal the act, for a decision against its constitutionality, by 9 of 17 in such a case is a repeal, and that nine may be the same persons who recorded their *nays* on the passage of the act by the Legislature. Jurors who have formed opinions upon a question, are excused from serving, and the same difficulty arises in reference to a judge or other person who has already expressed an opinion, and the framers of the Constitution have thus viewed the difficulty and provided for it by requiring that in case of appeal, that the Chancellor shall have no voice, and yet if the Senators form the Court these legislative officers act a second time on a question upon which they had previously acted.

The new Constitution requires the presence of executive and legislative officers together with one equity and two law judges to form a court. The reasonableness of the provision is plain and requires no argument to illustrate its importance. It is a common sense requirement.

The 10th section of the first article of the constitution of the United States restrains the States from emitting bills of credit,—it therefore follows that what the State cannot itself do, it cannot authorise others to do,—the quere then is, can Free Banking Associations be deemed "bodies politic and corporate?"

ICEBERGS.

The last account we gave of the icebergs was in our paper of May 8th. We continue that account by adding as follows:

Brig Crusader, 42 days from Liverpool arrived at New-York, May 21. Saw large quantities of ice upon the bank.

Ship St. George fell in with islands of ice on the 7th of May in lat. 45° 30′, long. 49°. Lat. 43°, long. 51 saw the last ice, run along side the ice for seventy miles.

Ship Indiana, from Liverpool, May 6th and 7th, lat. 44° 10′, long 45° 10, saw an immense number of icebergs.

Ship Iowa, on May 5th, lat. 40° 15′, long. 46, saw an island of ice.

Ship Quebec, from London, on 2d May, saw large fields of ice, some of which was 150 feet high.

Ship Mississippi from London saw a large quantity of ice.

Ship Victoria, from Havre, long. 48° and 49′, lat. 44° 10, passed large quantities of ice.

Ship Rochester, from Liverpool, lat. 43° 19, long. 42° 56′, May 1, passed islands of ice.

Ship Roscius which arrived at Liverpool 21st of April from New-York, passed numerous icebergs, islands and fields of ice from lat. 42° to 46° on the 2d, 4th, 6th and 8th of April.

THE APRIL THUNDER STORM.

We perceive that the thunder storm of Friday the 25th of April reached the Province of New-Brunswick, and that a boat with six persons on board in passing from Trinity Harbor to St. John's was capsized in the storm and all on board perished. This storm travelled with great rapidity, and was no doubt neutralized when it reached the ice crossing down from the arctic seas.

GREAT BROOKLYN MEETING CONCERNING THE FERRIES.

Pursuant to a call circulated through the city papers, a meeting was held of the citizens of Brooklyn, at Half's Exchange Buildings, on Wednesday evening, the 8th of May, 1844, to take into consideration the interests of Brooklyn, in relation to the Ferries of the East River.

On motion, His Honor, JOSEPH SPRAGUE, Mayor of the city was called to preside; William M. Harris and Geo. Hall, appointed Vice-Presidents, and Eben. Meriam and Henry E. Pierrepont, Secretaries.

The Mayor, on taking the Chair, addressed the meeting, explaining its objects.

RESOLUTIONS.

The following resolutions were offered by Hon. JOHN GREENWOOD, which were seconded and unanimously adopted:

Resolved, That the strait or arm of the sea, between the city of New-York and Long Island, commonly called the East River, is a natural highway, which the inhabitants of both have an equal right to use; and that there is no just principle by which we can be required to apply to that city for the privilege of using it, or which can authorize the latter to make it in any manner a source of revenue.

Resolved, That this highway ought to be, and is, of right, as free to all, as the air and light of heaven; and that as ferries constitute the most convenient mode of rendering it subservient to the public accommodation, every facility ought to be extended for their establishment and maintenance. That the proprietors of ferry boats should at the most be required to pay only a reasonable compensation for the use of landing places, and that a liberal policy would require that even these should be provided free of charge, in order to render the rates of ferriage as low as possible—that so far as the use of the highway itself is concerned, there would, in the opinion of this meeting, be more propriety in taxing the inhabitants of Westchester county for entering the avennes of New-York, which have been constructed at the expense of that city, than there is in obliging those of Long Island to pay for the privilege of crossing the natural highway of the East River.

Resolved, That the Ferries between New-York and Brooklyn are alike advantageous to the former as to the latter, in affording the means of supplying her markets with produce, and transporting persons and merchandize from thence to our shores; and that it is an unjust as well as narrow policy which seeks to make a ferry the instrument of burdensome exactions from the people.

Resolved, That the monopoly as claimed by the city of New-York under her royal charter, and now exercised by her, to establish Ferries between that city and Long Island, is not only inconsistent with the spirit of our institutions, but has no foundation in right—that the power which she possesses was correctly determined by the Assembly of this State in the year 1835, to be not a monopoly for the purpose of raising revenue, but a public power delegated to a public body to be exercised for public purposes, in the same manner in which the Legislature would themselves exercise it; and one which the latter may at any time regulate, control or wholly retract.

Resolved, That in the opinion of this meeting it is unjust to the inhabitants of this city, that the power in question should be exercised exclusively by the city of New-York—that the landholders of the upper portions of New-York are opposed to the growth of Brooklyn, and that in view of these rival interests and feelings, the prosperity of our city ought not to be jeopardied by being subjected to the control of a New-York Corporation—that there are strong temptations, under such circumstances to abuse power; and that experience has shewn, in the selfish and illiberal course pursued by New-York towards us, that such abuses will be committed.

Resolved, therefore, That the city of Brooklyn ought to be allowed to participate in the power to establish ferries between the two cities, or that such power should be lodged in some independent and impartial body.

Resolved, That an application be made to the Legislature of this State, to effect the object stated in the last resolution, and that we will persevere in such application until our just rights are established.

Resolved, That a Committee of ten be appointed

by the Chairman, with full powers to take all necessary measures to carry the foregoing resolutions into effect, and that the Common Council of this city be requested to pay the necessary expense which may be incurred in so doing.

Mr. J. M. VAN COTT offered the following resolution which was seconded and adopted:

Resolved, That for any citizens of Brooklyn, from motives of private gain, directly or indirectly to promote the views of the Corporation of New-York, in the mal-administration of their power over the ferries, will be a gross violation of their duty as citizens, and deserve the severest reprobation of the people of Brooklyn.

Mr. WM. M. HARRIS offered the following resolution, which was seconded and adopted:—

Resolved, That we, citizens of Brooklyn, in general meeting assembled, do hereby protest against the lease now contemplated to be made by the city of New-York, and do hereby, in this public manner give notice to all persons who may take such lease, that application will be made to the Legislature of this State, to revoke the authority of New-York in the matter, and to appoint a more fit, equal and impartial tribunal of our relative rights.

Mr. GEORGE HALL offered the following resolution, which was seconded and adopted:

Resolved, That the trustees of the Union Ferry Company, who have for the past five years managed the Brooklyn Ferries, deserve the thanks of the citizens of Brooklyn and Long Island, for their zeal, fidelity and disinterestedness.

The President then named the following as the Committee of ten, pursuant to the resolutions of Judge GREENWOOD, viz:

JOHN GREENWOOD, GEORGE WOOD, WILLIAM M. HARRIS, GEORGE HALL, EBEN. MERIAM, JONATHAN TROTTER, ALDEN J. SPOONER, HENRY E. PIERREPONT, CYRUS P. SMITH, GEO. S. HOWLAND.

At the suggestion of citizens, his Honor the Mayor, and HON. GABRIEL FURMAN were added to the Committee. It was then

Resolved, That the proceedings of this meeting be published in the papers of this city and of the city of New-York. The meeting then adjourned.

JOSEPH SPRAGUE, *President.*

WM. M. HARRIS, GEO. HALL, } *Vice Presidents.*

Eben. Meriam, Henry E. Pierrepont, } *Secretaries.*

The following able argument was drawn up by Judge GREENWOOD, *Chairman of the Brooklyn Ferry Committee, printed and a copy furnished each member of the Legislature.*

NEW-YORK AND LONG-ISLAND FERRY BILL.

There are only two questions in this matter:

1. *Can the Legislatare interfere?*
2. *Ought it to interfere?*

1. The Corporation of the city of New-York claim, under her charters, not only the exclusive authority to establish ferries all around that city to the opposite shores, but, as a franchise, which is the subject of property, all ferries, with their profits which can be established within those bounds.

The right of the Legislature to vest the power over these ferries in a body other than that city, was considered a settled question in 1835, when a bill similar to that now proposed, passed the Assembly, and also the Senate in Committee of the Whole; but failed in the latter branch of the Legislature, for the reasons stated in the Memorial—reasons wholly unconnected with the question of power. There seems to be no cause for entertaining a different opinion at the present time.

But suppose it to be an open question. What are the rights of the city of New-York in relation to these ferries? The Corporation of that city is a PUBLIC, POLITICAL Corporation. Her charters were granted for political purposes, viz: the GOVERNMENT OF A COMMUNITY, *not* to create a *franchise of a private nature*. Grants to such a body are governed by entirely different rules from those applicable to private Corporations or individuals. Where a portion of the sovereign power or prerogative is conferred upon them, it passes as a *public trust*, and is to be regarded as held in the same way as if it were still possessed by the grantor. The grantee is a mere subordinate agent. [16 Peters, 367 Martin v. Waddell.] It seems also to be well settled, that since MAGNA CHARTA, even the King of England cannot grant an exclusive right of fishery in navigable waters, and that such a franchise is void, as being in derogation of the common right. Is not an exclusive right of ferriage over two navigable streams, comprising a distance of twenty-three miles, in the most populous part of the State, where all the facilities for public intercourse are required, even more objectionable? These streams are natural highways, and *ferries are the appropriate means of using them*. It is no answer to say that every man may provide his own boat. This is impracticable. The right to use these waters in the mode best adapted to subserve the general convenience in the way of passage, is a public right in its nature, and as such, unalienable. [*Schultz on Aquatic Rights*, 10.—*Law Library, Vol.* 24.

Grants of property may no doubt be made to a public political Corporation. The inhabitants of the city of New-York had, at their own expense, erected a Stadt House, or City Hall, a Market House, a bridge, and some docks, and *established a ferry*, which they had provided with boats and other accommodations, and were keeping in operation. These, it was proper to vest in them in their corporate capacity, and the charters accordingly contain a grant of them. This ferry is there called "the Old Ferry." Its landing place on the New-York side has, however, been changed, and the subject of the grant is, therefore, probably extinct; for a ferry is such in respect to the landing place, and not the water. But if it still exists, the saving clause in the proposed bill will protect any rights which the city of New-York may have in it.

But she claims, also, the right, by virtue of her charters, to establish any and all other ferries. Now suppose it to be conceded, for the argument sake, that a grant of this broad character is good, and that the right to establish ferries and take toll may, in the case of a public political Corporation, become a private franchise, on the ground that the permanency of profits is an interest which is the subject of property:—still, it must be borne in mind that the right to take toll does not attach, until the ferry is actually put in operation, and continues no longer than it is kept so. No such right exists, without the foundation or consideration arising from the grantees maintaining the subject of the franchise. Without this, the grant is absolutely void. [2 *Bl. Com.* 38. 2 *Inst.* 220.] The right of toll, which constitutes the interest, is, therefore, wholly dependent upon the establishment and maintenance of the ferries, and has no existence without them. The utmost therefore, that New-York can, in any view of the case, claim under this unexecuted grant, is, that when she establishes a ferry, and provides the landing places, and necessary means for accommodating and transporting passengers, she becomes, as to these, vested with them in her corporate capacity. Such, also, is the only intelligible and practical construction of the grant to her of all ferries established and to be established. The mere right to establish ferries, while unexecuted, is but a derived public power, and is of the same nature as if it were still possessed by the sovereign authority. Its exercise, and the furnishing the consideration or foundation of the right to take profit, constitute the only ground of interest or property. So far, then, as this general grant remains unexecuted, it should be regarded as a mere power, *delegated* to the Corporation of New-York, to avoid the necessity of repeated applications to the sovereign authority, and to be exercised the more readily in cases where the public convenience dictates that a ferry is required; but not divesting the Legislature of their authority.

The fact that a grant was made to New-York, of (what was alleged to be) the waste or unappropriated land between high and low water mark on the Brooklyn shore, does not alter the case. It does not constitute the establishment of a ferry. The professed object, however, as recited in the charter, for which this grant was sought, was the better accommodation of "the old ferry." It is absurd to suppose that a strip of land three miles in length was needed for this purpose. It was intended, no doubt, to make "the old ferry" a more profitable monopoly, by acquiring, as far as possible, the control of all other landing places. But the alleged reason for the grant is sufficient to show that it was not intended to be connected with other ferries; and whenever the public convenience calls for the land, the right of eminent domain of the State, is sufficient to authorise the taking it for this purpose.

The only rent, profit, or emolument, then, of any kind which New-York can claim under this unexecuted grant in relation to ferries, is a fair rent or compensation for the use of her landing places, and of these there is no intention to deprive her. The proposed bill makes ample provision for its payment. The establishment of a ferry is an exercise of public power. When it is established, New-York will, under this bill, receive the emolument to which she is justly entitled. She can claim no profit from the use of the water, much less from ferries which she has not established, and which have no existence.

That the Legislature has not the power to interfere in this matter, must be regarded as a strange ground to be taken by the Corporation of New-York at the present time, when it is known that ever since the year 1717, the former have regulated the ferries between New-York and Long-Island, and established the rates of ferriage; and that in 1813 the Corporation of that city recognized the entire control of the Legislature over these ferries, by accepting an act *authorising them to establish and keep one or more of them.*—[2 *R. L.* 1813, p. 359, § 47; and see L. relating to N. Y. City, Gould and Banks ed. of 1833, p. 248 in note.] This act must be presumed to have been passed on the application of that Corporation, and is a limitation of any power previously existing under the charters of that city, and an express recognition of the power of the Legislature.—[12 J. R. 125, Mayor, &c. v. Ordrenan.]

But New-York, as has been already said, is a public political Corporation, and when contemplated as such, the true nature of the grant in question may be readily seen and defined. That city constituted the chief place in the Colony, in point of population and importance, and it is not strange that she succeeded in obtaining the most ample grants for the accommodation of her citizens and the advancement of her general prosperity. But still, these grants, it must be recollected, were for political purposes, and the powers conferred by them are therefore of that character. Her charters do not constitute a private franchise or contract, as the creation of a private corporation does. It is a well settled doctrine that there can be no such thing as vested political powers, as against the State. The Legislature can at pleasure modify or sweep away. [13 Wendell, 321. The People v. Morris.] The charters of the city of New-York, (assuming that they ever had validity, as to which, the most serious doubts may be entertained,) although impliedly saved by the constitution from the wreck of political revolution, are not exempted from this rule—She must necessarily, in this respect, be subordinate to the sovereign authority. Her charters are to be regarded in the same light, as if they had been granted by our own State Government, through the proper instrument—the Legislature. What, then, would become of the grant to that city in relation to ferries, so far as it is unexecuted, if all her political functions were suspended, and her existence thus, to all intents, annihilated? The subject of it would of course revert to the Legislature, to be again granted out, if it should be thought proper. A *private* corporation could not be thus dealt with, without reserving the power to do so; but a public political one—one created to administer government—might be—[4 Wheaton, 629 at foot of page, case of Dartmouth College—Op. of Ch. J. Marshall.]—and if this be so, is it not clear that the grant in question is one of public power, and as such within the control of the Legislature?

II. *Ought* the Legislature to interfere? It ought, for two reasons.

First—The course of New-York towards Brooklyn, has been both illiberal and unjust. She has withheld facilities for intercourse between the two places, which were loudly called for by the public convenience, until they were actually forced from her. She is now burthening that intercourse with heavy exactions, for the purpose of filling her coffers, instead of adopting a policy by which to render communication as free as possible. To effect this object, she is receiving an enormous amount annually, for the privilege of using a public navigable arm of the sea, over and above the value of her slips. This is particularly the case with the Fulton and South ferries, the two most

§ 4. Whenever the grantee or grantees of any such ferry or ferries shall not own, or be entitled to the use of the wharves, slips, landing places, adjacent grounds, or other property, at either or both extremities of such ferry or ferries, which may be required, and determined by the said commissioners, or a majority of them, to be necessary for the accommodation thereof; the said grantee or grantees, shall notify the persons or corporations owning the same, or interested therein, or their agents, or legal representatives, that the same are so required and determined to be necessary; and the said grantee or grantees shall thereupon treat with such owners or persons interested, for the same, and for the rent or compensation to be paid therefor; and if such owners or persons interested shall refuse so to treat or the parties shall be unable to agree in relation thereto, the said grantee or grantees shall apply in writing, to the Vice Chancellor of the Second Circuit, to issue a precept under his hand and seal, to the Sheriff of the county of Westchester, who shall thereupon issue such precept, commanding said Sheriff to summon and return a jury, of twelve men from said county of Westchester, to be named in said precept, to appear before the said Vice Chancellor, at such time and place as he may deem proper, to require and assess the damage and recompense which ought to be paid to such owners or persons so interested as aforesaid, for the use of such wharves, slips, landing places, grounds, or other property, and at the same time to summon such owners, or persons interested, or their agents or legal representatives, by notice to be served personally, or left at their usual place of abode, or served in such other way as the said Vice Chancellor may direct, to appear before said Vice Chancellor, at the time and place therein mentioned; and the said jury shall be sworn faithfully to inquire and assess such damage and recompense; and having viewed the premises, if the said Vice Chancellor shall deem such view to be necessary, shall assess the damages and recompense to be awarded to the owners or persons interested in such premises, according to their several interests or estates therein, and the said Vice Chancellor may thereupon render judgment confirming the same, or may set it aside and award a new trial. The verdict of such jury, and judgment of the said Vice Chancellor thereupon, and the payment by the said grantee or grantees within sixty days after final judgment, of the sum or sums of money so awarded, or the tender and refusal thereof, shall be conclusive and binding upon such owners and persons interested; and the estate of such owners and persons interested, shall thereupon vest in such grantee or grantees, for the term of such license or grant, who may then cause the said premises to be converted to and used for the purposes aforesaid. The said Vice Chancellor shall have power to adjourn such proceedings before him, for such time or times as in his opinion justice may require.

§ 5. All ferries hereafter established under this act shall be subject to the laws of this State, already passed, and now in force, or hereafter to be passed.

§ 6. The grantee or grantees of any such ferry or ferries as shall be established under this act, may cause such wood or other buildings and erections, or accommodations, as the said commissioners or a majority of them may deem proper, for the purposes of said ferry or ferries, to be constructed and maintained upon the wharves or adjacent grounds of the extremities of said ferry or ferries, which may become vested in them as aforesaid; and such buildings, erections and accommodations, shall belong to said grantee or grantees at the end of the term for which said ferry or ferries shall be granted.

§ 7. The said Vice Chancellor shall receive five dollars for every day he shall be employed in his duties under this act, which together with the fees and expenses of every kind incident to said proceedings, shall be paid by the grantee or grantees of said ferry or ferries.

§ 8. The sheriff, jurors, and witnesses in such proceedings, shall receive the like fees as are now provided by law in cases pending in the Supreme Court of this State, and the jurors shall receive each two dollars per day.

§ 9. In order to enable the Legislature of this State from time to time to regulate the rates of ferriage, it shall be the duty of the owners or superintendents of all ferries which shall be best established under this act, between New-York and Long-Island, whether owned or held by private persons, or bodies politic and corporate, to make annual returns under oath, to the Comptroller of this State, of the amount of the tolls and ferriage received at their said respective ferries during the preceding year, and also of the expenses attending the conducting and management thereof, and of the amount of capital employed therein, on pain of forfeiting their leases or licenses on failure so to do.

§ 10. Nothing herein contained shall be construed to annul, impeach or in any wise impair the rights of the Mayor, Aldermen and Commonalty of the city of New-York, and their lessees, their executors, administrators and assigns of, in, or to any ferry or ferries heretofore established by them, or of, in, or to the rents reserved in any lease of any such ferry or ferries, or of, in, or to any other private benefits, emoluments, or advantages incident to the same, or arising therefrom; and nothing herein contained shall be construed to supersede or annul the privileges, powers and emoluments of a private nature, which have been granted to the corporation of the city of New-York, by charters and legislative acts.

§ 11. All provisions in charters and legislative acts conferring public powers and privileges upon the corporation of the city of New-York, which are inconsistent with or repugnant to the provisions of this act, so far as such powers remain unexecuted by the said corporation, are hereby repealed.

State of New-York, }
In Senate, April 25, 1845. }

This bill having been read the third time, two-thirds of all the members elected to the Senate voting in favor thereof, Resolved that the bill do pass.

By order of the Senate.

A. GARDINER, President.

State of New-York, }
In Assembly, May 14, 1845. }

This bill having been read the third time, two-thirds of all the members elected to the Assembly voting in favor thereof, Resolved that the bill do pass.

By order of the Assembly.

WM. C. CRANE, Speaker *pro tem.*

Approved this 14th day of May, 1845.

SILAS WRIGHT.

THE ADIRONDACK MOUNTAINS.

There are several of these mountain peaks which have an altitude of more than 5000 feet and these high peaks are near neighbors. The heads of eight rivers are found in this cluster of mountain tops, they are therefore a great fountain of water in the condensation of the atmosphere upon their surfaces. The Hudson, Au Sable, Saranac, Racket, Black, St. Regis, Grass and Oswegachee Rivers have their sources in the Adirondack Mountains. and notwithstanding that this great State is so extensively watered by these mountains, the mountains are nevertheless but little known and their surfaces present a pathless forest to the explorer.

The mountains of New-Hampshire, and the mountains of North Carolina, have a little higher altitude than the Adirondack. That these mountains possess great mineral wealth there can be no doubt and their streams furnish water power to an almost unlimited extent.

In looking from these mountains to the north an extensive level country presents itself. To the west and north and north of west, vast lakes spread out upon the surface. The mountains levelled with the common surface and the surplus earth and rocks stored away in the lakes and we should have an ocean tide greatly elevated—our rivers would become extinct and our earth would then possess another climate. Lake Champlain is but 80 feet above the level of the ocean. This barrier removed and the waters of New-York Bay and the gulf of the St. Lawrence would become one body. When we look at our mountains and our lakes and rivers we perceive that what space is occupied by the latter has been made by removing the solid material and piling it up in mountains and hills. The average surface of our continent above that of the ocean is not great and much less than has usually been imagined.

Although the Adirondack Mountains are covered with forests and but few white men are to be found upon them, still the Indians do not frequent them. The St. Regis Indians are the only natives that remain in this region of country.

Municipal Gazette.

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THE NEW YEAR.

Another year has run its round and midnight has closed its mighty volume, and stamped its last page with a seal bearing the imprint of Eternity.

Midnight too has opened the record of another year, and each succeeding midnight ere its end, will open a new page in its mysterious volume, and proclaim in each succeeding moment, events of mighty import.

Time is continuous—years, months, weeks and days are but an apportionment of Time.

The primitive day commenced with evening. The three first days in the series of the days of creation were measured by the successive events of those momentous periods, and not by the celestial time-keeper, which was not until the fourth day of the series of the days of creation placed in the firmament of the heavens to give light upon the earth—to be for signs and seasons, for days and years.

Midnight is the last moment of lovely evening, and the first moment of charming morning.

Six midnights preceded the existence of man as a living soul, yet but three solar mornings shone upon the earth ere his body was fashioned from the dust.

How impressive the truth—how impressive the solemn reality—that time must have an end. Each successive year as it closes the mighty page of its last moment and transfers it to the archives of the eternal world, proclaims the continuance of the approach and the greater nearness of the termination of time—a termination ending in an eternal morning with those who sleep in peace.

The Grave—the great treasury of precious dust—of dust that will be kindled into light and life, and clothed with immortality—is the end of time with every human being that reposes in its bosom, but it is the gate of the celestial world, although an humble, and oftimes, a dreaded entrance.

THE STATE CONVENTION.

The Anti-Assessment Committee herewith present each member of the Legislature of this State with a copy of the Constitution of the United States, and the amendments thereto; also a copy of the present Constitution of this State, adopted in 1821, and the amendments thereto; and also a copy of the Former Constitution of this State, adopted in 1777, with the amendments subsequently made to that instrument.

As soon as the election for members to form the State Convention has been completed and their names ascertained, copies will be forwarded to each of them respectively, and when that body shall have convened, a full copy of the MUNICIPAL GAZETTE, in a plain bound volume, will be delivered to each member.

The State Officers and numerous Citizens in the cities of New-York and Brooklyn, and in other sections of the State will also be furnished with copies.

The various provisions of the Former Constitution of this State will be fully reviewed in this paper, and these contrasted with those of the present Constitution.

The provisions of the Constitution of the United States will be commented upon.

The Constitution of the States of Massachusetts and Connecticut will be examined and such of them as appear to be of more useful import than those contained in the New-York Constitution, will be fully set forth.

The declaring what are executive, what are legislative and what are judiciary powers, seem to be a very necessary provision in the framing of the new Constitution.

The delegation of Legislative power, by the Senate and assembly, requires examination.

The Assessment question will be fully discussed, and some plan suggested to confine Judiciary officers to their legitimate duties, and to the performance of these in their own seats and not elsewhere.

The imposition of Taxes direct or indirect is another very important matter, and should receive a careful and deliberate examination.

The Tax the present year in the city of New-York will exact from the citizen a greater share of his income than King Pharoah, in the plenitude of his power, ever exacted from his subjects.

The copies of the Constitution of the United States, and of the present Constitution of this State are to be found in No. 2, of this series, and to those who have not before received that number it is herewith sent. Should any of the copies of that number have been mislaid, they will be replaced gratuitously on application to the editor by a note addressed to him at New-York, through the New-York Post Office.

We here present a copy of the Former Constitution of this State.

FORMER CONSTITUTION
OF THE STATE OF NEW-YORK.

Approved.

AND WHEREAS this convention, having taken this declaration into their most serious consideration, did, on the ninth day of July, last past, unanimously resolve that the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent, and conclusive; and that, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it.

Powers of the convention.

By virtue of which several acts, declarations, and proceedings, mentioned and contained in the aforerecited resolves or resolutions of the general congress of the United American States, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath, by their suffrages and free choice, been appointed, and among other things, authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general:

All authority derived from the people.

I. This convention, therefore, in the name and by the authority of the good people of this state, DOTH ORDAIN, DETERMINE AND DECLARE, That no authority shall, on any pretence whatever, be exercised over the people or members of this state, but such as shall be derived from and granted by them.

Legislative power.

II. This convention doth further in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the supreme legislative power within this state, shall be vested in two separate and distinct bodies of men; the one to be called the Assembly of the state of New-York; the other to be called the Senate of the state of New-York; who, together, shall form the legislature, and meet once at least in every year for the despatch of business.

Council of revision.

III. AND WHEREAS laws inconsistent with the spirit of this constitution, or with the public good, may be hastily or unadvisedly passed: BE IT ORDAINED, That the governor, for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate and assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if after such re-consideration, two-thirds of the said senate or house of assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two-thirds of the members present, shall be a law.

Bills to become laws if not returned in ten days.

And in order to prevent any unnecessary delays,

BE IT FURTHER ORDAINED, That if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

The assembly.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, viz:

Representation apportioned to each county.

For the city and county of New-York,	Nine.
The city and county of Albany,	Ten.
The county of Dutchess,	Seven.
The county of Westchester.	Six.
The county of Ulster,	Six.
The county of Suffolk,	Five.
The county of Queens,	Four.
The county of Orange,	Four.
The county of Kings,	Two.
The county of Richmond,	Two.
*The county of Tryon,	Six.
*The county of Charlotte,	Four.
†The county of Cumberland,	Three.
†The county of Gloucester,	Two.

*Names afterwards altered, and the territory of which they consisted, divided into several counties.

† Ceded to Vermont.

Number of senators, and by whom chosen

X. And this convention doth further, in the name, and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that the senate of the state of New-York shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

Their term of election, and rotation in office.

XI. That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, and four; and that the seats of the members of the first class shall be vacated at the expiration of the first year; the second class the second year, and so on continually, to the end, that the fourth part of the senate, as nearly as possible, may be annually chosen.

Manner of choosing.—Census, and apportionment of the senators.—A quorum.—To be judges of their own members.—Other counties and districts may be erected.

XII. That the election of senators shall be after this manner; that so much of this state as is now parcelled into counties, be divided into four great districts; the southern district to comprehend the city and county of New-York, Suffolk, Westchester, Kings, Queens, and Richmond counties: the middle district to comprehend the counties of Dutchess, Ulster and Orange: the western district, the city and county of Albany, and Tryon county; and the eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit: in the southern district, nine; in the middle district, six; in the western district, six; and in the eastern district, three. AND BE IT ORDAINED, that a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature; and if, on such census, it shall appear that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion as near as may be, to the number of freeholders, qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators, to be chosen as aforesaid, shall be necessary to constitute a senate sufficient to proceed upon business; and that the senate shall, in like manner with the assembly, be the judges of its own members. AND BE IT ORDAINED, that it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as shall to them appear necessary.

No person to be disfranchised but by law.

XIII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that no member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of this state by this constitution, unless by the law of the land or the judgment of his peers.

Adjournments of both houses.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

Conference between them.—Doors to be open, and Journals how kept and published.

XV. That whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees to be by them respectively chosen by ballot. That the doors, both of the senate and assembly, shall at times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York; and, except such parts as they shall, as aforesaid, respectively determine not to make public, be from day to day, if the business of the legislature will permit, published.

Number of the senate and assembly limited.

XVI. It is, nevertheless, provided, that the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that, whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then, and in such case, the legislature shall, from time to time hereafter, by laws for that purpose, apportion and distribute the said one hundred senators and three hundred representatives among the great districts, and counties of this state, in proportion to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall forever remain proportionate and adequate.

Executive power vested in a governor.—When and how to be chosen.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power and authority of this state shall be vested in a governor; and that statedly, once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be, by ballot, elected governor, by the freeholders of this state, qualified, as before described, to elect senators, which shall be always held at the times and places of choosing representatives in assembly, for each respective county; and that the person who hath the greatest number of votes within the said state shall be the governor thereof.

His power.

XVIII. That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy, of this state; that he shall have power to convene the assembly and senate on extraordinary occasions; to prorogue them from time to time, provided prorogations shall not exceed sixty days in the space of any one year; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature, at their subsequent meeting, and they shall either pardon, or direct the execution of the criminal, or grant a further reprieve.

And duty.

XIX. That it shall be the duty of the governor to inform the legislature, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; to correspond with the continental congress, and other states; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed, to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

Lt. Governor to be president of the senate.

XX. That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant-governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting vote in their decisions, but not vote on any other occasion.

His further power and duty.

And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be chosen, or the governor absent or impeached, shall return or be acquitted. *Provided*, that where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this state, both by sea and land.

In his absence a president to be chosen by the senate.—His power and duty.

XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which

he shall exercise *pro hac vice*. And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people, at the succeeding election.

Treasurer.

XXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly. *Provided*, that he shall not be elected out of either branch of the legislature.

Council of appointment.

XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council, for the appointment of the said officers, of which the governor for the time being or the lieutenant governor, or the president of the senate, (when they shall respectively administer the government,) shall be president, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum; AND FURTHER, The said senators shall not be elegible to the said council for two years successively.

Tenure of certain offices.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behanior, or until they shall have respectively attained the age of sixty years.

Certain judicial officers not to hold other offices.

XXV. That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, excepting that of delegate to the general congress, upon special occasions; and that the first judges of the county courts, in the several counties, shall not, at the same time, hold any other office, excepting that of senator, or delegate to the general congress. But if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

Sheriffs and coroners.

XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively; nor the sheriff of holding any other office at the same time.

Registers, clerks, and marshals, by whom appointed.

XXVII. AND BE IT FURTHER ORDAINED. That the register, and clerks in chancery, be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said marshal, registers, and clerks, to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.

Attornies, solicitors, and counsellors, by whom appointed.

And all attorneys, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court, in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts.

XXVIII. AND BE IT FURTHER ORDAINED, That where, by this constitution, the duration of any office, shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: *Provided*, that new commissions shall be issued to judges of the county courts, (other than to the first judge,) and to justices of the peace, once at least in every three years.

Town officers.

XXIX. The town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore elegible by the people, shall always continue to be so elegible, in the manner directed by the present or future acts of legislature.

Loan officers, county treasurers, &c.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

Delegates to Congress.

XXX. That delegates to represent this state in the general congress of the United States of America be annually appointed, as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination they shall meet together, and those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Style of laws, and form of process.

XXXI. That the style of all laws shall be as follows, to wit: "Be it enacted by the people of the state of New-York, represented in senate and assembly," and that all writs and other proceedings shall run in the name of the people of the state of New-York, and be tested in the name of the chancellor, or chief judge of the court from whence they shall issue.

Court for the trial of impeachments and the correction of errors.

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the legislature, and to consist sist of the president of the senate for the time being, and the senators, chancellor and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal; and in like manner, when an appeal, from a decree in equity, shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

Power of impeachment, and manner of proceeding.

XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two third parts of the members present shall consent to and agree in such impeachment. That, previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid unless it shall be assented to by two third parts of the members then present; nor shall it extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this state. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment according to the laws of the land.

Party accused to be allowed counsel.

XXXIV. AND IT IS FURTHER ORDAINED, That in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions.

Law of the state.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that such parts of the common law of England and Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this state, subsubject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, goverument or prerogatives, claimed or exercised by the king of Great Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be and they hereby are, abrogated and rejected. And this convention doth further ORDAIN, that the resolves or resolutions of the congresses of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions as the legislature of this state may, from time to time, make concerning the same.

Grants by the king after a certain period, void.—Charter rights and former grants preserved.

XXXVI. AND BE IN FURTHER ORDAINED, That all grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this constitution contained, shall be construed to affect any grants of land, within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him, or them, *or any of them*, made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any nonuser or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. AND FURTHER, that all such of the officers, described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this state, until otherwise directed by the legislature.

Purchases of lands from the Indians.

XXXVII. AND WHEREAS it is of great importance to the safety of this state that peace and amity with the Indians within the same, be at all times supported and maintained: AND WHEREAS the frauds too often practiced towards the said Indians, in contracts made for their lands, have, in divers instances, been productive of dangerous discontents and animosities: BE IT ORDAINED, that no purchases or contracts for the sale of lands mrde since the fourteenth day of October in the year of our Lord one thousand seven hundred and seventy-five, or which may be hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state.

Free exercise of religion.

XXXVIII. AND WHEREAS we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: *Provided*, that the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

No minister or priest to hold any office.

XXXIX. AND WHEREAS the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretence or description whatever, be elegible to or capable of holding, any civil or military office or place within this state.

Militia.—Magazines.

XL. AND WHEREAS it is of the utmost importance

Number of senators reduced to 32, and the manner of reducing.

III. That from the first Monday in July next, the number of senators shall be permanently thirty-two, and that the present number of senators shall be reduced to thirty-two in the following manner, that is to say: The seats of the eleven senators composing the first class, whose time of service will expire on the first Monday in July next, shall not be filled up: and out of the second class the seats of one senator from the middle district, and of one senator from the southern district, shall be vacated by the senators of those districts belonging to that class, casting lots among themselves; out of the third class the seats of two senators from the middle district, and of one senator from the eastern district, shall be vacated in the same manner; out of the fourth class the seats of one senator from the middle district, of one senator from the eastern district, and of one senator from the western district, shall be vacated in the same manner; and if any of the said classes shall neglect to cast lots, the senate shall in such case proceed to cast lots for such class or classes so neglecting. And that eight senators shall be chosen at the next election in such districts as the legislature shall direct, for the purpose of apportioning the whole number of senators amongst the four great districts of this state, as nearly as may be according to the number of electors qualified to vote for senators, which shall be found to be in each of the said districts by the census above mentioned; which eight senators so to be chosen shall form the first class.

Mode of increasing the assembly till it arrive to 150, and the legislature to apportion senators and assemblymen.

IV. That from the first Monday in July next, and on the return of every census thereafter, the number of the assembly shall be increased at the rate of two members for every year, until the whole number shall amount to one hundred and fifty; and that upon the return of every such census, the legislature shall apportion the senators and members of the assembly amongst the great districts and counties of this state, as nearly as may be, according to the number of their respective electors: *Provided*, That the legislature shall not be prohibited by any thing herein contained, from allowing one member of assembly to each county, heretofore erected within this state.

True construction of the 23d article of the constitution declared.

V. And this convention do further, in the name and by the authority of the people of this state, ORDAIN, DETERMINE AND DECLARE, That by the true construction of the twenty-third article of the constitution of this state to nominate all officers other than those who by the constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the council of appointment. By order,

A. BURR,

President of the Convention, and Delegate from Orange County.

Attest,

JAMES VAN INGEN, JOSEPH CONSTANT, } Secretaries.

CHAP. 252.

AN ACT recommending a Convention of the People of this State.

Passed May 13, 1845.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

[The first five sections of this act are applicable to the proceedings of the November election, of 1845, which is already passed. The following sections apply to what remains to be accomplished.

§ 6. In case the said canvassers shall certify and declare a majority of such ballots or votes to be for a convention, it shall and may be lawful, and it is hereby recommended to the citizens of this state, on the last Tuesday of April, eighteen hundred and forty-six, to elect by ballot, delegates to meet in convention for the purpose of considering the constitution of this state, and to make such alterations in the same as the right of the people demand, and as they may deem proper.

§ 7. The number of delegates to be chosen to such convention shall be the same as the number of members from the respective cities and counties in this state. All persons entitled to vote for members of Assembly, shall be entitled to vote for such delegates. Such election shall in all respects be conducted as is now provided by law for the election of members of Assembly—the polls opened and held in the same manner, and the canvass and other proceedings to determine the election of such delegates as is now prescribed by law for electing members of Assembly.

§ 8. The delegates so chosen, shall meet in convention at the Capitol in the city of Albany, on the first Monday of June, eighteen hundred and forty-six. They shall, by ballot, elect one of their number president, and may appoint one or more secretaries, a printer, and such door-keepers and messengers as their convenience shall require—and such delegates and the secretaries of the convention shall be entitled to the same mileage for travel and the same per diem allowance, as is now paid to the members of the legislature, and the printer, door-keepers and messengers shall receive the same compensation as is provided by law for similar services and attendance upon the Assembly. The amount of pay shall be certified by the president of the convention, and shall be paid by the treasurer of the state, on the warrant of the comptroller, in the same manner as members of the legislature are paid. It shall be the duty of the secretary of state to attend said convention at the opening thereof, and he and all public officers shall furnish such convention with all such papers, statements, books or other public documents in their possession as the said convention shall order or require—and it shall be the duty of the comptroller to furnish the members with all such stationery as is usual for the legislature while in session.

§ 9. The proceedings of the said convention shall be filed in the office of the secretary of state, and the amendments to the constitution agreed to by the said convention, shall be recorded in his office—the said amendments shall be submitted by the convention to the people for their adoption or rejection at the annual election to be held on the Tuesday next succeeding the first Monday in November, one thousand eight hundred and forty-six—and every person entitled to vote at the election may vote thereon, in the election district in which he shall then reside, and not elsewhere. The said amendments shall be so prepared and distinguished by numbers or otherwise, that they can be voted upon separately, and they shall be so voted upon, unless the convention shall be of opinion that it is impracticable to prepare them so that they can be voted upon in that manner—and if the said convention shall by resolution declare that in its judgment the said amendments cannot be prepared so as to be voted upon separately, they shall be voted upon together. In either case, the convention shall prescribe the form of the ballot, the publication of the amendments, and the notice to be given of the election. In case the said amendments shall be voted upon separately, every person entitled to vote thereon, may vote for or against any one or more of them. At the election mentioned in this section, the inspectors in every election district shall provide a suitable box to receive the ballots given upon the said amendments, which ballots shall have the word "constitution" written or printed, or partly written or printed, upon them, so that when they are folded it will appear on the outside of the ballot—and all provisions of the laws of this state in relation to the election of officers at the general election, shall apply to the voting upon the said amendments, so far as the same can be made applicable thereto, and the votes given upon the said amendments shall be given and canvassed, and all the proceedings shall be had in regard to them, as nearly as practicable in the manner prescribed by law in respect to the votes given for Governor. Each of the said amendments which shall receive a majority of all the votes given upon it at the election mentioned in this section, shall be deemed and taken to be a part of the constitution of this state, and shall take effect from and after the thirty-first day of December in the year one thousand eight hundred and forty-six, unless the said convention shall prescribe some other time on which the same shall take effect—and each of the said amendments which shall not receive a majority of all the votes given upon it at the said election, shall be void and of no effect.

§ 10. All wilful and corrupt false swearing in taking any of the oaths prescribed by this act, or by the laws of this state made applicable to this act, or any

other mode or form in carrying into effect this act, shall be deemed perjury, and shall be punished in the manner now prescribed by law for wilful perjury.

§ 11. It shall be the duty of the Secretary of State, to cause this act to be published once a week for twelve successive weeks previous to the election, in not less than two or more than four of the public newspapers published in each of the several counties in this state in which two or more public newspapers are published—and in the public newspaper in all those counties where only one public newspaper is published—and shall also cause to be transmitted to the several clerks of counties in this state such number of copies of this act, with the necessary forms and instructions, as shall be sufficient to supply the several officers who are to perform the duties prescribed by this act—and the said clerks of counties shall distribute the same to such officers, and the expense of publishing and distributing the same and all other legal expenses incurred in printing for the convention shall be audited by the Comptroller, and paid by the Treasurer according to law.

§ 12. The copy of the certificate of the state canvassers shall in no case be directed to the clerk of a county, unless the office of sheriff of such county shall then be vacant, nor to the first judge, unless the office of sheriff and clerk shall both be vacant.

§ 13. The county of Hamilton and the county of Fulton, shall jointly elect one delegate to the convention in the same manner, and the votes shall be canvassed and transmitted in the same manner as now provided by law in reference to members of Assembly.

EXTRACTS FROM GOV. WRIGHT'S MESSAGE.

"The people of the state have, with a unanimity almost unknown in the history of elections, decided in favor of the proposition to hold a convention 'to consider of alterations and amendments to the constitution' of the state. This decision will relieve the present legislature from a mass of responsible labor, which has consumed much time, for several of the past years. Important propositions to amend that instrument have held prominent places upon the calenders of business of both houses for many consecutive sessions, and have given occasion for elaborate investigations and protracted debates. This whole subject has now been referred, by the people themselves to a convention; and it would be highly improper in me to attempt to press upon your consideration questions thus wisely disposed of, so far as our agency is concerned.

"Upon this legislature, however, is devolved the constitutional duty of re-apportioning the representation in the legislature, according to the returns of the state census just completed; and as the election to choose delegates to the convention is to be held on the last Tuesday in April next, justice to the people of the counties, the representation of which is to be increased by the change of population, would seem to require that the apportionment should be made in season to permit this election to take place under it. No injustice will be done, by this proceeding, to the counties, the representation of which is to be lessened by the new appointment, as they will still have, in the convention, that representation to which their population entitles them, while the other class of counties will have no more.

"Justice to the whole population equally requires this action at the hands of the legislature. The same people who have voted upon the question of a convention are to be represented in that body, and they have a right to be equally represented. I will not, however, occupy your time in the discussion of a point about which I feel sure there can be no diversity of opinion, but will content myself with recommending that this subject occupy your early attention, so that the law may be passed in time to prepare for the election in April."

LONG LEASES, AND GREATER THAN A FEE.

Judge Edmonds in his able opinion in an assessment case on this page, mentions an assessment lease for **800** years. In the case of Gen. Striker, in which the opinion of the Hon. John Porter, Senator from the Seventh Senate District, is given, the lease to Lovett by the New-York Corporation officers was for **1000** years. Some sales were made for **2,000,000** years. His Excellency, the Governor, has not referred to these in his message and probably was not aware of them. The Convention will no doubt look to this new mode of confiscating estates.

ASSESSMENT DECISION.

Supreme Court.. Before Judge EDMONDS.

DOUGHTY *vs.* HOPE.

This was an action of Ejectment brought upon a Corporation Assessment lease. The plaintiff bid off the defendant's house and lot at a Corporation Assessment sale, and the Corporation executed to him a lease of the premises in question, upon which he brought a suit to recover possession of the thus demised premises.

The counsel for the defendant insisted that the assessment was illegal and void, also that all the proceedings of the corporation and their officers in the premises subsequent to the sale, were also illegal and void, and that the lease was of no account whatever.

The plaintiff's counsel insisted that the assessment lease was conclusive evidence, that all the proceedings were regular and according to law.

In place of going into a detailed statement of the objections made by the defendant's counsel, we will content ourselves with reciting a part of a proceeding of the mayor and common council, as to the particular and general character of these assessments, and our readers will doubtless agree with us that this document is more than conclusive—for it is awfully alarming. It is as follows:

"*Preamble and resolutions for paying Contractors and applying to the Legislature for act to buy under sales for assessment.*

"WHEREAS, there are large amounts due several persons, contractors for building sewers, regulating streets and avenues, and paving and setting curb and gutters, and also for filling low and sunken grounds, as set forth in the original schedule. prepared by the street commissioner, and which improvements were made, and work done in pursuance of the several respective ordinances of the Common Council, and which were to be paid for by assessments on the property benefitted, and as soon as the amounts of said assessments were collected.

"AND WHEREAS, the assessments levied in pursuance of said ordinances have been for some time confirmed, but collection of the same only in part made, and most of them returned as unpaid and uncollectable, and the property liable thereto, and on which, the same were a lien, agreeable to the laws of the state advertised, and offered for sale by the street commissioner, at the recent sale of property for assessments; ***but the amount due on said assessments could not be realized, by reason of there being no bids at such sales for said property, the amount of said assessment being more than the present market value of said property so liable,*** in consequence whereof the said contractors are still unpaid."

The preamble and resolutions from which the above is extracted, were adopted by the Board of Aldermen on the 22d of February, 1841; concurred in by the Board of Assistants the 25th of February, 1841, and approved by the acting Mayor the same day, and are to be found in the volume of printed proceedings of the Common Council, known as volume 8, pages 121 and 122, and also to be found in the documents accompanying the report of the Select Committee from the Senate appointed to investigate assessment abuses in the city of New-York, in Senate Document No. 100, of 1842. page 278, of that report.

JUDGE EDMONDS after fully examining the merits of the case, delivered the opinion which goes to sustain the dignity of the man in the decision of the judge. It is as follows;

NEW-YORK ASSESSMENT DECISION.

DOUGHTY *vs.* HOPE.

BY THE COURT—EDMONDS, JUDGE.

EJECTMENT.—The plaintiff seeks in this suit to obtain possession of a lot in the Twelfth Ward, which he bought for eight hundred years at a corporation assessment sale, and the whole question is, whether that sale and the proceedings out of which it grew, have been regular and valid?

A corporation must show a grant either in terms or by necessary implication for all the powers it attempts to exercise, especially when it claims the right to divest individuals of their property without their consent. The exercise of this franchise being restrictive of individual rights cannot be extended beyond the letter and spirit of the grant, and being a high prerogative, should not be exercised, where the right is doubtful. *Beatty vs. Knowler*, 4 *Peters* 152. *Vanhorne's lease vs. Dorrance*, 2 *Dall.* 316. *Sharp vs. Spier*, 4 *Hill.* 83.

Every statute authority in derogation of the Common Law to divest the title of one, and transfer it to another, must be strictly pursued, or the title will not pass. The power under which the plaintiff claims, is a mere naked power in the corporation, and its due execution cannot be made out by intendment—it must be proved. He must show step by step that every thing has been done, which the statute makes essential to the due execution of the power, and he must therefore be careful to collect and preserve all the facts and muniments on which the validity of his title depends. *Williams vs. Peyton*, 4 *Wheat.* 77. *Rorkindorf, vs. Taylor*, 4 *Pet.* 349. *Jackson vs. Shepard*, 7 *Cowen*, 88. *Atkins vs. Kinnan*, 20 *Wend.* 241, *&c.*

Testing this case by these rules, it is objected to the legality of the sale,

I. That the resolution authorising the improvement out of which the assessment grew, was not published, nor were the ayes and noes published. It is insisted that this is not a mere idle ceremony; a mere direction to the Common Council, which they may disregard at pleasure, but was designed by the statute for a wise and beneficent purpose, namely—that of giving to the parties interested, notice of the threatened invasion upon their individual property—that it was devised as the mode of putting all upon their guard, and giving to all the opportunity of defending themselves.

No principle is more familiar to the Common Law than that which secures to every one due notice and a full opportunity of defence against all invasions of life, liberty or property; and it would seem that publication of the resolution and the votes, being the only notice which the statute requires, should be indispensably necessary to the validity of the proceedings under it. But that question is not now open for discussion, at least before me, because the Supreme Court have held that the part of the statute which requires this publication is merely directory—that the Common Council may disregard it at their pleasure, and that therefore a compliance with its requirements is not essential to the validity of a title acquired under it.

II. It is objected that the estimate of the expense of the improvement, and the assessment of the amount thereof were not made out before the improvement was made, but afterwards. It is evidently, the whole scope and object of the statute, that an estimate of the expense shall be made out before the work is done; and, that the estimated amount shall be collected prior to the same event. The corporation, who are the actors, being possessed of a mere naked power, and having no interest in the matter, the object was to protect the parties really interested: those, for instance, whose lands are to be burdened, and whose money is to make the improvement, against an improvident expenditure of that money, and to insure them that due economy shall be regarded in making it. The whole machinery devised by the statute of estimates, assessments, and collections, can have no other object in view than to insure to those at whose expense the improvement is made, that it be done in the cheapest manner, and that is, to have the money collected beforehand, and to have the work done for cash. If this is not the sole object of that machinery, all its parts are exceedingly cumbersome and clumsy; but if it is the object, they are well calculated, if fairly carried out, to answer the end in view.

This object was entirely disregarded in this case. The form of the law was attempted to be followed, but its spirit neglected. The work was done by contract before the money was collected, and at a price necessarily enhanced by the credit which the contractor was obliged to give for his labor. The augmentation is not at the expense of the corporation, through whose acts the plaintiff claims title, but of the owners, whose

the year 1841, the Hon. Murray Hoffman, then Assistant Vice Chancellor, granted an injunction to General Striker, against the Corporation of the City of New-York, restraining that body and its officers from delivering the lease of Gen. Striker's land to Lovett. . His Honor the Chancellor dissolved this injunction, and we think in this the Chancellor was decidedly in error. Vice Chancellor Hoffman, in giving his opinion on granting the injunction applied for by Peter G. Stuyvesant and others, uses this strong and very appropriate language:

"*I am sensible of the inconvenience to the city from an interference at this time, and do it with unfeigned reluctance, but I am thoroughly satisfied that a more palpable and pernicious disobedience of law has never marked the course of any corporate body than characterises the proceedings complained of. I have a deep rooted conviction that ultimately the decision must be against the Corporation.*"

We add, so it has been, by a vote of 16 to 1.

The case of Gen. Striker is of the same character as that of Stuyvesant and others.

This case was argued before the Court for the Correction of Errors by Samuel Stevens, Esq., of Albany, and Richard Mott, Esq., of New-York, for General Striker; and P. A, Cowdrey, Esq., of New-York for Kelly, the Corporation of New-York, and Bidders at Assessment Sales.

We have received two letters from Mr. Mott, of which the following are copies.

Albany, Dec. 29, 1845.

The Case of *Striker vs, Kelly*, has been reversed by a vote of vote of 16 to 1. SenatorJones voted for affirmance.

There were several opinions given. Sen. Porter gave an opinion for reversal in toto. The Lt. Governor, Lott, Bockee, and Jones were for sustaining the coustitutionality of the Law in favor of the Supreme Court Justices acting as a Court in every respect, and not as Commissioners or in any limited capacity. The decision is to be settled by resolution to-morrow. The Senators were all clear that the lease was not evidence of the right to sell, and that the Collector's affidavit must be produced, made according to the act of 1816, that the assessment had not been paid.

The case now stands Reversed 16 to 1.

Yours, &c. R. MOTT.

Albany, Dec. 31st, 1845.

To E. Meriam, Esq.

Dear Sir—The case of *Striker vs. Kelly*, is finally disposed of by the Court of Errors. When the case came up before the Court for the decision, Senator Porter gave a written opinion for Reversal. Senator Jones said he had prepared a short opinion for affirmance, the substance of which he said was that the judgment of the Supreme Court should be confirmed upon the ground that the Lease was conclusive evidence to *his mind* that all the requirements of the statute had been complied with and that the purchaser ought not to be put to the trouble and expense of examining the proceedings previous to the giving of the lease. The Lt. Governor gave a written opinion that the judgment of the Supreme Court ought to be confirmed in one point, to wit: That the Justices of the Supreme Court acted in these Street matters as a Court of general jurisdiction, and not as mere Commissioners under the statute. But that on the point that the lease was evidence of the regularity of the previous proceedings, he thought the judgment of the Supreme Court ought to be reversed.

Senator Lott then offered a resolution declaring the Law of 1813, giving power to the Supreme Court to act in the Street matters, to be constitutional. Several Senators rose and opposed the resolution, and said they could not vote for the resolution. The resolution was disposed of, as appears in the copy, which I here send you:

"IN THE COURT FOR THE CORRECTION OF ERRORS

Garret H. Striker, }
vs. }
Thomas Kelly. }

Senator Lott offered the following resolution:

Resolved, That in the appointment of Commissioners of estimate and assessment in relation to the opening or altering of Streets in the city of New-York, the Justices of the Supreme Court act as a Court and not as mere statutory Commissioners, and that the power conferred upon that Court by the act of the 9th of April, 1813, to reduce several laws relating to the City of New-York into one act is constitutional in this raspect.

Senator Wright moved to lay the same on the table and the said motion was adopted. Ayes 7, nays 6.

J. R. ELWOOD, Clerk."

This resolution taken in connection with the able opinion of Senator Porter for the Reversal of the judgment of the Supreme Court, I think will end this long contested controversy, and leave the rightful owners in the quiet possession of their own property.

Yours with much respect,

RICHARD MOTT.

We shall give the opinion of Lieut. Governor Gardner in the case of Striker vs. Kelly, delivered in the Court for the Correction of Errors, in our next; also the copy of a resolution passed by the Court for the Correction of Errors, in reference to the lease and affidavit, which is very broad, covering all other cases of assessments.

OPINION OF SENATOR PORTER,

Delivered in the Court for the Correction of Errors, Dec. 29th, 1845.

GARRET H. STRIKER *vs.* THOMAS KELLY.

The important questions presented in this case are,

1st. Do the Justices of the Supreme Court in performing the duties assigned to them by the New-York Street Laws, "hold any other office or public trust" than as Justices of that Court.

2d. Was the demand of the tax, and an affidavit of the demand an indispensable prerequisite to the sale of the property, and necessary to be proved.

3d. Was the lease itself sufficient evidence of the right to sell; and did it prevent all inquiry, whether the provisions of the Statute had been complied with.

1st. In respect to the first proposition, the destinction, I apprehend is, whether the new power conferred upon the Supreme Court, is one of a nature that properly belongs to the office of Judge of that Court, or whether it is not one that belongs to another office, or other public trust.

In order to arrive at a satisfactory conclusion upon this question, it is necessary to understand the nature of the office of Judge of the Supreme Court, and of the office of which the New-York Street Laws have bestowed in this respect. By repeated decisions, the Supreme Court have determined that in all this class of cases they act as commissioners, and wholly under the power derived from the statutes that these powers do not exist independently of legislative authority; and are not incident to their judicial office.

In the matter of Beekman Street, (20 John. 271,) Spencer, Ch. J., in delivering the opinion of the Court, said, "It is true we act collectively and in term time, and a majority present control the proceedings; but we act as commissioners, and in the same way and manner as we used, individually, under the insolvent act. The statute is our guide, and we must proceed by the rules, and in the manner it prescribes. The general powers and jurisdiction of this court, as regards the application now before us, cannot be brought into exercise." Here we have the Supreme Court saying, not only that they act in these cases as Commissioners, but that they cannot act as a Court; that although the matter is brought by the statute within their jurisdiction; yet that it is a special delegated power, to be exercised according to the statute and not subject to their general judicial powers, as the Supreme Court, they possess no control over the proceedings. Their high powers to be used according to the provisions of the common law, for the protection of the life, liberty and property of the citizens, and for the direction and control of all subordinate jurisdiction and tribunals have no analogy to those of Street Commissioners. The directions of the Statute are to be followed as far as they go, and when they cease, the powers and duties of the judges cease. The case of Stafford vs. Mayor, &c., of Albany, (7 John. 541) proceeds upon the same principle. In that case the statute had granted to the Mayor's Court of Albany, powers similar in many respects to those conferred upon the Supreme Court, in regard to the Streets in New-York. An assessment had been made and confirmed by the Court, and afterwards they attempted to act judicially, as if the subject matter had been under their control like other matters pending in their Court, they set aside the proceedings for irregularity.

The effect of this order annulling the proceedings in the Mayor's Court, came up in the Supreme Court and in their opinion they say, "The proceedings in question do not partake at all of the judicial proceedings. The authority under which the Mayor's Court acted was specially derived from the Legislature, and must be strictly pursued; when, therefore, the assessment was confirmed, the Court had no further powers; they were *functus officio*."

There is no analogy between this proceeding and the judicial proceeding of a Court of Record in the progress of a cause. The Court act quasi Commissioners. In 6 Cowen 572, in the matter of Third Street in New-York, Savage Ch. J., giving the opinion of the court, says, "The Report being once confirmed becomes irrevocable, unless it be voluntarily waved by all parties concerned. We do not act as a Court in these matters, but as Commissioners appointed by the legislature:" And the matter of Canal Street (11 Wend. 155), Savage, Ch. J., again says, "When we are reviewing the proceedings of the Commissioners of estimate and assessment, we act as Commissioners. and when once their report is confirmed by this Court it cannot be opened and reviewed again in the same Court. we cannot set aside those proceedings upon the merits any more than arbitrators can do so, after having signed and published their award."

In the matter of Mount Morris Square, (2 Hill 19) Cowen J., in giving the opinion of the court, and after repeating and confirming the principle above quoted from "matter of Beekman Street," adds, "our powers are likened to those of a Commissioner under the insolvent act. Our award is, therefore, like that of an inferior magistrate having a limited jurisdiction; and who have no power to review it on motion any more than a justice would have to open a summary conviction before him." These cases with others that might be cited, show clearly that the Supreme Court have, from the first time the question arose, deemed themselves as acting as Commissioners in these cases; and the argument by which that conclusion is sustained, appears to me to be conclusive.

But it is said that the acts of the Supreme Court in all the proceedings under the laws in question, are strictly judicial in their nature; and that the cases all proceed upon the broad distinction between what the court may do in the exercise of its common law jurisdiction, as the Supreme Court of the State, and what it may do under a special and limited authority, conferred upon it by the statute. I do not feel that there is any necessity for combatting the position that the court acts in this respect judicially; for I do not perceive how an admission of that fact furnishes any aid to the argument of the Supreme Court. It is not sufficient that it be shown that the judges act judicially in these cases, for there are many judicial proceedings that cannot constitutionally be embraced within the powers and functions of the judges of the Supreme Court. The proceedings of a Surrogate, or a Recorder's Court, or Courts Martial, are judicial proceedings, yet it will not be pretended that judges of the Supreme Court could be authorized by statute to hold either of those courts. Could the legislature give the judges power to hold the courts of justices of the peace and try the issues now confined to those courts without conferring upon them "another office or public trust? Or could it authorise them to hold the Court of Common Pleas in any county? If it can be said, that because the power is judicial in its nature, it is therefore properly conferred upon the judges, it must also be said that the judicial power in the cases I have mentioned may also be conferred upon them. This will hardly be pretended. The constitution did not confer upon the Supreme Court all manner of judicial power. The general common law powers and jurisdiction of a Supreme Court of judicature of the State are recognised by the Constitution; and it appears to me that when that instrument declares that the judges of that Court shall "hold no other office or public trust," it intends to confine their powers and duties to those that appropriately belong to that high tribunal, and forbids their holding any other office or trust. be the same judicial or otherwise. The design obviously was to confine the labors, services and responsibilities of those who set in that court sacredly and inviolably to those judicial duties and powers which are inherant in that Court, or which from analogy appropriately belong there, as the highest court in the state of original common law jurisdiction, those powers and duties are well understood. They are sufficiently ample and sufficiently burdensome in themselves without adding thereto other judicial powers. I do not deny that the Legislature may apply those powers to new cases; but they must be such as come within the acknowledged scope of its general jurisdiction. It cannot enlarge or abridge its powers. It may authorize the court to perform particular duties that it had never before performed, but they must be duties belonging to its department of the government; to the Supreme Judicial Court in the exercise of its common law powers. They must not only be judicial duties, but they must be such judicial duties as appertained to that court, in the exercise of the jurisdiction of the Supreme Court of Judicature. The clause of the constitution in question is inhibitory, and forbids that any other powers shall be conferred upon the Judges, and that any other duties shall be required of them, than such as belong strictly to the Supreme Court of Judicature. A natural jealousy is therein expressed, and also a wish to confine those high offices of the government to the exercise of their appropriate power and duties. If the Legislature can authorize and require the Supreme Court to perform these duties of Commissioners under the street law. because they are judicial in their nature, what hinders from requiring them to perform a large portion of the duties of the Canal Board, for they are clearly judicial in their nature.

Again, the admitted fact, that these proceedings are not of such a character, that they can be revised until they are brought before the court by a certiorari, and are again passed upon by the Court, and made a matter of record in that Court; proves to my mind that these judges are performing some other trusts and duties than such as belong to the Court. Indeed the prevailing opinion in the Supreme Court seems to conclude that while performing the duties in question, the Court is then acting as "an inferior and limited Court." This is also necessarily implied from the fact that it is subject to the command contained in the certiorari to make return of their proceedings into the Supreme Court. This subjection to a review in the Supreme Court can only exist in the case of a subordinate tribunal, and of itself proves that it is a distinct subordinate tribunal. If then the Judges while performing those duties of Commissioners, form a distinct, inferior and subordinate tribunal it follows necessarily that it must be another tribunal than the Supreme Court. If another tribunal, and the officers composing it are in fact the Judges of the Supreme Court, how can it be said that they hold no "other office or public trust"? While executing that commission, they are compelled to lay aside their character, and divest themselves of their power as judges, and assume that of Commissioners clothed with special and limited powers.

There is no difficulty in the same individual holding two offices at the same time. The same person may be first Judge of a county, and also Surrogate of the same county; and he may hold the different courts and exercise the different powers without causing any confusion of ideas, or of business. In the same manner, the judges of the Supreme Court, if not forbidden by the constitution, might sit in and exercise all the powers of any inferior judicial tribunal. But while performing those duties, it would be a misnomer to call that tribunal the Supreme Court. It would be inferior to it, and subject to its supervisions, and of course not the same tribunal. It cannot in any proper or admissable sense be said to be executing the same "office or public trust." It is possible that these commissioners may possess many of the attributes of a Court, as is supposed by the Chancellor in the case of the President, &c. of Brooklyn, vs. Patchen, (8 Wend. 47,) but the question does not turn upon that fact but rather upon this, whether it is inferior and subordinate, and therefore another.

I cannot, therefore, come to any other conclusion than that the statutes which confer upon the judges of the Supreme Court the powers in question do profess to give them another office or public trust than the Judges of that Court, and that, as in this respect, they violate the constitution, and are void.

2nd. The statutes (sess. laws of 1816, p. 114, sec. 2) provides that when an assessment shall not be collected "and the Collector shall make affidavit of his demanding the money two several times of such owners as may reside in the city, and that they have neglected or refused to pay, then and in any such case, it shall be lawful to sell." The legality of the sale was objected to on the trial. Among other things for the reason that there was no proof of a demand of payment before proceeding to sell, nor any evidence that the collector had made the affidavit required by the statute. The objection was overruled, and it is now insisted that this defect was fatal to the defence. The answer is, that the same act declares that the lease to be executed to the purchaser "shall be conclusive evidence that the sale was regular according to the provisions of this act." The question then is: Suppose there was in fact no demand or affidavit as required by the act? Does the giving of the lease cure the defect? There are certain cardinal rules on this subject which I find no where better expressed than by Bronson J., in Sharp vs. Spier, (4 Hill 86). He says, "every statute authority in derogation of the common law, to divest the title of one and transfer it to another, must be strictly pursued, or the title will not pass. This a mere naked power in the corporation and it its due execution is not to be made out by intendment. It must be proved. It is not a case for presuming that public officers have done their duty, but what they have in fact done must be shown." The cases there cited abundantly sustain those positions. The section of the act above cited, is the one that gives the power of sale; and that confers the power only upon a *condition*. The language is express, "Whenever the Collector shall make affidavit of his demanding the money two several times, and there is neglect or refusal to pay, then and in such case it shall be lawful," &c. The object of the law was that there should be not only a regular assessment and non-payment, but also that the owner should have personal and official notice of the assessment and demand of payment, and that should be repeated to give him ample warning that he was in danger of losing his land. These were not meant to be an idle ceremony to be dispensed with or not at the pleasure of the corporation, but as a substantial protection against surprise, and this provision of the act shows how cautious and guarded the law is, when the title of the owner of land is to be divested. This act is in derogation of the common law right of the owner, and is therefore to be construed strictly, and strictly followed. By the terms of the act no sale could take place until the affidavit of the collector had been made. The affidavit is made as necessary as the assessment. The statute has made it a condition upon which the corporation may proceed to sell, and the courts have no power to dispense with it. It is no answer, that the act has declared that the "lease shall be conclusive evidence that the sale was regular." It is not regularity of the proceedings at the sale, or immediately connected with the act of selling that is sought to be impeached. The objection is that the foundation of the right to sell at all, however regular the proceedings at the sale, has not been sustained by the proof. I cannot consider this part of the statute as dispensing with the proof of a demand and affidavit any more than with the proof of assessment, or any other important step in these proceedings. In my opinion the defendants failed to show a power to sell in the corporation, and for this reason also, the judgment should be reversed.

I have not thought it important to examine the other points made at the argument, for the reason that they have not been passed upon by the majority of the Supreme Court who concurred in the decision then given; but on both points above considered I am of the opinion that the judgment of the Supreme Court should be *reversed*.

The vote for Reversal, was as follows:

Lt. Governor, Senators Backus, Beekman, Beers, Bockee, Deyo, Emmons, Hand, Hard, Lester, Lott, Porter, Sedgwick, Smith, Varney and Wright.—16.

For Affirmance.—Senator Jones.—1.

The vote on Senator Wright's motion to lay Senator Lott's resolution to sustain the Justices of the Supreme Court in holding another office *(for such is its bearing)* on the table, was as follows:

Ayes—Senators Hand, Lester, Porter, Sedgwick, Smith, Varney and Wright.—7

Noes.—Lt. Governor, Senators Backus, Beekman, Bockee, Folsom and Lott.—6.

On the introduction of this resolution the Chancellor made a speech in favor, although he had not heard the argument. This speech we shall review (on paper) before the State Convention, to assemble in June, in reference to some suitable provision being made in the Constitution to restrain a Judge from expressing opinion in Court in any case in which he has not heard the argument.

ister an oath to any person, concerning any matter submitted to the board, or connected with their powers of duties.

"§ 9. Each board of supervisors shall, as often as may be necessary, appoint some proper person to be their clerk, who shall hold his office during their pleasure, and whose general duty it shall be,

"1. To record in a book to be provided for the purpose, all the proceedings of the board:

"2. To make regular entries of all their resolutions or decisions, on all questions concerning the raising or payment of monies:

"3. To record the vote of each supervisor on any question submitted to the board, if required by any member present: And,

"4. To preserve and file all accounts acted upon by the board.

"§ 10. The clerk shall receive a reasonable compensation for his services, to be fixed by the board of supervisors, and to be paid by the county.

"§ 11. The books, records and accounts of the boards of supervisors, shall be deposited with their clerk, and shall be open, without reward, to the examination of all persons.

"§ 12. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person six cents for every folio of one hundred and twenty-eight words contained in such copy.

"§ 13. It shall be the duty of the several boards of supervisors, as often as shall be necessary, to cause the court-house and jail of their respective counties to be duly repaired, at the expense of such counties; but the sums expended in such repairs shall not exceed five hundred dollars in any one year.

"§ 14. They shall also cause to be prepared within the jails of their respective counties, or elsewhere, at the expense of such counties, so many solitary cells for the reception of convicts who may be sentenced to punishment therein, as the court of common pleas of the county may direct.

"§ 15. Each member of the board of supervisors shall be allowed a compensation, for his services and expenses in attending the meetings of the board, at the rate of two dollars per day.

"§ 16. If any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he shall, for every such offence, forfeit the sum of two hundred and fifty dollars.

"§ 17. The mayor, recorder and aldermen of the city of New-York, shall be the supervisors of the city and county of New-York; and all the provisions of this Article shall be construed to extend to them respectively, except where special provisions inconsistent therewith, are or shall be made by law, in relation to the city and county of New-York."

ANNUAL PUBLICATION BY SUPERVISORS.

§ 1. It shall be the duty of the board of supervisors in each county in this state, annually to publish in one or more public newspapers in such county, the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim so allowed, together with the amount claimed, and also their proceedings upon the equalization of the assessment roll.—*Session Laws of* 1839, *chap.* 369.

CORRECTION OF ERRONEOUS TAXES BY THE BOARD OF SUPERVISORS.

"§ 2. The board of supervisors in and for the city and county of New-York, may at any meeting of said board, at which the mayor or recorder shall be present, correct any erroneous assessment which may have been made by the assessors of either of the wards of the said city, for the year 1843, and may also correct any erroneous assessment which shall hereafter be made by any such assessors as aforesaid, provided application for such relief shall be made upon assessments in 1843, within three months after the passage of this act, and in all other cases within the period of six months after the assessment roll shall have been returned as required by law, and provided also proof is made to the satisfaction of such board of supervisors, by the affidavit of the applicant or other legal evidence that the said erroneous assessment did not result from any neglect on the part of the person or persons applying for relief."—*Session Laws of* 1844, *page* 384.

PENAL STATUTES APPLICABLE TO PUBLIC OFFICERS.

From 2d Vol. of Revised Statutes, page 581.

"§ 44. (Sec. 38.) Where any duty is or shall be enjoined by law, upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty where no special provision shall have been made for the punishment of such delinquency, shall be a misdemeanor, punishable as herein prescribed.

"§ 45. (Sec. 39.) When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition, or in any other section or statute, the doing such act shall be deemed a misdemeanor.

"§ 46. (Sec. 40.) Every person who shall be convicted of any misdemeanor, the punishment of which is not prescribed in this or some other statute, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

"§ 47. (Sec. 41.) The court before which any person shall be convicted, of an offence punishable by imprisonment in a county jail, may sentence such person to be imprisoned in a solitary cell in such jail, if any such be erected; but such imprisonment shall in no case exceed thirty days in the whole."

REEFS OF ROCKS IN NEW-YORK HARBOR.

Copy of Memorial to Congress:

To the Honorable, the Senate of the United States:

The undersigned, citizens of the city of New-York, represent to your Honorable Body that the Harbor of New-York is obstructed by two dangerous Reefs of Rocks, for the particular locality and depth of each below the surface at low water, the undersigned refer to the published Charts in the archives of the Navy Department.

The undersigned ask that these dangerous rocks, in the very bosom of so important a harbor as New-York, may be removed, and that an appropriation may be made by Congress for that purpose. And your Memorialists, &c.

New-York, Dec. 31, 1845.

David Hale,
Henry E. Pierrepont,
Abm. G. Thompson,
The Pelican Mutual Ins. Co. by S. Baldwin, Pres.
Russell Sturges,
Agent of Underwriters,
The Sun Mutual Ins. Co., by A. B. Neilson, Prest.,
Josiah Macy & Sons,
The General Mutual Ins. Co. by A. Ogden, Prest.
Philip Hone,
E. & G. W. Blunt,
Lawrence & Hicks,
Henry Ruggles,
Wolfe & Bishop,
John I Palmer,
Richard Irvin,
Alliance Mutual Ins. Co., by J. P. D. Ogden, Prest.
Jonathan Thompson,
Grinnell, Minturn & Co.,
Goodhue & Co.,
Howland & Aspinwall,
Schermerhorn, Banker & Co
The Atlantic Mutual Ins. Company, by Walter R. Jones, Prest.
Brown, Brothers & Co,
H. & D. Parish,
Joseph Kernochan,
The Mutual Safety Ins. Co. by A. Pell, V. P.
Fox & Livingston,
The New-York Ins. Co., by B. McEvers, Prest.
J. Sprague, Brooklyn,
Sol. Townsend,
Burtis Skidmore,
Chas. H. Marshall,

The Reefs referred to in this Memorial are Diamond Reef between Governors' Island and the Battery and Princes Reef, between the Battery and Brooklyn shore. The Great Western Steamer struck on the latter named reef; also the Packet Ship Roscius.

☞This Journal will be published during the session of the Legislature, and during the sitting of the State Convention.

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, FEB. 2, 1846. [VOL. I....No. 37

STATE CONVENTION.

In No. 2 of this volume we have given the entire copies of the Constitution of the United States, and the amendments thereto,—also the present Constitution of this State, and the amendments which have been made to that Instrument, and in No. 36, we have given a copy of the Constitution of 1777, and the amendments adopted in 1801.

It is but forty-four years from the adoption of the former Constitution, to the formation of the Constitution now in force, and but twenty-five years have elapsed since this new Constitution was approved, to the time fixed for the assembling of a convention for the formation of a *third* Constitution. Thus in a period of seventy years the people of the State of New-York will have changed the fundamental law no less than three times.

Human government, in its origin, was patriarchical, and from this form in the beginning, changes have been continually in progress, but human ingenuity has never yet been able to invent a form or frame of government that was perfect, nor never will; but the difficulty is not in the framing of fundamental laws, but it is in enforcing obedience thereto.

The great division of power in government has been allotted into three branches—the executive, the legislative, and the judiciary, and this division constitutes the essence of a republican form of government. These powers have not been so clearly defined in written Constitutions. Hence disputes arise, and these are of difficult determination.

Take the New-York assessment question for an illustration. In this case it is insisted that the justices of the Supreme Court cannot act under the street law of 1813, in nominating and appointing Commissioners of Estimate and Assessment, for the plain and obvious reason that it is another "office or trust," and therefore comes under the inhibitory provisions of the constitution which declares that the justices of the Supreme Court shall hold no other office or trust. See Constitution of 1821, article 4 sec. 7. Article 25 of the constitution of 1777 contains also an inhibition as to the same functionaries, but with a qualification that justices of the Supreme Court may hold the office of Delegate to the General Congress, but the word "trust" was not contained in that provision of the former Constitution. The appointing power has ever been one of much difficulty, and the people have always expressed a great anxiety in reference to its impartial exercise, more particularly in regard to the great preponderance it gave in the government to the officers exercising this power. Hence we find that in 1801, a convention assembled, the business of which was among other things to settle the construction of the twenty-third article of the Constitution of 1777 as to the appointment of officers.

The preamble is as follows:

"WHEREAS the legislature of this state by their act, passed the sixth day of April last, did propose to the citizens of this state, to elect by ballot delegates to meet in convention, "for the purpose of considering the parts of the constitution of this state, respecting the number of senators and members of Assembly in this state, and with power to reduce and limit the number of them as the said convention might deem proper; and also for the purpose of considering and determining the true construction of the twenty-third article of the constitution of this state relative to the right of nomination to office;"

The Convention determined as follows:

"V. And this convention do further, in the name and by the authority of the people of this state, ORDAIN, DETERMINE AND DECLARE, That by the true construction of the twenty-third article of the constitution of this state to nominate all officers other than those who by the constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the council of appointment."

Now then we have a precedent here of great importance, and correctly adapted to the subject matter before us.

We have also a construction, for the convention declare in words so plain as not to admit of but one construction, that "the right to nominate all officers other than those who by this constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the council of appointment." Commissioners of Estimate and Assessment are not among those "directed to be otherwise appointed," and therefore could only be appointed by the Governor and Council of appointment. Another inhibitory provision is to be found in section 41 of the constitution of 1777, declaring that no "new court or courts but such as shall proceed according to the course of the common law, and that trial by jury in all cases in which it hath heretofore been used in the colony of New-York shall be established and remain inviolate forever." A new power unknown to the course of the common law, in this Street law of 1813, is conferred upon the Supreme Court, and Judge Beardsley says this power "is a special power," and therefore a new court of limited jurisdiction, according to his reasoning. The right of trial by jury in all cases of taking land for a street was in use under the colonial government. See street law of 1691, and ante. p. 4. first full paragraph in second column.

Having thus briefly disposed of that provision that applies to the appointing power and the right of trial by jury, we come down to the present constitution. By section 7, of art. 4, it is provided as follows: "The Governor shall nominate by message in writing, and with the consent of the Senate appoint all judicial officers except justices of the peace." Section 9 of the same article provides and specifies what officers the Courts may appoint, and this disposes of the whole appointing power, under the new constitution so far as the courts are concerned.

The street law of 1813 is repealed by section 13, of art. 7, of the present constitution by these words: "and such acts of the legislature of this state subject to such alterations as the legislature may make concerning the same. But all such parts of the common law, and such of said acts or parts thereof, as are repugnant to this constitution ARE HEREBY ABROGATED." This disposes of the New-York street law of 1813.

We have been brief in this because we wish to bring the argument within the limits of a single page.

The appointing power is dangerous on account of its patronage—its great patronage. We feel confident that we shall surprise some of our readers when we quote from the Report of the Select Committee of the Senate, appointed by that body, on the memorial of P. A. Jay, and others, to investigate assessment abuses in the city of New-York, as per Senate doc. No. 100, of 1842, p. 12, 13 and 14. The Committee say:

"That there have been great and serious abuses in the mode of opening streets and avenues in the city of New-York, and the expenses attending the same, cannot be doubted by any person who has examined the subject; and these evils have mainly arisen from the loose and unguarded manner in which that important branch of authority has been exercised. For while in England, in the city of London, in Birmingham and other places, whose proper municipal regulations would seem to require as liberal extension of power to their local corporate governments as that of New-York, streets cannot be opened or widened without an act of Parliament, specially passed for that purpose, upon a due examination of all the circumstances of the case: yet in the city of New-York, they are opened or widened, and that in large numbers together, by a single resolution adopted by the two Boards of the Common Council, without any control, as was the case in opening all the streets and parts of streets not previously opened up to and including 42d street, by a resolution of April 6, 1835; and subsequently, September 12, 1836, another resolution was adopted to open all the streets from 42d to 57th streets. The reservoir on Murray's Hill, in the city of New-York, is on 42d street. This loose practice has grown up in modern times, for the more guarded one of an application to the supreme legislative authority which was in existence in that city, subsequent to 1792, when to authorise the first widening of John Street, an application was made to the Legislature then in session in that City, and before either house would act upon the petition, they sent a committee to examine the ground; upon the report of which committee, they enacted that the damages to the owners whose lands were taken, should be appraised by a jury who should be composed of merchants—showing how careful they were in former legislation on this important subject. This appraisement is now made by three commissioners, appointed by the Supreme Court, who are generally nominated at the instance of the counsel of the corporation, although there have been instances where one of these commissioners has been selected by the court from names proposed by the corporation counsel, and by the opponents to the application, and another has been named by those opponents. It is difficult now to comprehend how the expenses in opening streets and avenues in that city could have been so very great as they are represented to have been, but of the fact of their being so very great, there can be no doubt; it is established by the receipts of commissioners for the same, exhibited before the committee. In the opening of the 7th Avenue, from 21st Street to 129th Street, which was confirmed in February, 1839, the amount awarded to the owners for land taken for the avenue, was $28,141.41, while the fees and expenses of that opening amounted to the large sum of $12,435.70, and if to that is added the collector's fees for collecting the assessments—$1,115.00, it will show a total of expenses paid by the owners of land on that portion of the Seventh Avenue for its formal opening, amounting to $13,550.70.

"The amount paid to the commissioners on that avenue for their services, at the rate of $4 per day, which is the highest sum allowed by the statute, is pay for *sixteen months'* services for each commissioner, in making the estimate of the land taken for that avenue, and assessing the value back again upon the land on each side of the avenue; and in opening this one street, of one hundred and eight blocks, of about 270 feet each, the commissioners were each engaged three times the whole period that the Legislature is employed in legislating for the State, and each of them received about three times the compensation that is paid to a legislator for passing the whole winter from his home in attending to the public business. And in addition to that, it was shown to the committee that commissioners were frequently engaged on several streets or avenues at the same time, taking their four dollars per day on each of those improvements; and that they received and were paid that compensation in some instances where they did not attend to the duties of their appointment, and in others where they attended but once or twice. If the case of the Seventh Avenue had been a solitary instance, the com-

a communication on this subject, in which he stated that "in many cases the injustice was so great, that he had firmly made up his mind to sell all his property in this State, and remove to where his property would be protected and placed on an equality with that of other citizens; and was only prevented from so doing by reason that it would not bring the prices of 1830, thereby was forced to stop the sale, having made some sacrifice."

"If the citizens of New-York are laboring under circumstances oppressive in believing that they have been greatly assessed and injured by the course pursued by these commissioners, that belief is, in the judgment of the committee, very extensive. The committee entertain the conviction that these errors on the part of the commissioners, have mainly arisen from the want of settled rules or principles in making their awards and assessments, and that such want of settled principles must always be experienced so long as those commissioners shall continue to be appointed for each individual case."

We will next refer to the Report made to the Senate by two of the clerks of the Supreme Court, viz.: Albany and New-York, and known as Senate document No. 31, of 1843, of vol. 3, p. 23 to 27, both inclusive.

We will next refer to Senate Document No. 109, of 1842, p. 27 and 273, to the letter addressed by Robert Emmet, Esq., recently appointed by the Chancellor, to the office of Assistant Register of the Court of Chancery, to Assistant Alderman Adams.

Having thus briefly passed over the question of princely patronage, we come next to the question of *Trustee*. The Revised Statutes, vol. 1, p. 721, sec. 45, abolishes all existing trusts, and subsequently creates three special trusts in section 55 of p. 723. By referring to the New-York Street Law of 1813, sec. 178, it will be seen that in the taking of land for a Public Square, Avenue, Street or Public Place, the Mayor, Aldermen and Commonalty, are declared to be seized of the same "*in trust*." This provision is repealed and here is therefore another abrogation of Street powers.

SUB-MARINE ASSESSMENT.

New wonders are continually presenting themselves. Wonders in the ocean—wonders in the atmosphere—in the storm—in the calm—in the frozen continents at the poles, and in the burning sands of the equator—but here is a new wonder, a nondescript of the temperate zone—a marine monster hatched upon the land—it is an assessment for a sewer in 13th Street and Second Avenue. This assessment is levied in part upon the bottom of the deep—upon the lower surface of an arm of the sea, known as the East River. The assessment extends 1000 feet from the shore to where the water is 50 feet deep. The ocean thus assessed has been advertised for sale, and bid off by the Corporation for the term of 1000 years. The Collector of the assessment has been unable to demand the assessment of the occupants, and a newspaper notice is of no avail, as no public journals that are printed on terra firma circulate among the finny tribes who occupy the assessed territory. A doubt too is raised as to the mode of relief it not being a matter of equitable cognisance, inasmuch as the assessment cannot be a cloud while a denser body intervenes, being that of condensed clouds. Ships of the largest class float upon the water that covers the assessed surface, and it has been in the same navigable state for about 1000 years. At the sale for the assessment no human being dare bid off the sea, lest he might leave it as an inheritance to those who are to have his estate, a paper title, that would be a cloud upon his memory as an awful testimony to posterity. It is barely possible that some subterranean convulsion may upheave the assessed premises, or that the sea may become depressed, or the land become elevated, but it is by no means possible that posterity will recognize the validity of a New-York assessment lease, made to themselves under an act of the Legislature which leaked out all its substance while in transit.

This assessment exceeds the aerial conceit erected in 122d Street, for an improvement called a sewer, built upon stilts above the surface—and is equal to the expense assessed for building a little drain in 17th Street, for which Mr. Henry Parish was charged $550, on 50 feet, fronting on the street.

UTICA MOVEMENT....STATE CONVENTION.

During the last summer several essays upon the STATE CONVENTION appeared in the "*Utica Democrat*" from the able pen of A. B. JOHNSON, Esq., of that city. In the month of December last, a letter was addressed to Mr. Johnson by the Hon. WARD HUNT, Formerly Mayor of the city of Utica, and several other gentlemen, requesting him to collect these essays together with a view to their republication in a pamphlet form, for more convenient use. Since the commencement of the present year we have received one of these pamphlets of 51 pages, and reprinted from it on this page one of the essays. In our next number we shall give, extracts from, Mr. Johnson's introductory. We now present the following in relation to Assessments under the head of

"MUNICIPAL CORPORATIONS.

"Our Constitution permits the infliction of special burdens, as well as the grant of special privileges. What would farmers think, should every man be compelled to macadamize the road in front of his farm; or even to repair it in an ordinary way, except by a rateable contribution with all the other inhabitants of his road district? Still in cities, persons whose lands lie along any street, are compellable by the city authorities, to pave and flag it, for the use of the public. And these exactions are often less disastrous to land owners than kindred requirements to fill up low streets, dig down high ones, open new streets, and drain wet ones; hence, in perhaps every city, hundreds of acres (especially of suburbs) remain with the owners at the sufferance of the local corporation, who can compel expenditures on the land that will induce its abandonment; while in some cities the option of abandonment will not avert liabilities which, in known cases, have deprived the owner of not the assessed property merely, but of all his possessions. Such extremes are of course not frequent, but so inherently vicious is the authority in question, that a member of almost any municipal corporation will display great resistance of temptation if he can pass through his civic year without sanctioning some wrong that would merit a penitentiary punishment if practised without the sanction of law. Even in Utica, of which the writer would speak kindly, it having generally borne its terrible municipal faculties as inoffensively as powers so perverse can be borne, yet in Utica the writer has purchased property in fee for a much less sum than the seller paid on it years previously, in assessments for grading and extending Columbia Street. But, as respects Utica, the writer, to avoid every suspicion of personality, excludes her from all the preceding and following remarks, except to the extent only in which they refer to her by name.

If the paving, flagging, &c., concern those alone who own adjacent land, with them alone should rest the option of paving or continuing unpaved; but if the paving concerns the whole city (and on no other principle can a city government claim authority over the question) on the property of the city at large should rest ratably the expense of the improvement. Any different proceeding exhibits the anomaly of power in one set of men to decree improvements another set are to pay for; since experience shows that costly improvements are seldom ordered when the real estate that is to be burdened with the expense is owned by the members of the corporation who decree the improvement. They are more usually in the position of the law-givers of whom 1800 years ago was said reproachfully: "Ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers." To thus ward off onerous improvements from one's own real estate constitutes one of the benefits which makes a seat desirable in a city's councils; while another benefit consists in the ability to cause improvements to be made at the expense of others that will benefit some proximate property of one's own. So naturally corrupting are powers which permit such results that a person well acquainted with local interests, can usually foresee after every municipal election, where costly improvements will be ordered during the incoming civic year, and especially where costly improvements will be forborne, except such as are to be made at the common expense; and of so demoralizing public

sentiment is such legalized privateering on private property that when an officer is expert in the practice of it he is only deemed, by many, a shrewd man of enviable tact and thriftiness.

Nor are the foregoing the only temptations to evil. The system permits discriminations, which are sometimes used to revenge personal wrongs, sometimes to deplete specially over rich or absentee land-holders; hence, nothing is more common than the most abject petitions, private and public, direct and indirect, (through influential friends,) to avert meditated improvements which in contemplation of law are to benefit the remonstrants, who by virtue of such contemplation are to pay the expense. And still worse; nearly every corporation is surrounded by a multitude of retainers, who live by performing the labor and furnishing materials for corporate improvements. Like camp followers they are ready to rifle the slain and wounded whether the fallen be friends or foes; and being usually the belligerents most relied on for success at elections, every existing officer who is ambitious of a re-election propitiates them by his zeal in supplying them with spoils; and hence his chance of continuance in office is in an inverse proportion to the regard he exhibits for economy and resistance of expenditures. And nearly every city is afflicted with not merely one such army in possession, but with another in reversion, dependent on the success of a rival set of city officers at the incoming civic year; and as anticipators are ever more numerous than participators, the army of hope are generally able to change annually the city government, which comes into new hands tremulous with gratitude to partizans who press around for remuneration with an appetite sharpened by a year's abstinence, and made impatient by the consciousness that the time to make hay is while the sun shines. Even Utica has not always been exempt from the foregoing vices, that seem not the fault of individuals, but rather of the bad organization of which she participates; for one of her aldermen has said that when he once boggled about the expediency of some projected costly improvement he was told explicitly by the "wheel within a wheel" of his day, that if such was his course his career would be short. We have not, however, approached the point arrived at in some older city, when an alderman sometimes becomes so suddenly rich that it reveals a forgone secret iniquity as unmistakably as the sudden expansion of a spinster's waist.

But our concern is not with evils, which, like collusion with contractors, depend for their cure on a reformation of public morals, but on such as the State Convention may remedy. Every city improvement of a street must necessarily benefit some person specially, in addition to the general benefit. The like can be said whenever a country road district improves a highway, or our State constructs a canal, or the general government a harbor; but no where except in our cities, is the incidental beneficiary compelled to pay the *whole expense* of the improvement, so that the public which orders the improvement may obtain it free from charge. In thus reversing the principle which, in our general and State governments, looks to the public benefit only, and disregards incidental private advantage, we, in effect, take private property for public use without adequate compensation satisfactory to the owner, and concentrate ruinously on a few persons an expense which if borne ratably by all the property of the city would seriously afflict none. Men who congregate in cities may be supposed willing to bear all burdens that on known principles are incident to a dense and luxurious population; but we need not suppose them willing to see principles reversed and to suffer as morally right in cities what would be morally wrong in other places. Nothing exists analogous to the foregoing city code, except the former postage system that is now generally execrated, and mainly for the feature in which the analogy resides, namely: for making the incidental private benefit to individuals in employing the post office as a means of extorting from them all the expense of the mail system, thereby enabling the public to use it free of expense for all the lavish purpose of all the departments of government, just as the incidental private benefit to a man living on a paved street is made the pretext for extorting from him all the expense of the pavement, which is thereafter to be used free of expense by the community, with all the vehicles they may choose.

City assessments, which produce these results, are founded on a clause that exists in city charters directing the expense of civic improvements to be assessed on the real estate benefitted thereby, and on every piece of real estate in proportion to its respective benefit. The provision contains a pernicious fallacy in assuming that the benefit is only local, that it is confined to real estate, and that the local benefit is always pecuniarily equal to the improvement; while, practically, the filling up in front of a lot may cost a thousand dollars, and the lot subsequently be not saleable for half the money. Such inequalities, varying in degree, attend every improvement, and always to the impoverishment of the land holder, because no improvement is worth to any given lot more than its utility to the person who resides on the lot; but the improvement is not graduated to subserve his use alone, but it is made sufficiently extensive in dimensions for the public at large, and sufficiently elegant to gratify the public taste.

But were civic improvements to become a general charge on the city, we may be told that a constant struggle would ensue for their location, as we see in Congress when rivers are to be improved, and in our legislature when a penitentiary is to be constructed. Such struggles are, however, only for location, not for the construction of useless works. So in cities, the struggles would not be for useless improvements while the eyes of an interested community were gazing on the fraudful advocates. And, as an additional guard, every city should be limited in its annual expenditures to a given sum, to be annually ascertained by the vote of the people, as is now practised in country towns; or if the sum is to be determined by the legislature, it should be so small a per centage on the taxable property within the city as to leave no range for extravagance. Utica is limited now to an annual general tax of eight thousand dollars; but the power to burden by special tax is unlimited. This feature alone of our charter shows glaringly the inherent protective tendency of a common liability, and the inherent licentious tendency of withdrawing such protection from any portion of community: hence the cogency of the crafty maxim, "divide and conquer," for every whole can command justice by controlling at elections, and by remodelling, if necessary, the charter; but the specially oppressed can appeal only to sympathy and abstract justice, while the principle that afflicts them (special taxation for public improvements) bribes all the rest of the community to stifle sympathy and disregard justice. Even a knowledge by every man, that he may in turn suffer the like oppression, moves but feebly where the impending evil is contingent and may be remote: hence usually municipal legislators are left to an undisturbed control over the land holders whom they may choose to victimize, while others look on with the philosophic calmness that is proverbial to men in the contemplation of others' woes. The evil is fast detracting from the value of city property every where, while in places that are not vigorous in prosperity, real estate, in many locations is worse than valueless; still so few men are much effected by abstract considerations that special grievances are the last to find redress. The great source of hope consists in the possibility that the evil may fall within the correction of some wholesome general principles that the coming State Convention may think proper to adopt: as, for instance,

First: that no land shall be compulsorily taken for any street, rail-road, canal, public highway, or other purpose, without full compensation to the owner for his land and damage, irrespective of any benefit that may accrue to him or his remaining property by reason of the use to which the land is to be apportioned; and

Secondly: that no person or property shall be compulsorily assessed or taxed for any object, except ratably in common with all the persons or property within the community who shall order the tax or assessment.

A. B. JOHNSON.

☞ Mr. JOHNSON has rendered the people of the city of New-York, a service in this publication which is suitably appreciated. The Mayor of every city in the United States will be furnished with a copy of this paper by which they will be able to compare the views here expressed with their own city organizations. Municipal Corporations have grown into power so rapidly that the people look on with amazement, without knowing how to restrain the evils which they are bringing about.

WM. F. HAVEMEYER.

Mayor Havemeyer, as Chief Magistrate of the city, has sustained the public expectations of his ability and fidelity. Mr. Havemeyer is a practical business man, of business habits, and such learning is always useful to a public officer.

As a POLITICIAN Mr. Havemeyer was but little known: as a merchant and citizen, well known, and highly respected.

At the meeting held at the office of Mayor Harper for the relief of the sufferers by the great fire in Pittsburgh, the HON. MAYOR elect attended—STEPHEN ALLEN, Esq., was also there—seeing them sitting together in silence, it occurred to us that perhaps these two distinguished individuals were strangers to each other, we accordingly enquired of Mr. Havemeyer if he was acquainted with Mr. Stephen Allen; he replied that he was not. We had then the honor of making these two individuals (who have both distinguished themselves) acquainted with each other. We mention this occurrence as an illustration of the unmixedness of Mayor Havemeyer with public matters before he came into the executive chair.

Mayor Havemeyer has vetoed several acts of the Common Council, and in this he has done well, and had he vetoed more of them, he would have done better, and with these one-half the warrants drawn upon the City Treasury.

SUPERIOR COURT.—ASSESSMENT DECISION.

By the full Bench. Chief Justice JONES, and Judges OAKLEY and VANDERPOOL.

Platt vs. Stewart. Action of ejectment.

The Plaintiff bid off at a New-York assessment sale a house and lot belonging to defendant, which had been assessed for regulating the 5th avenue, a public highway. The assessment list was not signed by any of the assessors, and as is usual in these cases, they never had any meeting to make the assessment. (See Senate doc. No. 100, of 1842, p. 60.) The whole assessment was $43,922.25,—no small sum, surely; but this is the way the New-York assessment system is carried on. The corporation officers trusted to the conclusiveness of the lease to cover up the iniquity and as being a barrier to all investigation. This assessment, although not signed by the assessors or made by them, was confirmed by the Common Council by passing it through the hands of the clerks of each board, with a red tape tied around it, and without any examination, and then the Mayor approved it by writing his name on the wrapper. The defendant in this case is a colored woman, who supports herself and an invalid child by taking in clothes to wash. Her husband was a shoe blacker, and had by this business earned as much money as purchased him a lot, and with further savings built a small house which he left at his death to his widow and helpless child. The court decided that the assessment was void for not being signed and the sale therefore void. Mrs. Stewart had no money to pay for defending her rights, but some philanthropic individual sent to Judge Tallmadge a fifty dollar note as a fee for the poor woman and her helpless child. It was a noble act, and when we learn his name we will put it in capitals at the head of one of our columns. The Superior Court have done their duty in this matter.

CANDIDATES FOR THE STATE CONVENTION.

It is high time to call public attention to the selection of candidates for the State Convention, as members of that body from the county of New-York. We present the following list of names selected from the three political parties, viz.: James Kent, Albert Gallatin, Jonathan Thompson, Stephen Allen, Saul Alley, Jonathan Goodhue, John M. Bradhurst, Solomon Townsend, Peter Cooper, James Harper, Wm. F. Havemeyer, Bartis Skidmore, Richard Mott, Lea [illegible], F. R. Tillou, Luther Bradish, George Douglass, Abraham G. Thompson, Abraham Van Nest, Gulian C. Verplanck, Wm. B. Crosby, Charles H. Russell, Peter Schermerhorn, James I. Jones, Robert Smith, Murray Hoffman, David Hale, Philip Hone, Jona. I. Coddington, Theodore Sedgwick, Samuel Thompson, James Donaldson, Peter Lorillard, jr. Henry Grinnel, Richard S. Williams, Thomas T. Woodruff, Elisha P. Hurlbut John David Wolfe.

REVIEW OF PRESIDENT GARDNER'S OPINION.

In reviewing the opinion delivered in the Court for the Correction of Errors by the learned President of that tribunal, we have changed our plan and instead of taking up the opinion of the learned jurist, section by section in the order of its delivery, we proceed at once to examine the New-York Street powers which he discusses, and trace them step by step from the commencement to the present time, and in doing this we shall probably travel a path not noticed by any of the very learned counsel who argued this case before the courts.

On the first of October, 1691, a street law in relation to the city of New-York, was passed by the Colonial Legislature. It was sent to the Governor and Council for their assent, and by them returned with a *proviso*, which proviso was appended to the bill, as an amendment, and in that shape it became a law. *See ante. p.* 4. That act provided that in all cases of the taking of land for a street, that a jury should be summoned, and their award should be paid or tendered to the owner, before the land could be converted to public use. This act remained in force during the continuance of the Colonial Government, and was by the general provision of the Constitution of 1777, article 35, made a law of this State. By art. 41 of the same constitution, the right of trial by jury in all cases where it existed under the Colonial Government was *continued*, and the same provision is made in sec. 2 of art. 7, of the Constitution of 1821. In 1786 the colonial act of 1691, was repealed, and a new act, very similar in its provisions was enacted. *See ante. p.* 6.

On the 6th of April, 1792, the Legislature passed an act for extending Roosevelt Street and Frankfort Street in the city of New-York, in which they appointed five persons, viz. Richard Furman, Abraham Rhinlander, George Stanton, Joseph Stringham and John Stagg, Commissioners of Estimate and Assessment. The assessment after being made by these Commissioners and signed by a majority of them, and sealed with their respective seals, and returned to the Mayor, Aldermen and Commonalty, was binding and conclusive upon the owners, a lien and prior incumbrance upon the land assessed, and the Treasurer of the city was authorised to sue for the amount in case of non-payment, in any court of record in this state.

In 1793, a similar act was passed in relation to John Street, in which Commissioners were appointed by the Legislature.

In 1795, an act of the same purport was passed in relation to Beaver Street, and Banker Street.

On the 6th of April 1787, *(see ante. p. 4)* the Legislature passed an act for the regulation of streets, building of sewers, &c. in the city of New-York, and authorized the Mayor, Aldermen and Commonalty to appoint five freeholders to make estimate and assessment, which assessment, in writing, on being returned to the Common Council and ratified by them, shall be conclusive upon the owners of houses and lots assessed. In the Chapel Street cases in which the Supreme Court quashed the certioraries, which they had previously granted, they say: "The powers exercised by the Common Council of the city of New-York, are for the most part, either legislative, executive, or ministerial, and a *certiorari* only lies to inferior courts and officers who exercise judicial powers." *See ante. p.* 181. In this opinion Mr. Chief Justice Nelson concurred. These are precisely the same powers that the Justices of the Supreme Court exercise as Street Commissioners—the one for regulating—the other for opening Streets. The distinction between the two is without a difference.

These powers were not judicial then. The Commissioners could not issue execution, nor could such a precept be issued until a suit had been commenced in a Court of Record and a judgment obtained, and a similar provision in the act of 1813, is contained in section 186 of that act. The Supreme Court in assessments cannot issue execution until a suit is subsequently brought in a court and judgment obtained.

An act was passed on the 2d of April, 1807, authorising application to be made to the Supreme Court or one of the Justices thereof for the appointment of Commissioners of Estimate and Assessment, and the Court were empowered to confirm their reports.

On the 9th of April, 1813, an act was passed authorising application to be made to the Supreme Court, of Judicature of this State for the appointment of Commissioners, and the Court were authorised to *nominate* and *appoint* any person being citizens of the *United States*. *See Section* 178. By section 187 it is provided that in case of death, refusal to serve, or resignation, that application may be made to the Supreme Court, or *one* of the Justices thereof, and by the act of 1818, it is provided that whenever commissioners shall thereafter be appointed by the Supreme Court or *one* of the Justices thereof, &c. We have thus given a brief history of the origin of this street power, and its transfer from one set of persons to another. It is a "*special power*" and besides its exercise is confined to a LOCAL DISTRICT. Now we most respectfully ask the learned PRESIDENT how he is to get over this difficulty? It is not an enlargement of the general jurisdiction of the Court for it is confined to a LOCAL DISTRICT, and by the act of April 20, 1839, it must be exercised at particular terms, and not otherwise, and in particular places. The Justices of the Supreme Court under the act of 1813, perform precisely the same duty that was performed by Richard Furman and his associates, in the confirmation of the report under the act of 1792, and in neither case could the judgment be enforced until a suit shall be first commenced and a *judgment obtained in a court of law*. The transfer of power of the *nominating* and appointing, from the Legislature to the Court, or one of the Justices thereof, does not make the executing of the power a *judicial* act because it is confered upon a court or one of its justices, and the transfer of the confirming of the assessment, which was by the respective signing and sealing of the commissioners and delivery to a particular class of officers, to the Supreme Court or one of the Justices thereof, does not alter the character of the duty to be performed. By the act of April 20, 1839, the corporation are to nominate one commissioner, the owners of the property another, and the court a third. *Is this "general jurisdiction?"*

"Having shown, as we conceive, most clearly both the origin and character, of the New-York Street power, and that it is a matter of decidedly local character and therefore the justices of the Supreme Court exercising it are in this mere local functionaries, and not a court of general jurisdiction, it follows that we should now look at the constitutional inhibitions and to the construction which the convention which framed amendments to it, put upon the powers of the Supreme Court, and upon the power of appointment of officers. By Art. 25 of the Constitution of 1777, it is provided that the judges of the Supreme Court shall not at the same time hold any other office, except that of delegate to the general Congress. Art. 27 provides that the courts shall appoint their clerks, attorney, solicitors and counsellors; and art. 23 provides that *all* officers except those specified shall be appointed by the council of appointment; and art. 5 of the amendment of 1801, is expressly declatory of that power. By the Constitution of 1821, sec. 7 of art. 5. it is provided that the justices of the Supreme Court shall hold no other office or trust, and the elegibility for delegate to the general congress is taken away. By sec. 9, of art. 4, the power is given to the courts to appoint their clerks, and by sec. 7 of art. 5, it is provided that the appointment of all judicial officers shall be made on the nomination of the governor to the senate in writing, and in sec. 13 of art. 7, it is provided that all state laws then in force which conflict with the provisions of the new constitution are null and void.

The nominating of Commissioners of Estimate and Assessment for the performance of specific duties of a most extraordinary character, with a princely patronage for the exercise of powers unknown to the constitution, is the performance of the duties of another office, than that of a Justice of the Supreme Court. It is a little remarkable, and is also worthy of particular notice here, that an application was made at the December Special Term of the Supreme Court in 1840, held by Chief Justice Nelson, by Mrs. Winifred Mott, sister of General Striker, for relief in the matter of the assessment for the pretended opening of the same avenue for which her brother was assessed. The motion was opposed by Mr. Cowdrey, counsel of the Corporation, on the ground that in the appointment of the Commissioners and in confirming their Report, the Justices of the Supreme Court acted as Commissioners and not as a Court, and they had exhausted their power in the premises. The Chief Justice sustained this objection and refused relief. The same learned counsel in the case of Mrs. Mott's brother, General Striker, in the same assessment proceeding, took the opposite ground and insisted that the Justices in all respects, as to the appointment of Commissioners, and confirming their reports, acted as a

If by the statute the authority is not conferred upon the court in its corporate capacity, it is not in the power of language to do it. n

And in the second place if the power is not judicial then the authority to hear, try and judge, is not of that character. o

I am aware that the act of 1813 declares that the application may be made to the justices of the Supreme Court, or one of the justices, &c., but it was not seriously contended that these statutes being in *pari materia* intended to provide distinct tribunals to perform the same services. p

The justices of the Supreme Court in legal language mean the Court, and one of them may discharge the duties under the act, because by the Constitution one may hold the court.

The statute relative to referees confers powers upon the Supreme Court in many respects similar to the present. q

They are authorized without the consent of parties to appoint referees, who shall hear the evidence and in the first instance determine the question of law and fact. r

Those decisions may be reviewed (at the instance of either party who has any thing to allege against them) by the Supreme Court, who may send the cause back or enter judgment on the report. s

It might be objected in this case with equal plausability that the appointment of the referees was not a judicial but an executive act, and the legislative encroachment might proceed step by step until the Supreme Court would be compelled to appoint the State officers. t

Should it be said that in the case of referees, the parties litigant were in Court. I answer that the Supreme Court exercises the same power of review in cases of arbitration upon the mere agreement of the parties under the statute. u

The referees are officers of the court, and so are the commissioners *quasi* officers, and may be compelled like them to perform their duty by attachment. [Matter of Canal St.] v

The mode of acquiring jurisdiction varies in each of the cases. w

The suit may be commenced by declaration in the case of a reference, by the agreement of the parties, and petition in that of arbitration, and in the present by application to the Court, followed by the appointment of the commissioners.

That the legislature have the right to confer jurisdiction upon the Supreme Court by proceedings of the nature designated, and cannot, it appears to me, be questioned. x

It is analagous to proceedings in admirality, where the proceedings are in rem, and where the only notice to the parties interested in the property is by advertisement in the newspapers. y

Again the practice under the statute in this case shows that the justices must have acted as a court. z

The commissioners are appointed by rule, entitled in, and entered in the records of the Supreme Court, reciting a petition presented to the *court* and the order made by the *said court*. *aa*

The report is made to the court, and the order of confirmation is made by it and entered in the same book, and with an effect at least equal to a record of the Supreme Court for final judgment in other causes. *bb*.

In addition to this, the papers are placed upon *their* files and certified by *their* clerk, under *their* seal. *cc*.

The practice in this controversy is the same with all other proceedings under this act, and it has occurred to me as a feature in all these cases most extraordinary and peculiar, that mere Road Commissioners should not merely use the office, books, clerk and seal of the Supreme Court, but should also assume the official designation and act in the name of that high tribunal. *dd*.

This practice, however, is entirely consistent with the provision of this law, and the inference from both is the truth of the proposition. *ee*.

That by the statutes I have referred to, new judicial powers have been conferred upon the Supreme Court to be exercised by that court, and not otherwise. *ff*

It follows that the authority thus given must be exercised by the Supreme Court as a court of general jurisdiction. *gg*

I am unable to conceive how powers thus explicitly court, and not as commissioners, and Chief Justice Nelson, and Mr. Justice Beardsley sustained him. Mr. Justice Bronson dissented. If for nearly forty years parties applying for relief are denied because the act complained of is not judicial, and when at last resort is had to the constitution and the plea of lapse of time is set up—it surely comes with a very bad grace.

Mr. Justice Bronson, in the matter of 39th Street said: "It has been fully settled that we do not act as a court, but as commissioners under the statute to discharge the special trust or office." Mr. Justice Cowen in the matter of 37th Street said: "It has been, however, so often held that our powers are summary, those of a mere special commissioner, like the powers of commissioners under the act of insolvency that we are perhaps hardly warranted in having the question debated." Chief Justice Savage, in the matter of Third Street in the city of New-York, said, "We do not act as a court in these matters, but as commissioners appointed by the Legislature." Chief Justice Spencer in the matter of Beekman Street, said, "It might be a question how far the Legislature can impose such duties on the judges." In 1814 a memorial was presented to the Legislature for the repeal of the New-York Street Law, on account of its unconstitutionality. *See ante. p.* 253 The Select Committee appointed by the Senate of this State in 1841, to investigate assessment abuses in the city of New-York, in their Report, p, 20, of Senate Document No. 100, of 1842, say: "It is well known that the judges of the Supreme Court in confirming these reports in street openings, do not act as a court but as Commissioners under the Statute." Mr. Justice Cowen, in the matter of 37th St., said: "On the words we are a *Court*, it is said, and may act as such on the matter in all respects, including the hearing of motions to set aside proceedings on the merits for irregularity, defect or nullity." Suppose the Statute had said the Supreme Court shall execute process for the city and county, would it have been the less turning us *quasd hoc* into Sheriff because of the title? It is difficult, I apprehend, to combat the argument of Spencer, Ch. J., in the matter of Beekman Street, that by whatever name we may be called in the delegation of power, this cannot vary the nature of the thing, and so long as we act at all, we act as Road Commissioners." Mr. Justice Bronson in the matter of 11th Avenue and other streets, said, "In executing the street law of 1813, we are but commissioners discharging a special trust. The principle has been settled more than thirty years, and it is now quite too late to call it in question. The principle has been fully carried out, by refusing to set aside the proceedings in street cases under any circumstances, on the ground while sitting as commissioners we had no power to recall that which had once been done. If we can execute the office of street commissioner for the city of New-York, the like powers may be conferred upon us in relation to any other town or county, or the duties of the office of Comptroller; Treasurer or Sheriff may be assigned to us, and thus the constitutional disqualification would be rendered a dead letter. For one I can never give such a construction to the fundamental law as will amount to a practical nullification of its provision. Indeed there is little room for construction." In another part of the very able opinion of Mr. Justice Bronson, he says, "It is never too late to look at the fundamental law."

The act of April 9th, 1813, authorises an application to the Supreme Court of Judicature of this State, or one of the Justices thereof, by the Mayor, Aldermen, and Commonalty of the city of New-York. At that time the Mayor, Recorder, Aldermen and Assistant Aldermen, formed the City Council, and formed one board for the transaction of business. In April, 1824, ante. p. 58, the Legislature passed a law for the reorganizing of the city government, in which it was provided that all the powers theretofore vested in the Mayor, Aldermen and Commonalty, should be vested in the Common Council, under the new organization. This act was conditional, viz: that it should be submitted to the people at an election to be held for that purpose, and if accepted by a majority of the voters, then it should become a law, *and not otherwise*. At the election but 667 votes were given in favor, and the act therefore became a nullity. This act was reenacted in April, 1828, in nearly the same form, and again submitted to the people, and again *rejected*, 3753 votes only being cast in its favor.

In 1829, the following year, a city convention was assembled, and agreed upon a bill, which was on the 7th of April of the next year, passed into a law for reorganizing the city government, by which the Mayor and Recorder were deprived of seats in the Common Council, and the Aldermen and Assistants were vested with the legislative powers of the corporation, and formed into two boards with concurrent powers and required to meet in separate chambers, and all reports and resolutions recommending any specific improvement, involving a tax or assessment, was required to be published in all the newspapers employed by the Corporation immediately after the adjournment of the Board, and whenever a vote should be taken, the *ayes* and *noes* shall be taken and published in the same manner. The Common Council were only vested with the *legislative powers* of the Corporation, hence a question arises whether the Common Council could make application to the Supreme Court, or one of the Justices thereof, for the appointment of Commissioners, not being the body named in the act of 1813. It will be seen by the Report of the Select Committee of the Senate appointed to investigate assessment abuses in the city of New-York, p. 14 of Senate Doc. 100 of 1842, that application was actually made (and granted) for the appointment of twenty-eight sets, or eighty-four Commissioners, when no authority was ever given by the Common Council for the application, as appeared by the testimony of Assistant Alderman Townsend, Chairman of the Street Committee of the Board of Assistant Aldermen, in 1835 and 1836. See the same Senate document, p. 102. The conclusiveness of confirmation provided for in sec. 178, of act of 1813, is taken away by the act of April 7, 1830, requiring he previous publication of the report and resolution, and the calling and publication of the ayes and noes, in taking the vote; and then again the question arises as to the right of the Aldermen and Assistants to execute a power given to the Mayor, Aldermen and Commonalty. Where several persons, or classes of officers, are vested with a power, all must unite in the execution, or else the power is not duly executed. The petition in this case was merely signed by the clerk of the Common Council, and did not recite what was done as a compliance with the law of April 1830, by which alone the justice of the Supreme Court could under any circumstances entertain the petition, independent of any constitutional inhibition. The proceedings complained of in these assessments are of a most flagrant character. The Senate of this State have in their archives bundles of petitions asking for an investigation into the abuses, and for relief from the depredations that had been committed in assessment proceedings. These memorials are signed by nearly all the leading men in the city of New-York, of both political parties.

Mr. Justice Bronson in this same case, in the Supreme Court, said, "Following out the principles which have already been settled in relation to this law, I think it conflicts with the Constitution, and cannot therefore be supported, and in this opinion I had the full concurrence of the late Mr. Justice Cowen." In another part of the same opinion, the same learned judge says, "In these and in all other forms in which the question has arisen, it has been uniformly held, that in executing the street law of 1813, we act as Commissioners appointed by the Legislature, and not as a Court." The same doctrine has been held by the Federal judiciary. By an act of Congress, passed in 1792, (2 Bis. 259) the Circuit Courts of the United States were directed to enquire into and decide upon the claims of certain persons to be placed upon the pension list. Several of these Courts declined to execute the law on the ground that the duties assigned to them were not of a judicial nature. The Circuit Court for the district of New-York, with Chief Justice Jay at its head, held that the act of Congress could only be considered as appointing Commissioners for the purposes mentioned in it, by official instead of personal designation, that the Judges regarded themselves as being the Commissioners designated by the act, and therefore as being at liberty to accept or decline that office."

The Constitution of the United States contains no inhibition against a judge holding another office, but it may be said that this was not holding another office, but merely an enlargement of the general jurisdiction of the Circuit Court. The act of Congress referred to is in the 2d vol. of Laws of the United States, page 28. We copy from it as follows: "Any commissioned officer," &c., "shall be entitled to be placed on the pension list," &c., "as the *Circuit Court* of the district in which they respectively reside, may think just, and every applicant shall attend the *Court* in person, and every *Circuit Court*, upon the proofs aforesaid shall," &c.

Hence the proceedings were to be had in the *Court*—that power was given to the *Court*, and the *Circuit Court* were to take the proofs. The appointment of Boat Commissioners by the Supreme Court, or one of the Justices thereof, is no more a judicial act than the taking the proofs, and placing of the names of the applicants upon the pension list under this act of Congress.

Mr. Justice Cowen on the matter of 87th Street, said: "It is indeed difficult to see what the provision in the constitution against a judge holding any other office is worth to the people of this State, if it can be avoided by turning a judge into a Commissioner of highways, a trustee of Colleges, &c., as the Legislature have in some few instances done. We have also, I believe, been declared members of the Police Courts in the city of New York. The office of Sheriff for that city, or indeed any other county in the State, might perhaps with as much constitutional propriety have been imposed as some of the duties I have attended to, and had the case been made as I assert it should have been, a reconsideration by the Legislature would have ensued, and the evil of the intervention of the peculiar business of the court been prevented."

Mr. Justice Bronson in giving an opinion in the Court for the Correction of Errors, in a case involving a constitutional question, said:

"We have under a government of laws now (as well to the Legislature as to the other branches of the Government; and if we wish to uphold and perpetuate free institutions, we must maintain a vigilant watch against all encroachments of power, whether arising from mistake or design, and from whatsoever source they may proceed." *Again he says:* "We are not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language." *And again he said,* "If we may get around the clause of the constitution, because it stands in our way, or we do not like it, we may in the same manner get around any other clause in that instrument, and this all hope of fixing the boundaries of power by written instruments will be at an end. In this way a solemn instrument, for such I think the constitution should be considered, is made to mean one thing by one man, and something else by another, until in the end it is in danger of being rendered a dead letter, and that where the language is so plain and explicit, that it is impossible to make it mean more than one thing, unless we first lose sight of the instrument itself, and allow ourselves to roam at large in the boundless field of speculation. For one, I have not venture on such a course. Written Constitutions of Government will soon come to be regarded as of little value if their injunctions may be first flatly overlooked, and the experiment of setting a boundary to power, will prove a failure. If this clause can be so construed it may then, I think be set down as an absolute fact, that the English language is too poor for the framing of fundamental law, which shall limit the powers of the legislative branch of the government." This reasoning of Mr. Justice (now Ch. Justice) Bronson is unanswerable and irresistible.

Mr. Senator Rogers, in the same case said, "To preserve the Constitution is our first duty: and if the legislature has for any cause encroached upon that sacred instrument; or if an erroneous construction has been given to it we are imperatively called upon to declare its meaning and assert its supremacy. Nothing can be more dangerous to free institutions, or to the rights of the people, than to encourage doubtful interpretations of the Constitution, contrary to its more plain and natural import as understood by the great body of its readers. The view taken of this question by Mr. Justice Bronson, should be attentively read by every individual in our State who considers the Constitution worth preserving."

Alexander Hamilton, in reference to assessments said: "Do we imagine our assessments operate equally? Nothing can be more contrary to the fact. Whenever a discretionary power is lodged in any set of men over the property of their neighbors, they will abuse it. Their passions, prejudices, partialities, and dislikes will have the principal lead in measuring the abilities of those whom their power extends; and assessors will ever be a set of petty tyrants—too unskillful, if honest, to be possessed of so delicate a trust, and too seldom honest to give them an excuse of want of skill. The genius of Liberty reprobates every thing arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands. Whatever liberty we may boast of in theory, it cannot exist in fact if assessments continue. The admission of them amounts is a new proof how often human conduct reconciles the most glaring opposites: in the present case the most vicious practice of despotic governments with the freest institutions and the greatest love of liberty."

It was a matter of immense concern in the framing of the fundamental law, to separate the judiciary from every other department of the government. Judges should be kept unbiased. In reference to the judiciary, Judge Hopkinson very appropriately remarked, that "The pure and upright administration of justice is of the utmost importance to every people; the other movements of the government are not of such universal concern. Who shall be the President, or what treaties, or general statutes shall be made, occupies the attention of a few busy politicians; but these things touch not, or but seldom, the private interests and happiness of the community; but the settlement of private controversies, the administration of law between man and man, the distribution of justice and right to the citizen in his private business and concern, come to every man's door, and is essential to every man's prosperity and happiness. Hence I consider the judiciary of a country the most important among the branches of government, and its purity and independence of the most interesting consequence to every man."

In this case the question of taking private property for public use, is involved, for the assessment sought to be collected from General Steiker, the plaintiff in this suit, was in effect, and in fact, taking private property for public use, without compensation, for the land was taken for the Ninth Avenue, and he was called upon to pay for it, and his money was as much private property as the land he was indirectly required to purchase. In reference to that branch of the subject Mr. Justice Story in speaking of the U. S. Constitution, says: "the concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government alone of all other rights would be comparatively worthless, if the government possessed an *uncontrollable* power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of Justice; and how vain it would be to speak of such an administration when all property is subject to the will or caprice of the legislature and rulers."

The Constitution of the State of New-York contains the same provision.

We have taken a wide range here, but it will be borne in mind that we are arguing this matter before the highest authority known in the government—before the people, and before the CONVENTION of the People—before the high dignitaries of the Commonwealth, who are shortly to assemble to form a fundamental law for the government of a body of freemen, for posterity—for millions yet unborn.

SENATOR PORTER'S OPINION.

We printed 6000 copies of the opinion of the Hon. John Porter, Senator from the Seventh Senatorial District, delivered in the Court for the Correction of Errors, in the last number of this paper, but there were some typographical errors in it which were not noticed until the whole number were struck off and the type distributed. We have set them up again with the correction, and it seemed to us that it was very important not to do so, independent of the correction, as the opinion of the Hon. the PRESIDENT of the Court and that of the HON. SENATOR should go together in this connection be given to the public, in order that both should be passed upon together by the people. We shall in a subsequent number continue our review of the opinion of the learned President and for that purpose have appended at the end of each paragraph of his opinion a letter of reference.

The letter of Counsellor Cowdrey to his Honor, Mayor Havemeyer, we said in our last we would try to give in the present number, but we lack space for that purpose, inasmuch as it requires a lengthy review.

OPINION OF SENATOR PORTER.

Delivered in the Court for the Correction of Errors, Dec. 29th, 1845.

GARRET H. STRIKER *vs.* THOMAS KELLY.

The important questions presented in this case are,

1st. Do the Justices of the Supreme Court in performing the duties assigned to them by the New-York Street Laws, "hold any other office or public trust" than as Justices of that Court.

2d. Was the denial of the tax, and an affidavit of it to be made an indispensable prerequisite to the sale of the property, and necessary to be proved.

3d. Was the lease itself sufficient evidence of the right to sell, and did it prevent all inquiry, whether the provisions of the Statute had been complied with.

1st. In respect to the first proposition, the distinction, I apprehend is, whether the new power conferred upon the Supreme Court, is one of a nature that properly belongs to the office of Judge of that Court, or whether it is not one that belongs to another office, or other public trust.

In order to arrive at a satisfactory conclusion upon this question, it is necessary to understand the nature of the office of Judge of the Supreme Court, and of the office which the New-York Street Laws have bestowed in this respect. By recorded decisions, the Supreme Court have determined that in all this class of cases they act as commissioners, and wholly under the power derived from the statutes; that these powers do not exist independently of legislative authority; and are not incident to their judicial office.

In the matter of Beekman Street, (20 John. 271.) Spencer, Ch. J., in delivering the opinion of the Court, said, "It is true we act collectively and in term time, and a majority present control the proceedings; but we act as commissioners, and in the same way and manner as we would, individually, under the insolvent act. The statute is our guide, and we must proceed by the rules and in the manner it prescribes. The general powers and jurisdiction of this court, as regards the application now before us, cannot be brought into exercise." Here we have the Supreme Court saying, not only that they act in these cases as Commissioners, but that they cannot act as a Court; that although the matter is brought by the statute within their jurisdiction; yet that it is a special delegated power, to be exercised according to the statute and not subject to their general judicial powers. As the Supreme Court, they possess no control over the proceedings. Their ample powers are to be used according to the provisions of the common law, for the protection of the life, liberty and property of the citizens, and for the direction and control of all subordinate jurisdiction and tribunals and have no analogy to those of Street Commissioners. The directions of the Statute are to be followed as far as they go, and when they cease, the powers and duties of the judges cease. The case of Stafford vs. Mayor, &c., of Albany, (7 John. 511) proceeds upon the same principle. In that case the statute had granted to the Mayor's Court of Albany, powers similar in many respects to those conferred upon the Supreme Court, in regard to the Streets in New-York. An assessment had been made and confirmed by the Court, and afterwards they attempted to act further, as if the subject matter had been under their control for other matters pending in their Court, they set aside the proceedings for irregularity.

The effect of this order annulling the proceedings in the Mayor's Court, came up in the Supreme Court, and in their opinion, they say, "The proceedings in question do not partake at all of the judicial proceedings. The authority under which the Mayor's Court acted was specially derived from the Legislature, and must be strictly pursued: when, therefore, the assessment was confirmed, the Court had no further powers: they were *functus officio*."

There is no analogy between this proceeding and the judicial proceeding of a Court of Record in the progress of a cause. The Court act quasi Commissioners. In 6 Cowen 572, in the matter of Third Street in New-York, Savage Ch. J., giving the opinion of the court, says, "The Report being once confirmed becomes irrevocable, unless it be voluntarily waived by all parties concerned. We do not act as a Court in these matters, but as Commissioners appointed by the legislature:" And the matter of Canal Street (11 Wend. 155), Savage, Ch. J., again says, "When we are reviewing the proceedings of the Commissioners of estimate and assessment, we act as Commissioners, and when once their report is confirmed by this Court it cannot be opened and reviewed again in the same Court. We cannot set aside those proceedings upon the merits any more than arbitrators can do so, after having signed and published their award."

In the matter of Mount Morris Square, (2 Hill 19) Cowen J., in giving the opinion of the court, and after repeating and confirming the principle above quoted from "matter of Beekman Street," adds, "our powers are likened to those of a Commissioner under the insolvent act. Our award is, therefore, like that of an inferior magistrate having a limited jurisdiction: and we have no power to review it on motion any more than a justice would have to open a summary conviction before him." These cases with others that might be cited, show clearly that the Supreme Court have, from the first time the question arose, deemed themselves as acting Commissioners in these cases: and the argument by which that conclusion is sustained, appears to me to be conclusive.

But it is said that the acts of the Supreme Court in all the proceedings under the laws in question, are strictly judicial in their nature: not that the cases all proceed upon the broad distinction between what the court may do in the exercise of its common law jurisdiction, as the Supreme Court of the State, and what it may do under a special and limited authority, conferred upon it by the statute. I do not feel that there is any necessity for combating the position that the court acts in this respect judicially: for I do not perceive how an admission of that fact furnishes any aid to the argument of the Supreme Court. It is not sufficient that it be shown that the judges act judicially in these cases, for there are many judicial proceedings that cannot constitutionally be embraced within the powers and functions of the judges of the Supreme Court. The proceedings of a Surrogate, or a Recorder's Court, or Courts Martial, are judicial proceedings yet it will not be pretended that judges of the Supreme Court could be authorized by statute to hold either of those courts. Could the legislature give the judges power to hold the courts of justices of the peace and try the issues now confined to those courts without conferring upon them "another office or public trust?" Or could it authorise them to hold the Court of Common Pleas in any county? If it can be said, that because the power is judicial in its nature, it is therefore properly conferred upon the judges, it must also be said that the judicial power in the cases I have mentioned may also be conferred upon them. This will hardly be pretended. The constitution did not confer upon the Supreme Court all manner of judicial power. The general common law powers and jurisdiction of a Supreme Court of judicature of the State are recognized by the Constitution: and it appears to me that when that instrument declares that the judges of that Court shall "hold no other office or public trust," it intends to confine their powers and duties to those that appropriately belong to that high tribunal, and forbids their holding any other office or trust, be the same judicial or otherwise. The design obviously was to confine the labors, services and responsibilities of those who sit in that court sacredly and inviolably to those judicial duties and powers which are inherent in that Court, or which from analogy appropriately belong there, as the highest court in the state of original common law jurisdiction.

Those powers and duties are well understood. They are sufficiently ample and sufficiently burdensome in themselves without adding thereto other judicial powers. I do not deny that the legislature may those powers to new cases: but they must be such as come within the acknowledged scope of its general jurisdiction. It cannot enlarge or abridge its powers. It may authorize the court to perform particular duties that it had never before performed, but they must be duties belonging to its department of the government; to the Supreme Judicial Court in the exercise of its common law powers. They must not only be judicial duties, but they must be such judicial duties as appertain to that court, in the exercise of the jurisdiction of the Supreme Court of Judicature. The clause of the constitution in question is inhibitory, and forbids that any other powers shall be conferred upon the Judges, and that any other duties shall be required of them, than such as belong strictly to the Supreme Court of Judicature. A natural jealousy is therein expressed, and also a will to confine those high offices of the government to the exercise of their appropriate power and duties. If the Legislature can authorize and require the Supreme Court to perform these duties of Commissioners under the street laws, because they are judicial in their nature, what hinders from requiring them to perform a large portion of the duties of the Canal Board, for they are clearly judicial in their nature.

Again, the admitted fact, that these proceedings are not of such a character, that they can be revised until they are brought before the court by a certiorari, and are finally passed upon by the Court, and made a matter of record in that Court: proves to my mind that these judges are performing some other trusts and duties than such as belong to the Court. Indeed the prevailing opinion in the Supreme Court seems to concede that, while performing the duties in question, the Court is the party as an inferior and limited Court." This is also necessarily implied from the fact that it is subject to the command contained in the certiorari to make return of their proceedings into the Supreme Court. This subjection to a review in the Supreme Court can only exist in the case of a subordinate tribunal, and of itself proves that it is a distinct subordinate tribunal. If then the Judges while performing those duties of Commissioners, form a distinct, inferior and subordinate tribunal? it follows necessarily that it must be another tribunal than the Supreme Court. If another tribunal, and the officers composing it are in fact the Judges of the Supreme Court, how can it be said that they hold no "other office or public trust"? While executing that commission they are compelled to lay aside their character, and divest themselves of their power as judges, and assume that of Commissioners clothed with special and limited powers.

There is no difficulty in the same individual holding two offices at the same time. The same person may be first Judge of a county, and also Surrogate of the same county: and he may hold the different courts and exercise the different powers without causing any confusion of ideas, or of business. In the same manner, the judges of the Supreme Court, if not forbidden by the constitution, might sit in and exercise all the powers of any inferior judicial tribunal. But while performing those duties, it would be a misnomer to call that tribunal the Supreme Court. It would be inferior to it, and subject to its supervision and of course not the same tribunal. It cannot in any proper or admissible sense be said to be executing the same "office or public trust." It is possible that these commissioners may possess many of the attributes of a Court, as is supposed by the Chancellor in the case of the President, &c. of Brooklyn, vs. Patchen, (8 Wend. 47.) but the question does not turn upon that fact but rather upon this, whether it is inferior and subordinate, and therefore another.

I cannot, therefore, come to any other conclusion than that the statutes which confer upon the judges of the Supreme Court the powers in question do profess to give them another office or public trust than that of Judges of that Court, and that, as in this respect, they violate the constitution, and are void.

2nd. The statutes (sess. laws of 1816, p. 114, sec. 2) provides that when an assessment shall not be collected "and the Collector shall make affidavit of his demanding the money two several times of such owners as may reside in the city, and that they have neglected or refused to pay, then and in any such case, it shall be lawful to sell." The legality of the sale was objected to on the trial. Among other things for the reason that there was no proof of a demand of payment before proceeding to sell, nor any evidence that the collector had made the affidavit required by the statute. The objection was overruled, and it is now insisted that this defect was fatal to the defence. The answer is, that the same act declares that the lease to be executed to the purchaser "shall be conclusive evidence that the sale was regular according to the provisions of this act." The question then is: Suppose there was in fact no demand or affidavit as required by the act? Does the giving of the lease cure the defect? There are certain cardinal rules on this subject which I could no where better expressed than by Bronson J., in Sharp vs. Spier, (4 Hill 96). He says, "every statute authority in derogation of the common law, to divest the title of one and transfer it to another, must be strictly pursued, or the title will not pass. This a mere naked power in the corporation and its due execution is not to be made out by intendment. It must be proved. It is not a case for presuming that public officers have done their duty,

SUMMARY PROCEEDINGS RELATIVE TO PUBLIC OFFICERS ACTING COLLECTIVELY OR INDIVIDUALLY.

From the Revised Statutes, Vol. 2 p. 486.

"§ 54. Whenever any writ of *mandamus* shall be issued out of the supreme court of this state, the person, body, or tribunal, to whom the same shall be directed and delivered, shall make return to the first writ of *mandamus;* and for a neglect so to do, shall be proceeded against as provided in the thirteenth Title of the eighth Chapter of this Act.

"§ 55. Whenever a return shall be made to any such writ, the person prosecuting such writ, may demur or plead to all or any of the material facts contained in the said return; to which the person making such return, shall reply, take issue or demur; and the like proceedings shall be had therein for the determination thereof, as might have been had, if the person prosecuting such writ had brought his action on the case for a false return.

"§ 56. Issues of fact joined in any such proceeding, shall be tried in the county within which the material facts contained in the *mandamus*, shall be alleged to have taken place.

"§ 57. In case a verdict shall be found for the person suing such writ, or if judgment be given for him upon demurrer or by default, he shall recover damages and costs, in like manner as he might have done in such action on the case as aforesaid; and a peremptory *mandamus* shall be granted to him without delay.

"§ 58. A recovery of damages by virtue of this Article, against any party who shall have made a return to a writ of *mandamus*, shall be a bar to any other action against the same party, for the making of such return.

"§ 59. The supreme court, or any justice thereof, shall have the same power to enlarge the time for making a return and pleading thereto, and for filing any subsequent pleading, as in personal actions.

"§ 60. Whenever a peremptory *mandamus* shall be directed to any public officer, body or board, commanding them to perform any public duty specially enjoined upon them by any provisions of law, if it shall appear to the court, that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer or member of such body or board; and such fine, when collected, shall be paid into the treasury. And the payment of such fine, shall be a bar to any action for any penalty incurred by such officer or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

"§ 61. A writ of prohibition shall only be issued out of the supreme court; and hereafter such writs shall be applied for upon affidavits, by motion, in the same manner as writs of *mandamus*. And if the cause shown shall appear to the court to be sufficient, a writ shall be thereupon issued, which shall command the court and party to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of the said supreme court, and the further order of such court thereon; and then to show cause, why they should not be absolutely restrained from any further proceedings in such suit or matter.

"§ 62. Such writ shall be served upon the court and party to whom it shall be directed, in the same manner as a writ of *mandamus;* and a return shall in like manner be made thereto by such court, which may be enforced by attachment, as herein before provided.

"63. If the party to whom such writ of prohibition shall have been directed, shall, by instrument in writing to be signed by him, and annexed to such return, adopt the same return, and reply upon the matters therein contained, as sufficient cause why such court should not be restrained as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter; and the person prosecuting such writ may reply, take issue or demur, to the matters so relied upon by such defendant, and the like proceeding shall be had for the trial of issues of law or fact joined between the parties, and for the rendering of judgment thereupon, as in personal actions.

"§ 64. If the party to whom such writ of prohibition shall have been directed, shall not adopt such return as above provided, the party prosecuting such writ, shall bring on the argument of such return, as upon rule to show cause; and he may, by his own affidavit and other proofs, controvert the matters set forth in such return. And the court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party from proceeding in such suit or matter, do issue, or a writ of consultation, authorizing the court and party to proceed in the suit or matter in question.

"§ 65. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; if judgment be given against such party, a writ of consultation shall be awarded as above provided."

RICHARD MOTT, ESQ.

The individual whose name heads this paragraph has by his talent and industry accomplished great good in the reforming of abuses in assessments. Bold and fearless in his course, he has marched onward. His extensive examination of assessment abuses have made him acquainted with particular abuses of a very aggravated character, which give to him a power that is irresistible. Mr. Mott is associated with the Hon. J. E. CARY, and have their office at No. 11 Wall Street, Mortimer Buildings.

NORTHERN NEW-YORK.

The present volume of this Gazette will contain an account of the editor's geological exploration in northern New-York, and among the Adirondack Mountains of that region, which are far the highest land in this State. In these mountains the *chayotant*, or gold stone, is found, one of which we have weighing 17½ pounds. This stone has the hardness of the agate, receives the highest polish, and with strong solar or electric light gives out brilliant scintilations, the golden yellow surmounted by a halo of most brilliant green, amidst the most brilliant coruscations of three different colored scintilations united as the surface of the stone is turned in the sun's rays, or exposed in a proper angle to the brilliant coruscations of the lightning's fire, while it is lighting up the dark chambers of the storm. It is a pretty gem—it is beautiful.

THE CASE OF MRS. PIERSON.

Mrs. Pierson, and her children, are the owners of a house and lot on the corner of Pearl and Centre Streets. The husband of Mrs. Pierson, and father of the children, died about the year 1834, leaving this property, on which there was a mortgage, to his family. The annual rental paid the interest of the mortgage and left a surplus for the support of the children. The corporation sold the whole property for the assessment, and she and her children were thus reduced to suffering and to want. The assessment for regulating the street for which this property was sold, was never signed by the assessors. She made application to the Hon. MURRAY HOFFMAN, then Assistant Vice Chancellor for an injunction to restrain the corporation officers from executing the lease. The application was granted, and rightly, too. The Chancellor dissolved this injunction, and he also decided that Mrs. Pierson must pay the cost. Her friend who was security for her, was prosecuted by the corporation officers for the cost, and his property levied upon. He was a hard working mechanic, and suffered by this cruel act of the corporation officers. The Chancellor's opinion in this case is to be found on page 195 of this volume, and deserves an attentive perusal.

INCREASE OF TAXES.

The City Tax has been greatly increased this year, while the State Tax has been decreased. The Natives very improperly asked the Legislature to authorize a big Tax, and their successors, with the aid of the Natives, have expended the money.

BIG ASSESSMENT.

Two lots on 17th Street, near Union Square, 25 feet by 94 feet each, belonging to Henry Parish, Esq., have been assessed the large sum of five hundred and fifty dollars, or eleven dollars the foot, fronting on the Street.

Municipal Gazette.

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STATE CONVENTION.

The Constitution of 1777, denominated the Legislative power vested by that instrument in the Senate and Assembly, "the supreme Legislative power."

The Legislative department of the State Government was not so independent uader the former Constitution as under the present. By the Former Constitution the Gov. could prorogue the Legislature, and send the members home to their Constituents, and he could also in the council of Revision, retain a bill passed by the legislature within nine days of its adjournment and return it with objections on the first day of the next session, or approve it after the Legislature adjourned.

The responsibility rested then upon that department of the Government denominated by the Constitution "the Supreme Executive power."

What is to be deemed a legislative power must be determined by the language of that Constitution which creates the legislative department of the State Government, as duties are imposed upon the Legislature other than those of enacting laws.

The Constitution of 1777, in art. 18, sought to restrain arbitrary legislation; and in art. 3, to provide against hasty legislation. The present Constitution provides no check against arbitrary legislation but the executive is vested with a qualified negative upon the acts of the Senate and assembly, but there is no provision to guard against the hasty approval by the executive of acts passed by the legislature, for on the last day of the session bills are hurried through the two houses in such numbers and sent to the Governor for approval that the executive must either sign them without reading, or return them without signing. If the executive was to carry out the spirit and letter of the Constitution he would direct his private Secretary to prepare a general communcation for him to sign, to accompany all such bills back to the house in which they originated, stating briefly that the nearness of the termination of the session prevented a careful and deliberate examination, and for that reason the bill is returned for reconsideration.

Under the former Constitution the negative upon the Bills passed by the Senate and Assembly was less qualified than under the present Constitution. A bill returned by the Council under the Constitution of 1777, required a vote of two thirds the house in which it originated to overcome the objection and of two thirds the members present in the other house. Under the present Constitution a vote of two-thirds the members present in either house is only required to pass a bill returned by the executive with his objections, although the bill might be of that class which required the assent of two-thirds the members elected to each house, to pass it in the first instance.

The veto power is much discussed in reference to the national legislature, and we think the majority of intelligent men are opposed to any greater qualfication than now exists.

In England, the refusal of the King to sign a bill passed by Parliament, is absolute. In Norway the negative is qualified to this extent: A bill pussed by the Legislative chambers and refused by the King, is an absolute veto for that session but if re-enacted the two succeeding sessions in the same form it becomes a law at the end of the third session without the approval of the King. The Legislative chambers convene but once in three years.

CANDIDATES FOR THE STATE CONVENTION.

It is high time to call public attention to the selection of candidates for the State Convention, as members of that body from the county of New-York. We present the following list of names selected from the three political parties, viz:

James Kent,	George Douglass,
Albert Gallatin,	Abraham G. Thompson,
Jonathan Thompson,	Abraham Van Nest,
Stephen Allen,	Gulian C. Verplanck,
Saul Alley,	Wm. B. Crosby,
Jonathan Goodhue,	Charles H. Russell,
John M. Bradhurst,	Peter Schermerhorn,
Solomon Townsend,	James I. Jones,
Peter Cooper,	Robert Smith,
James Harper,	Murray Hoffman,
Wm. F. Havemeyer,	David Hale,
Burtis Skidmore,	Philip Hone,
Richard Mott,	J. I. Coddington,
Lora Nash,	Theodore Sedgwick,
F. R. Tillou,	Samuel Thompson,
Luther Bradish,	James Donaldson,
Peter Lorrilard, jr.,	Thomas T. Woodruff,
Henry Grinnel,	Elisha P; Hurlbut,
Richard S. Williams,	John David Wolfe,
James Boorman,	Hiram Ketchum.

THE STATE CONVENTION QUESTION.

BY A. B. JOHNSON, ESQ., UTICA.

While history records but little more than unceasing attempts to circumscribe the natural rights of man, and enlarge the privileges of rulers, we occasionally institute the opposite experiment, of how far every man may be left in the unrestricted pursuit of his own happiness, and how far the superiority of rulers may be wholesomely diminished. In about five months we are to pronounce whether another experiment of this nature shall be tried or not. The object is undeniably benevolent, and with the known good dispositions and sedate views of our citizens, we ought not to be too suspicious of evil, miser-like clinging to our present possessions, and from the mere possibility of loss, refusing all attempts at further political acquisitions. The spirit of fair enterprise which leads us step by step to perfection in other arts and sciences, may, if directed to the science of government, lead to results equally beneficial. The good which may be elicited at every trial, will be a permanent acquisition to mankind in all times and places; while the mistakes that may be committed will be corrected by ourselves as soon as they are felt. The experience of all our States in such experiments is full of encouragement for the future, since every attempt has meliorated the condition of the people for whose benefit it was instituted.

Before any man can assume that our present constitution is incapable of improvement, he must believe that the congregated wisdom of the State can suggest nothing which is not already known to him; this too in the face of defects in our judiciary, that oppress every suitor with "the hope deferred, which maketh the heart sick;" and in the face of social inequalities that proceed not from the differences of intellect, health, perseverance, and other inevitable natural causes, but from a difference of priveleges accorded to some men arbitrarily and denied to others. If any citizen wishes to erect a saw-mill, he receives no guarantee that another person shall not erect a rival mill in its vicinity; but when a man has obtained from the Legislature a charter for the construction of a railroad, say from Utica to Schenectady, he has acquired a monopoly of the route, for no person can erect a rival road without like legislative facilities; and no legislative application for such rivalry would be successful in one application out of a thousand. The corporations of such special privileges, are, therefore, about as secure of their monopoly as though the monopoly were an express grant; hence their stocks sell in market at premiums varying from 20 to 30 per cent. or more: while travellers, excluded from the benefit of rival enterprises, are helplessly subjected to virtually unrestrained rapacity; and the result is seen in enormous dividends. Monopolies of this character, directed to numerous pursuits, flood our State; and so corrupting is the power to create such monopolies, and so eager is the instinct of gain to procure them, that as early as the year 1811, Gov. Tompkins prorogued the Legislature, and sent the members home for a season, in the vain hope that the sight of their constituents would arrest a corrupt combination to charter a bank. Gov. Clinton's messages to the legislature are full of evidences that the same corrupting influence was active in his day. From his suggestions, against what is technically called legislative log-rolling, arose the rule that no bill should create or alter more than a single corporation, lest the want of merit, which should preclude the enactment of the bills separately, might induce their legislative fathers to club and pass them all. And in our time, if rumor lies not, some of the members of our legislature, as they journey towards the Capitol to enter on their duties, are occasionally, (when their services are needed to create some new privilege,) surprised by the equivocal courtesy of receiving free railroad tickets. Nor is the corrupting power to grant special privileges, and the corrupting consciousness that special privileges are obtained by favor and friendship, seen in only the coy dalliance of such soft appliances; who cannot see it in the meritorious laws that are annually rejected, when they happen to conflict with existing monopolies; as, for instance, last winter, the railroad from Albany to New-York, and from Utica to Binghampton?—and who cannot see it also, in the laws that are annually passed, when they happen to benefit political favorites; as, for instance, the renewal, last winter, of two bank charters, after years of denial to kindred applications? and what resisted, till the people were weary of asking for it, the mere privilege of sending to and from Albany by railroad the produce and merchandize which the frozen canal cannot convey, and which, when transmitted by railroad, were to pay canal tolls? Let the tariff answer, which last winter the rail-roads established for freight, when they were, at length compelled (not being quite ready to accept this additional branch of lucre) to accede to the wants of the country; but acceded by freight charges so great as "to keep the word of promise to our ears only."

In the year 1821, when our present Constitution was created, the evil of special legislation was sought to be corrected by the expedient of a two-third vote. Experience shows that this has increased the facility of obtaining charters: for Legislators are now, by a spirit of practical concession, induced to help make up a two-third vote, when, had applications depended on the vote of a mere majority, they would have exercised on every question, their personal convictions of duty. Nor, in truth, is the remedy at all adapted to the disease.

Yale College, Aug. 26th, 1845.

E. Meriam, Esq.

Dear Sir,—I am much obliged by the account of the singular freak of lightning communicated in yours of the 20th, and I take this opportunity also to thank you for valuable facts on this and other subjects received through the medium of your paper.

Last Friday night the lightning played some queer pranks in this city, violently assailing two buildings, each furnished with two lightning rods. The enemies of this mode of protection thought they had now got us, for here the lightning struck half way between two rods which were on directly opposite sides of the house. I have some remarks to-day on the case in the New-Haven Palladium, which I will endeavor to send to you.

Your fondness for facts, and industry in collecting them, have already rendered much service to the cause of science and of humanity, and I hope you will continue your useful labors.

Very truly yours,
DENNISON OLMSTED.

From the New-Haven Palladium of Aug. 26th, 1845.

REMARKS ON THE CASES OF TWO BUILDINGS STRUCK BY LIGHTNING ON THE MORNING OF AUGUST 23d. BY PROF. OLMSTED.

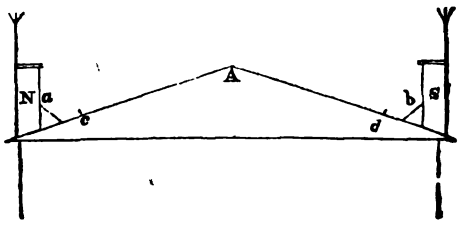
"The *facts* relative to the extraordinary cases of the two buildings struck by lightning during the thunder storm of the 23d of August, have been already laid before the public, and the only remaining inquiry is, *why the lightning rods* (of which there were two on each building) *failed to afford protection.*

"In regard to the dwelling house of Mr. Stillman, which is a building of moderate dimensions, having each of its two chimneys furnished with a conductor, and therefore to appearance, uncommonly well fortified, I cannot doubt that the cause of failure was that already assigned by my respected colleague Professor Silliman,—namely, the fact that the *rods descended into the ground but two or three inches, terminating with a blunt extremity in dry sand.* All the efficacy of a conductor depends upon its furnishing a passage for the lightning to the earth. Were it to terminate at the bottom in a glass bottle the lightning would not touch it. It acts not by *attracting* the electric fluid after the manner of a magnet, but by *conducting* it to the earth; and when the conducting medium is interrupted by the interposition of a non-conductor, a rod of iron loses all its power over a flash of lightning.

"Now, dry sand is almost or quite as bad a conductor of electricity as glass; and in the present case, the rod was almost as effectually prevented from exerting its proper office, as it would have been had it entered a glass bottle. Some have supposed, that the shower which preceded the stroke must have so far moistened the earth as to render it a conductor to the depth of several inches. It must, however, be recollected that previous to the shower the ground was quite dry; that but little rain had fallen previous to the stroke; that when the surface of the earth is in a dry, pulverulent state, rain is but slowly absorbed; and finally that the roots and grass that lie near the surface of the ground, render its conducting powers much inferior to those of the dense earth at the depth of permanent moisture. Hence, all writers on the subject of lightning rods insist upon this point,—that the rods must descend to the depth of permanent moisture,—as one of cardinal importance. In our dry soil, this depth is not less than from seven to ten feet, and a majority of the cases of the failures that have fallen under my observation, have arisen from a defect in this particular; although I have never before met with so egregious an instance of inattention to this point as the present. I would respectfully suggest, that our citizens examine their conductors, and see how far they penetrate the earth, before they confide to them the safety of their families from the attacks of this terrible element. At the same time, it may be well to examine whether their rods are *continuous* throughout, since breaks like the hook-and-eye joints, greatly impair their efficacy; and finally to see that the rod ascends above the *ridge* of the house to a height equal in every direction, to half the distance that it is required to protect. Thus, a rod ascending ten feet above the ridge, will protect a space all around it of twenty feet, and cannot be relied on to do more than this.

"The safety of Mr. and Mrs. Stillman, who were lodging so near the angle of the house which was so violently assailed, I ascribe to the fact that the bedsted was of hard and dry maple well varnished, and thus rendered so good a non-conductor as to insulate them or to cut off their communication with the earth. Had the bedstead been of soft pine and unvarnished, it is not improbable that so dense an electric charge would have sent off a branch through their persons in its way to the earth, unless the floor itself were so bad a conductor as to prevent it. Still, had the bedsted been of *iron*, and in free communication with the earth, they would probably have sustained no injury, since, in that case, the fluid would have followed the metal rather than the human system, being a better conductor.

The case of the *Lancasterian Schoolhouse*, presents more difficulties. The leading facts may be at once understood from the following diagram: Let N and



S represent, respectively, the north and south chimneys, and A the ridge of the house. After a careful examination of all the circumstances, it appears to me most probable, that the lightning did not strike either rod, but struck the ridge at the point A, following the rafters down on either side to the vicinity of the iron braces *a* and *b*, leaped through the roof at two openings at *c* and *d*, entered the braces, and went through them by way of the soot on the inside of the chimney, to the rods, and thence to the ground.

"*Why did not the lightning strike one or the other of the rods, rather than a point in the ridge half way between them?* In the first place, the rods were badly terminated at the lower extremity, one end at the depth of two feet four inches, and the other of only ten inches, the earth being in a very dry state. In the second place, the distance from the summit of the rod to the point of attack was greater than the rule requires. The rods rise about seven feet above the level of the ridge, while the distance from the summit of each rod to the point assailed, is at least twenty-five feet. In the third place, several nails at and near the point A, contributed to determine the charge in that direction, while the power of the rods was too feeble to present an antagonist force of sufficient intensity to divert the charge from its direct course. Had the charge come as near to either of the rods as it did to the point A, it would probably have taken that route; but it preferred, as the medium of least resistance, first to enter the ridge, then to divide into two branches, to follow the nails along the rafters each way to the iron braces, thence to the rods, and finally to the earth.

"On the whole, although there is nothing in these two extraordinary cases, which ought to diminish public confidence in the safety of lightning rods, when constructed according to the rules of science, yet there is enough to warn us not to trust to badly constructed rods, and not to employ incompetent artists in putting up new ones."

We copy the account of another visitation:

From the New-Haven Palladium, Sept. 2d, 1845.

TERIFFIC THUNDER STORM..THE TONTINE AND FOUR OTHER BUILDINGS STRUCK!

"The clouds gathered this morning about 10 o'clk. and in a few minutes a shower drenched the city and the whole neighboring country. It was accompanied by terrific thunder and lightning—three distant explosions at different times causing the earth to quake and tremble. Each of these electrical discharges struck five different buildings in different sections of the city, but happily no lives were lost.

"The observatory and flag-staff on the Tontine received the full force of one stroke. The staff was shivered and thrown in various directions, and the roof, sides and windows of the observatory essentially shattered. The electric fluid descended two rafters, one running north and the other south, and thus passed off, tearing up the shingles. On the north side its

progress is seen in the ceiling in the form of holes near the bell-wires, from whence it descended to the earth through that medium. In the upper part of the house the wires are broken and disordered, and in the basement story, where its effects are again visible, the wires are again broken and destroyed.

"The observatory of the Tontine is elevated some ten feet above the rods on the adjoining chimneys, and the flag-staff twenty feet above all neighboring objects. It is easily understood then, why that should receive the force of the blow, and why the cupola was so shattered in its progress. It is wonderfu. that no lives were lost. A colored man in the garret was left insensible for some time, and another on the stairs below, was prostrated, and as he thought at the moment, his *scull* fractured!! In the basement story, a number of the servants were thrown down, but no one in that crowded house was seriously injured. For a few minutes after the shock, there was a scene of great consternation among the numerous inmates, but when it was found that no one was injured, and that the building was not on fire, their self-possession was soon restored.

"The house of Capt. Samuel Short, situated in Park street, between George and Crown streets, was also struck and very much damaged. There was no rod upon it. The fluid struck the eastern or rear chimney, splitting it to the roof, when it entered the garret, following nails, and reached the floor, which it tore up for the space of eight or ten feet. It descended to a chamber, destroying the wood and plastering in its passage to the stairs, through which it entered to the cellar. Another portion shot off to the front of the house, tearing the window casings, and breaking the windows, together with a mirror hanging between them, when it entered the ground. Our time is too limited to give a minute description of the wonderful effects of the lightning. In some places it perforated the wood as if it had been a bullet.

It should be particularly remarked in regard to this house, that in every rain storm, a large pool is collected in front of it. This water probably invited the lightning down, acting as a cloud to receive the fluid from the surcharged cloud above. In proof of this is the fact that the house directly opposite was struck two summers ago upon the chimney nearest the street, and of course nearest this pool of water which then existed as at present. It is wonderful that no one was killed in Capt. Short's house, A lady was upon a bed in a chamber adjoining the chimney and closet which was so much injured. Other inmates of the family were in the rear part of the house.

"The house of Mr. J. Walton near the Catholic church was also struck. The fluid struck the chimney of the kitchen part of the house, notwithstanding there was a rod on the main part of it about ten feet distant. It descended the chimney, and after scattering some wood about, passed off through a young woman, Miss Walton, who was standing near the fire-place, and cut her shoe open in two places! The shoe has been exhibited to us, and the holes on each side show distinctly where the electricity passed off! She experienced no unpleasant effects from it, except fright, and miraculously escaped instant death.

"We have been informed since writing the above, that Miss Walton, after the shock, exclaimed that her foot was injured; her screams alarmed her parents, who immediately went to her relief. When her shoe was taken off, not only were holes found in that, but four small ones in her stocking, burnt by the electricity. The foot for some hours was affected; her father was also internally affected by the shock.

"Another house was struck in Wallace street. Mr. Henry Bromley, the occupant, informs us that the fluid descended one of the chimneys and down the roof, tearing up the shingles in its course. It ran along the eaves to the conductor, and down that into a rain-water cask. There was no rod upon this house.

"The house of Mr. Russel Hotchkiss, facing Wooster Square, was also struck, but no damage was done.—This is a brick house, defended by rods, yet slight effects of the lightning were found upon the house and the premises, which however we have no time to examine so as to give particulars this afternoon.

"In regard to the Tontine it should be stated that the nearest rod to the flag-staff was distant some forty or fifty feet, and the points of the rod were very rusty. The nearest rod could not therefore have been so good a conductor as the flag-staff, which was so much higher, and which was wet by the shower so as to become a more perfect conductor.

"In reference to the course of the lightning upon the house near the Catholic Church, there is much mystery, as there was a good rod upon one of the chimneys; but the lightning fell upon the other chimney, which had a much less elevation and upon which there was no rod. The soil, however, was very dry, and we have not learned how far the rod penetrated the ground."

In addition we add the following:

The city of New-Haven is often visited by thunder storms. Shortly after the thunder storm on the 23d of August, the New-Haven Palladium published a paragraph stating the remark of some wag, that the lightning was always taking liberties at New-Haven when Professor Olmsted was absent. The learned Professor was absent on the 23d. When the second storm came on the 2d of Sept., but a few days after, we presume the editor was not in a mood to make jest of the lightning of the thunder.

The lightning conductors on the dwellings in New-Haven protected the lives of the inmates—more than this cannot be expected.

We examined a church edifice at Clintonville. Clinton County, New-York, which was on Saturday afternoon the 20th of September, 1845, struck by lightning and injured. This building is constructed of wood, stands on a hill, and has a copula upon it surmounted by a frame work of iron, fancifully wrought, to which is attached an iron rod one inch in diameter, which leads from this iron frame work into the ground. The rod is in pieces, at each end of which a turn is made like a hook and eye to connect the rods together. A few hundred feet from the church edifice, are the large works of the Peru Iron Company, the roofs of which are covered with iron, and within these buildings and around them is a great abundance of iron and iron ore. To the north and to the west the hills are filled with ores of iron, and the surface of the ground is strewed with ore which has been mined. The lightning damaged the church edifice, broke the doors and windows and passed through the building the entire length. A large rock forming the underpinning of the north east corner of the building, and weighing several hundred pounds, was broken and appeared to have been struck by the lightning on its side with immense force. This rock is metallic. We brought a piece of it home but have not yet examined it. Whether the lightning descended the rod until it reached the first joint and then glanced off, or whether it struck the rock first, we were unable after a long and particular examination to determine. The rod terminated in a dry soil. The thunder storm which visited this place led a hurricane through the wilderness from Lake Ontario followed by a storm of hail. Its main path was to the north of Clintonville. We examined during the same tour the lightning rod on a church edifice at Keesville. This rod is led through the inside of the steeple, and is so nicely enclosed that whenever the lightning descends it the building will be most certainly set on fire or rent to pieces

We have thus given a statement of buildings struck by lightning which were furnished with rods.

THE LIGHTNING.

The lightning has been unusually active during the last year. Every month from January to November, both inclusive, have witnessed its operations and we are by no means certain that it did not extend its labors into December, in the neighborhood of Chicago, in the State of Illinois. The same testimony continues to be given by the lightning itself as to its habits and disposition, that we have recorded heretofore, which is, that in no case has a human being been killed by a thunderbolt in a building protected by a metallic rod *of any kind*, reared for the purpose of protection. What mysterious influence is exerted here is not within the province of human science to determine—the fact we know, but the cause is one of the mysteries that pertain to Him whose chariots are the burning clouds.

In our next number we will endeavor to present a synopsis of our record of the transactions of the lightning during the last year in this section of the United States so far as these have come to our knowledge, and will accompany it with a diagram of a building protected by rods diverging from the roof.

ICEBERGS.

In our next number we will endeavor to give a synopsis of our record of the Icebergs met upon the Atlantic by vessels arriving at New-York. The arctic ice has been abundant upon the ocean in southern latitudes ten months of the year 1845, from February to November, both inclusive.

THE COLD.

The frost the present year has presented some facts which are very instructive. At New-Orleans, on the night of the 27th of November the temperature of the atmosphere was below 32°, and ice was formed in great abundance. At Brooklyn at 6 o'clock P. M. of the 26th, the temperature of the air was at 50°. During the day the wind was in a state of activity, and the temperature at 4 o'clock next morning was down to 24°.

At St. Louis, Mo., on the following Sunday and Monday the temperature was at Zero, and at Springfield, Ill., at 14° below Zero. At Brooklyn the temperature did not fall below 33°, nor rise above 36° on either of those days.

At Franconia, New-Hampshire, on the 13th of December the cold measured by a spirit thermometer 28° below zero, and by the mercury 33° below zero, while at Brooklyn at the same time the lowest depression was 13° above zero, showing a difference between Brooklyn and Franconia of from 41 to 46°.

At the foot of the Adirondack Mountains on the Au Sable, we measured the cold on the 22d of October, and found it at 14° above zero, while at New-York at the same time it was 33° above zero.

THE DROUGTH.

During the summer of 1845, some of the districts of North Carolina suffered intensely from drought; also some sections of Orange County in this State, while at the same time Lower Canada and the State of Maine were suffering excessively in consequence of the great abundance of rain.

THE HEAT.

The heat the last summer was unusual. L. W. Conkey, Esq., in a letter to us covering elaborate records of his observations upon the weather at the State Salines at Onondaga, says that the rain which fell there in July was more abundant than usual, yet the drought was more severe in consequence of the great heat. We shall give a synopsis of Mr. Conkey's observations on the weather. They are useful statistics, and he has made these observations with great care, and registered them with great particularity.

LAKE ONTARIO.

In our tour on Upper Canada, in 1844, we selected Gull Island, in Lake Ontario, about two miles from its northern shore, between Port Hope and Coburgh for the establishment of a Lake-ometer, to measure the rise and fall of the waters of the lake, and thus determine whether these changes are periodical, or occasional. We have recently been furnished by the intelligent and worthy keeper of the light on that island with the following official statement of his observations for six years.

REMARKS ON THE RISE AND FALL OF THE LAKE AT THE GULL ISLAND LIGHT HOUSE.

1840..	June 29	2 10
	Dec. 6	9
1841..	April 15	1 6
	Sept. 25..fell 14 inches in 36 hours.	4
	Dec. 7	6
1842..	March 24	14
	June 9	18
	Dec. 6	8
1843..	April 15	8
	May 12	21
	Dec. 9	8
1844..	April 1	14
	May 3	24
	Sept. 23	9
	Dec. 6	4
1845..	March 24	14
	May 12	26
	Sept. 5	14

With heavy gales from the west; a few days there is strong current up the Lake.

N. OWSTON, Jr., L. K.

reported that after leaving St. Lawrence county and crossing the great forest lying between Black River and Lake Champlain, it struck a new village and extensive iron works near Keesville, Essex county, which it entirely destroyed.

We have room only for a few particulars; but these, strange as they may appear, may be relied on as substantially correct. Our informant, Mr. Benton, resides at Fullerville, but 150 rods from the north track, has examined the ground with a view to the facts alone and his statement is entitled to the most implicit belief.

Passing along towards the Oswegatchie river it crossed the road running through what is known as the Emmerson and Streeter settlement, on the west side and distant about a mile from the river. In the track of the tornado on this road stood 16 buildings, all of which, as before stated, were swept down. Among the things carried away from this settlement was a feather bed, since found in what is called 'Pond's Settlement,' sixteen miles distant!

Crossing the Oswegatchie, the next settlement in line of the tempest was the Pitcairn road, embracing ten buildings. Near the north line of the tornado, among the sufferers was a Mr. Brown, who had recently erected a large 40 by 30 feet barn, which he had filled with the products of his farm. This, with his house, was blown down and the contents scattered far and wide. Mr. B. was taken up and carried fifteen or twenty rods, unconscious of the moving power, and was severely bruised upon the head, shoulders and other parts of his body. When he struck the ground he seized hold of a stump and by that means saved himself from further personal injury. His family in the house took refuge in the cellar, and were thus saved. The next house south of Mr. B. was that of Mr. Leonard, in which were two women and five children. Hearing the noise of the tornado and seeing its approach, these also took refuge in the cellar—one of the women last descending was struck by the timbers of the house, and rendered senseless, in which condition she remained nearly a day. It is said that she will ultimately recover. Next to Mr. Leonard's stood another house—the name of the occupant not given—in which was a sick woman with a young child about three weeks old and a young woman named Kinney, who was attending upon her. Frightened by the noise and looks of the tempest as it approached, Miss K. threw herself upon another bed in the same room, when the house was blown down and one of the logs of which it was composed fell across the bed of Miss K. and held the latter fast. The sick woman immediately rose from her bed and by almost superhuman strength removed the log, and thus saved the life of the young lady!

Near the latter house, in the street, was a man driving a yoke of oxen attached to a wagon laden with coal—being from 60 to 80 rods distant from any standing trees. Two large trees were brought by the wind and laid across the wagon, crushing it without injury to the team, or to the man, except the tearing of his clothes and slight scratches of his person. The team was so bound in by the trees and rubbish that it required several hours to extricate them, which was not effected until the Monday following.

A frame schoolhouse standing near Mr. Brown's dwelling, in which were several children and their teacher, was moved entire from its foundation, without injury to its inmates. A hemlock tree, said to be from two to two and a half feet in diameter, standing on the west side of the Oswegatchie, was taken up whole and deposited on the coal job on the east side of the river, distant two miles! A log school house in the town of Edwards was taken over the heads of the scholars—every log, down to those on which the floor timbers rested—carried away without injury to its inmates.

The village of Fullerville is situated on the Oswegatchie, about 150 rods distant from the north line of the tornado. Its citizens had a full view of the storm as it passed, and were consequently enabled to judge of its force and appearance. At this place, although out of the track, its force was perceptibly felt. A grist mill, the timbers of which in the lower story are from 20 inches to 2 feet square, rocked to its foundation.

Immediately following the tornado was a storm of hail, some of the stones as large as hen's eggs, severely lacerating the cattle exposed, as they fell.

We have thus briefly described the effects of the storm in eight miles of its length; we are not in possession of sufficient data to state accurately its effects after it left Benton & Fine's Tract, in the town of Edwards. But as the great eastern forest borders on the latter line, it is not probable that any considerable damage was done, except to standing timber, until it reached the inhabited parts of Essex county."

From the Plattsburgh Republican.

At Union Falls, in this county, it emerged from the forest, making a complete wreck of many of the buildings in that place, and for a distance of twenty miles in a northeasterly direction, over a tract from 80 to 100 rods in width, it swept everything before it—trees, fences barns and houses were levelled with the ground. Duncan's forge was considerably injured, the chimneys blown off even with the roof, and several out buildings destroyed. The brick school house near the Travis forge in Peru was utterly demolished, and the brick dwelling of H. N. Peabody, near by, was partially destroyed. We hear of two houses that were blown down over the heads of the inmates, and it is most extraordinary that no lives were lost. Some 15 or 20 buildings were destroyed or injured in that vicinity by the wind, which committed no further depredations until it reached Burlington, where it unroofed the house of Mr. Moody, blew down some barns, &c. It struck the Steamer Burlington near Fort Cassin, but she braved the storm handsomely, suffering no greater damage than the loss of some loose deck plank, which were picked up miles from the shore.

Extract of a Letter from Clark Rich, Esq. to Eben. Merriam, dated Shoreham, Vt., Oct. 13th, 1845.

"On the evening of the 20th of September we had the most majestic display of lightning I ever saw. Many other elderly people say so. The upper part of a dense cloud, coming slowly from the north west was almost constantly lighted up with flashes and spangled streaks shooting in every direction, upwards as often as otherwise. Occasionally the lightning would streak to the ground. As it approached the thunder commenced its roar, and increased without intermission until it passed by me. Just before the rain commenced, there was a narrow black cloud directly over me, so dense that I could not see the lightning through it, but the light from the flashes were very vivid on each side of the cloud. The beauty of the scenery was before and after the shower passed. The latter I did not notice."

We visited the pathway of this storm in October last, and made particular examination of its operations. At Clintonville, on the Au Sable, the lightning struck a church edifice, a notice of which will be found in another column. At New Sweden, the lightning struck a barn, set it on fire, and which was with its contents wholly destroyed. This storm was led by the lightning with a chain of fire enclosed by a cloud of dismal blackness filled with broken fragments of rocks of ice, attended by a furious wind which roared like a mighty cataract, amid peals of deafening thunder which kept almost a continuous crash as its fiery bolts fell from cloud to cloud, ever and anon lightning up the dark chambers of the storm with vivid coruscations—thus making the blackness of darkness doubly visible. When this storm was first seen emerging from the wilderness at Union Falls, it appeared to be descending from a higher region in the amosphere. Had this storm visited the great metropolis of the state, with the same force that it did its wilderness, how fearfully awful must have been its work of destruction—but it was guided by that Being who holds the wind in the hollow of his hand, and who has made "a way for the lightning of the thunder."

This storm followed the mineral strata that is embeded in the earth, its whole path.

The pathway of the storm in the wilderness is an instructive page to study—to contemplate—for it is written by a pen guided by the tempest, and is witnessed by the lightnings fire, amid the reverbations of

the thunder's awful crash, and the whirlwind's terrific roar—when it breathes its breath of fire—presenting a record when viewed in the regions of profound solitude in the midst of the stillness of silence that is overwhelming—bowing down the pride of man and at the same time lifting up his soul and leading it to the spontaneous offering up the homage of adoration.

THE AGE OF THE WORLD.

Mankind are wonderfully prone to disbelieve the record of time, and the only record extant, a record of indisputable authenticity, given to man by his Creator—by Him who made the world.

The gigantic bones which are found beneath the surface in numerous localities are brought forward as evidences of the existence of a previous world. The Book of Job, written but about 3300 years ago, treats of the Leviathan and Behemoth as then alive. This record is therefore sufficient upon this point, and although brief, is nevertheless particular.

The uninhabited, or thinly inhabited provinces of the Empire of Brazil swarms with countless herds of wild cattle, the offspring of stock imported thither from Europe within 250 years; and on Van Dieman's Land are numerous herds in the forest, the original stock of which were imported from Europe.

Our own Continent, or rather that section of it which now composes the United States, beyond 250 years ago was a perfect blank on the page of history.

There are vast and extensive sections of the globe yet unexplored, and our continent presents in its greater surface, a vast and uncultivated wilderness.

When the solar orb sent forth its first morning rays upon our earth, there was no human eye to behold the newborn light, yet it was not unseen, nor unrecorded. He who made it, beheld it, and pronounced it good.

THE STRANGER'S GRAVE.

It was near the close of a Sabbath, in the month of May, in the year last past that I came to a solitude on the bank of a pond, in the edge of a vast wilderness, where I found planted a "Strangers Grave." The wind was blowing its chilling blasts across the inland sea—the waves were dashing their murmuring waters upon the rocky shore—the trees that stood upon the banks were vocal, for the wind whistled through the bending limbs which were not yet clothed with newborn leaves—those of the previous year were dead. At a little distance stood a grove of mountain spruce, and beyond it, was a mountain avalanche that had torn a ragged path in its descent from its lofty bed—near by was a cabin, built of logs, which had once been a habitation, but is now a ruin. On a little knoll, near by the place we stood my companion pointed to a little mound of earth—a new-made grave, and added, that "a Stranger was buried there; none knew with certainty his name, or from whence he came." The lifeless body was brought to the shore of a little island in the pond by the wind and waves; there it was found by some persons who were fishing in the pond and brought to this shore, near where it lies buried, after an inquest had been held upon it.

Some supposed it was the body of a man who had been murdered and thrown into the pond, for the body of a wagon was found washed up upon the shore: others supposed it was the body of a man whom sorrow and trouble had bereft of reason, and who in that state of suffering had escaped from his friends who resided in a county on the opposite side of the wilderness, and had drowned himself in this pond, after a long wandering in the wild woods, bewildered, solitary, and alone. After the account of the finding of the body was published, a lone female journeyed hither from a distance of more than a hundred miles. She had lost a husband who had once possessed an active mind and a warm heart, misfortunes had overtaken and overwhelmed him, and made his mind a ruin; in a frenzied moment he fled his home, his friends, his fireside, and became a wanderer, she knew not where. She came to see this grave—and moistened its new-made sods with a mourners tears, for she was almost satisfied it was the grave of her dear fond husband. As I stood viewing this ground, my companion related to me the particulars I have narrated. The grave was in the path we were walking, but I turned and walked around it, for I did not like to tread upon human ashes—upon dust that is to become clothed upon with immortality, when those who are in their graves shall be awakened by the trump of the Resurrection morning.

I said it was at the close of a Sabbath day, in the wilderness, a day more revered here than in the busy walks of men. Here is impressive scenery—a majestic mountain lifts its venerable head to the very clouds, where the thunder rolls its fiery bolts—and the waves of this pond bathed the rocks of its foundation with the very fluid in which "the Stranger" made the bed of death.

Near the Stranger's grave is a limbless tree, its top has been cut from the trunk by the axe of the hurricane, and on the broken point was a little bird which often sings at midnight on the borders of the wilderness, and indeed at intervals throughout the night—this bird was singing a mournful song—every five or ten minutes it would thrice sound its mournful notes, and was again silent. I have heard this bird no where else but near the Adirondack Mountains.

No chisseled stone marks the place where the Stranger's grave is planted, but it has a more enduring *memento* which is impressed upon the very atmosphere that rests upon it. Parents will tell to their children the fate of the lone wanderer in the wilderness—they will point to his grave, and thus from generation to generation the place of sepulchre will be marked and its locality remembered.

Many years ago I passed in the wilderness, far from any human habitation, a solitary grave. I was alone, and from the time I came in sight of the thus consecrated ground, until I was far beyond, I checked the speed of the horse I was riding and went slowly past the last resting place of a brother mortal. It was an impressive path to travel, for it was shaded by the gates of another world.

I have been accustomed to the salutation of "Stranger," in extensive travels in a section of the country where a stranger always found favor, from the very reason that he was far from *home*.—"Stranger" was here a sacred name—when I have alighted, at the close of a hard day's travel, in stormy weather, at the gates of hospitality, and heard the kind welcome, "Come in Stranger and be seated, for you must be both weary and cold," I felt that kind words that came from a warm heart, were sweet indeed, and that tenderness of expression from the lips of a kind host, a rich solace to a weary traveller in a stranger land and one of those comforts which may be called a blessing.

My mind has been awakened to these remembrances by reading a notice that "Albany Street" is to be opened through Trinity Church yard, New-York, and also by reading a majority report of a committee of the Board of Assistant Aldermen in favor of the measure which excuses the desecration of the ground of that portion of the graveyard required, is that only in which "strangers" are buried. "Ashes to ashes—dust to dust," until the morning of the ressurrection of the dead, is an emphatic and solemn annunciation of the ministering servant of the Most High when he stands over the closing grave of a fellow mortal; and the forcible and solemn language of the patriarch Job, when he declared that although worms should destroy his body, yet in his flesh he should see God, is so impressive that there are very few who attentively read the sacred scripture, that have not both read and remembered this sentence.

In early time the grave was regarded as a sacred place. Abraham purchased the Cave of Macpelah, for the repose of the remains of his beloved consort, and his body was at the time of his decease carried to the same grave. Jacob, 200 years after the burial of Sarah, was carried by his son Joseph out of the land of Egypt and entombed in the same sepulchral chamber. Joseph of Arimathea left on record a sweet remembrancer in the kind provision he made for the repose of the body of the King of Heaven, while it lay in the sepulchred chamber during the period fixed for its rest by the King of Kings.

On the day of the crucifixion, many that had been long in their graves, arose, and appeared among the living.

Lazarus was raised from the grave in which he had been for some time buried.

Silence, solitude, impressive and instructive solemnity mingle in the atmosphere that rests upon the sepulchral chambers of mortality, and the willow that droops its branches over the sleeping ashes, and the cypress that stands sentry over the consecrated spot, have each an expression which those who go to meditate among the tombs, find to be living preachers to their souls.

Over the stranger's grave in Trinity Church yard, are to be seen the weeping tree—a memento, nourished by nature—fed by the golden rays of the morning sun—when the sacriligious axe shall be laid to its roots, its sound will echo from the hollow chambers beneath with an awful reverberation, for the echo will be from the tomb—the silence of which is thus broken—and when the sacriligious spade shall be driven into the ashes of the terrestrial urn, and these thrown to the winds and borne upon their wings to the chambers of the living, to be gathered to their bosoms in the air they breath——I pause—for my pen trembles while it marks down the emotion of the human breast. It is night—and darkness is thick and heavy—there is silence—in its midst I arose from my pillow to make this memorandum of my thoughts for they came not unbidden to the chambers of the mind.

The Lake of Sodom, where once stood the cities of Sodom and Gomorah, is now a deadly pool—no human being has ever navigated its waters and survived the impious deed three days afterwards. It is the *memento* of an awful judgment. High heaven has decreed it so.

The dissecting knife which wounds the operator when mangling the body of a fellow mortal, gives a deadly stab—death follows the slightest scratch that stains the knife with blood.

The dissector pleads his desire for the welfare of the living as an excuse for violating the resting places of the dead, but the statutes have declared the act to be sacrilege, and pronounced the removal of mortal remains for such a purpose, a crime.

The fields of Waterloo have been desecrated, the ashes of the dead have been carried away to manure the fields—to increase the products of vegetation—*and what do we hear?*—that famine threatens the land, for the food of man is poisoned—a disease, malignant and extensive has seized upon vegetation.—Need we look for a cause beyond what we already know—need we wonder that judgments fall upon us while we know full well that we have, in our acts, denied a safe resting place to the treasures of the grave, and torn the sepulchral chamber from its foundation.

AWFUL VISITATION.

Bark Bayfield, John Lucas, master, from Liverpool, for the Bonny River, on the West coast of Africa, with a cargo of ***gunpowder, spirits,*** &c., was struck by lightning on the 25th of Nov. last. The mate and the whole of the crew, then on deck, were knocked down by the force of the electric fluid, and soon afterwards it was discovered that the vessel was on fire directly over the magazine; after using all exertions to suppress the fire without effect, the crew were compelled to take to the boats. They were unable to save any water or provisions, and in this pitiful condition steered for Sierra Leone, then distant about three hundred miles, which port was reached after being nine nights and eight days in open boats, without water or other necessaries, and having lost three men by starvation.

PEACE.

The United States have enjoyed uninterrupted peace with the other nations of the earth, for a period of upwards of thirty years. From the termination of the revolutionary war to the commencement of the last war, was a period of about twenty-nine years. The war of the revolution lasted about seven years, and the last war with Great Britain lasted near three years; thus we have in the four periods named an aggregate of about 70 years, during which time our people have been engaged in war 10 years, or *one-seventh part of the whole time.*

direction, together with the 8 to 12 feet elevation of the tide, great advantages are presented for drainage, such as I fear New-York can never possess, although Brooklyn might be made to. In conversation to-day with the superintendant of a Sewer constructing in Fleet Street, he told me that a descent of 1 inch in 10 feet was considered large, and that 1 inch in 20 feet would suffice without flush gates, which are used as you know to create a current by holding the water. I found this individual very much disposed to communicate his knowledge on the subject, and he finally concluded by offering me the loan of a pair of boots adapted to the occasion if I would go down this afternoon and take a walk with him through some of the Sewers! an offer which I politely *declined*.

I send with this a London paper of Oct. 1st, containing an article upon the recent Parliamentary enquiry into Drainage, Ventilation, &c. I hope to procure one of the reports upon the subject made to Parliament by the Commission that made the investigation.

The pavements most approved here now, are of stone presenting a surface of 3 inches by 6 to 8, and about a foot deep; these cause less jarring to the wheels than those heretofore used, which were nearly square upon the surface. To lay them down cost about 2.50 per square yard.

The Fire Insurances are higher here than with us, considering the small risks—the price is much enhanced from an injudicious *stamp* charge on policies, which an effort is now being made to have abolished.

I have not as yet been near any of the Salt works except those on the coast of France, which were much impeded by the rains of the summer, so that the price of the article had risen much. At Salines, where are the springs in the east of France, the water is carried in conduits 15 miles to a forest where it is allowed to deposit its sediment and then is evaporated. This is equal to the plan that the Oswego people once proposed of having the *water* of Syracuse thus carried to the woods of their neighborhood, instead of carrying the *wood* to the *water*.

You can scarcely imagine the excitement here in regard to Railroads: wherever in Europe they are *constructing* the Magnetic Telegraph is combined with them. The Exchange of London and Paris are drowned with the clamor of the Brokers selling the projected road shares. Iron must for some time feel the effect of this rage, as roads are here constructed 300 ton a mile is wanted. Great Britain makes 1.500,000 tons this year.

When I meet you again, which I hope will be soon after the receipt of this, I may be able to communicate some information of a more definite character upon the topics on which I have just *touched* here—till then adieu.

SOLOMON TOWNSEND.

E. Meriam, Esq.

We are indebted to Mr. Townsend for the following extract from the log of the Great Western on his return passage.

Ship GREAT WESTERN, towards New-York.

1845.	*Lat.*	*Long.*	*Dist.*	*Air.*	*Water.*
Oct. 12th	52 16	6 00	150	00	00
13th	51 16	9 56	158	58	54
14th	51 03	14 24	168	55	52
15th	50 55	19 09	178	57	53
16th	50 37	22 50	140	53	55
17th	51 00	26 14	129	57	54
18th	51 03	30 25	158	52	53
19th	50 06	35 09	189	52	53
20th	49 08	39 01	160	57	56
21st	48 22	43 38	190	58	50
22d	47 34	48 23	198	42	43
23d	46 26	53 09	206	38	45*
24th	45 25	57 22	186	54	48
25th	43 28	62 34	253	48	52
26th	41 05	67 03	244	56	50
27th	40 35	71 39	216	62	54

2923
112 S. Hook west at noon.
3035 miles.

264,809 times the wheels revolved.

* Wind and Snow, Cape R., N. by E., noon 13.

Extract from London Globe of Oct. 1st, 1845, refered to by Mr. Townsend

"In considering the probable results of the late inquiry into the sanitary condition of our large towns and popular districts, we have one chief source of apprehension—that, in applying remedial measures, too much reliance may be placed upon mere legislation. For effecting the most important of the changes in the internal economy of crowded districts recommended by the Commissioners, there are but two available methods. Either the inhabitants, and others immediately concerned as individuals, must be persuaded voluntarily to adopt and co-operate in effecting the proposed measures, or adequate compulsory powers must be vested in some authority, disposed and competent to effect them in a proper spirit. In availing themselves of either of these methods, it is to be remembered that defective drainage and want of ventilation do not accompany the habitations of the poor because they are either agreeable to the tenant or profitable to the landlord. They are nothing more than the particular form assumed in England in the 19th century by incidents common to the condition of those who have reached the stage of civilization now occupied by the bulk of our population. Three centuries ago the personal habits of the highest classes in this country were scarcely in any degree superior to those which, when described as now actually prevailing in the courts and alleys of our large towns, excite the astonishment of most and the pity of all.

"A large section of the population—embracing all the most intelligent and influential persons in the country—is, it may be said, much improved in this respect. But how is the influence of this section to be brought to bear most effectually and beneficially upon the rest of the community?

"We are already far advanced both in a knowledge of what is wrong and of the means of setting it right. This the labours of the Commission we have referred to have done much to achieve. And to the influence last mentioned we must undoubtedly look for the chief if not the only means of usefully applying this knowledge. But we fear this influence will be found but weak if exerted through no better medium than Parliamentary debates and restrictive statutes, or the noisy discussions and arbitrary municipal regulations of corporation committees.

"On the other hand, mere exhortation is not likely to have much effect. The landlords of small houses will still claim the right to do as they like with their own; and may be expected very generally to resist every change till it is proved not only to be harmless, but to be attended with some positive advantage to themselves. Where the owners of such property in large towns are not themselves closely allied in habit and feeling with their tenants, they usually intrust its management to agents who are so, and have as little personal acquaintance with its condition as the merest stranger. Yet it is to the landlords alone that any appeal can be made. The tenants can seldom be brought to desire, and never found able to effect the requisite structural reforms.

"That the practice of building houses for the poorer classes which it is impossible by any ordinary means to ventilate, still continues, may be proved by a walk through the outskirts of any growing town in the kingdom. Even in the new town of Birkenhead, nearly the whole of which has been built within a very few years, may be seen rows of small houses lately built back to back, and facing into narrow courts in a manner specially reprobated by the Commissioners as having been found almost entirely to preclude the access of fresh air. Yet in the same locality, not only is the gross impropriety of this and similar practices well known, but ranges of houses for the families of laborers have actually been built—under the direction, we believe, of the Dock Commissioners—exhibiting all or the greater part of the simple and economical improvements of construction recomended in their reports.

"To effect the desired changes by operating upon public opinion, through the only method likely to be effectual in the end, must necessarily be a slow process; and nothing, we fear, but untiring energy and perseverance on the part of those intrusted with the task, can be expected to produce any material result. In the mean time, nothing should be left undone by the legislature in the narrow field, properly open to its influence. Drainage, and the supply of water, being now commonly brought under the management

either of the local authorities or of public companies, may in many cases be improved and extended with facility and advantage, and without much interfering with individual interests or prejudices. Ventilation offers other and more serious difficulties. But even here something may be done, both in actual improvements and in their extension by example. Public buildings, churches and schools may be so constructed or altered as to admit of safe and complete ventilation. Arrangements should be made for securing at all times to those who frequent them, an adequate supply of warmth and pure air. We do not doubt that the effects would soon be visible. The added health and comfort would be felt and appreciated—the cause would be considered, and in time properly valued. Let a taste for pure air once begin to prevail, and the means of gratifying it would soon be found.

"We cannot perhaps, better illustrate both the need for improvement and the scope afforded to it by the condition of *public buildings devoted to popular purposes*, than by reference to Dr. Reid's report on the state of the *Northern Coal Mine District*. The *neglect* is here the more striking as the popular attention must be constantly directed to the value of fresh air, in connection with the mines, and the abundance of cheap fuel renders perfect ventilation comparatively easy in all cases. "The same defects," we are told, "that prevail almost universally in the public buildings in other districts, are equally conspicuous in the public buildings in Newcastle, Sunderland, and other towns in the North of England."

"Churches with galleries near the ceiling—schools receiving vitiated air from other schools—one with vaults below it for the reception of dead bodies—and cases of recently erected buildings without a single aperture for the ingress or egress of air beyond those which doors or windows afford, all attest that, even in this mining district, the ventilation of public buildings has assumed no regular or systematic shape. Out of ten churches, chapels, and meeting houses in Sunderland, two bad been the subject of special arrangements for ventilation.

"In few places, for the most part, could ventilation be improved with greater facility than in churches.

"But in no public buildings does systematic ventilation appear to be so desirable as in schools, where the long period spent in them, as well as the age of the pupils and the numbers so often crowded in a given space, renders them peculiarly prone to suffer from a stagnant atmosphere.

"In an infant school in Durham, to which my attention was directed by Mr. Fox, 30 children out of 90 were absent from illness (scarlet fever). There were no means of systematic ventilation; a slaughter-house and a piggery were noticed opposite the principal window." . . . . . .

And again—

"If any buildings should be subjected to inspection in reference to their arrangements for ventilation, school-rooms pre-eminently present themselves for consideration, not only from the powerful effect which ventilation must have upon the health of pupils, but also from *the influence which the maintenance of a pure atmosphere, and the example of the simple manner in which it may be sustained, must exert in disseminating widely throughout the whole community a practical knowledge of means that are equally applicable to the habitations of the higher classes and the dwellings of the poor.*"

STATE OF PRISONERS ON BLACKWELL'S ISLAND.

The Sessions Grand Jury have presented the following communication to the Mayor, on the above subject. January, 1846.

To His Honor, William F. Havemeyer, Esq., Mayor of the City of New-York.

The Grand Inquest most respectfully submit, that in the prosecution of their duty, they have visited the Alms House and Prisons during the present session, and found them very crowded, as is generally the case at this season of the year. The Jury however were much pleased with the cleanly manner in which these establishments appear to be kept.

The Grand Inquest desire to call the particular attention of your Honor to the situation of one of the buildings called the *Luna House*. It is situated on the west side of Blackwell's Island, near the Penitentiary, is built of stone, 75 feet long, 35 wide, and three stories high; the lower story is used as a blacksmith's shop, the 2d and 3d are occupied as prisons, where the most miserable objects are confined. They are persons committed by the Police magistrates under the Vagrant Act, and more or less are sent up every day from the city. There were nearly 200 men confined in the two rooms the day the Grand Inquest visited the place, and the keeper and physician advised the Jury not to go in the building, on account of the vermin.

The inmates were directed to be brought out, and it is impossible to describe their miserable condition; a great many too are idiots, and the remainder either lame or diseased and covered with vermin.

Part of the jury visited the interior of the building, and found there were neither *beds* nor *straw;* nor was there even room on the floor for all these wretched people to lie down, at the same time.

The keeper informed the jury that there were, frequently, 250 persons confined in these two rooms; there being no place to put them in, and in consequence of this state of things, it is almost impossible to prevent them from quarreling and fighting.

The jury are unanimously of opinion that no time should be lost in alleviating the sufferings of these unfortunate beings, and they request of your Honor specially to advise the Common Council of the necessity which exists of an additional building to be erected with suitable accommodations, without delay.

Opportunity will then be given to classify these persons, and produce more cleanliness, order and regularity in the establishment, and the great object of society in providing these institutions, and the cause of humanity, will be in a greater degree promoted.

HENRY ERBEN, Foreman.

Jos. B. Brewster, Secretary.

DO THE CORPORATION OWN THE FEE OF THE STREETS?

Extracts from the Opinion of P. A. Cowdrey, Esq., Counsel of the Corporation of New-York, communicated to the Common Council, Feb. 24, 1840.

Doc. No. 54 of the Board of Aldermen.

"Have the Legislature of the State and the Corporation of the City, combined, the power to grant the authority conferred by the Acts above referred to?

"The streets and highways in the City of New-York, may be divided into two classes, one including such of the ancient streets as were in use prior to the passage of the law of 1807, (30 Sess. Chap. 115,) and the other of those which have been laid out under the provisions of the last mentioned Act. As to the first class, there being no statutory provision vesting the fee in the Corporation, but only authorizing the land to be converted to and used for a public highway, (Sess. 30, Chap. 61, Act March 21st, 1789,) they are governed by the rules of law applicable to other highways. These rules are that the fee to the centre of the road or street, belongs to the owner of the adjoining ground, and that the public have only a right of passage.

"This is the acknowledged doctrine of the common law, and is sanctioned by the decisions in our own state, and in others of the Union. (1 Burrows, 143; 19 Wend., 675; 11 Wend., 502; 8 Wend., 107; 1 Wend., 270; 1 Cowen, 238; 6 Mass., 456; 1 Pick., 122; 1 Conn., 105; 1 Yeates, 168; 9 Sarg. & Rawle, 31; 1 New Hampshire, 16; 3 Kent's Comm., 432.) This doctrine is carried so far by the authorities above cited, that the adjoining owners are held to have the exclusive right to the soil, while the public have only an easement or right of way—and that being such adjoining owners, they may maintain ejectment for any encroachment upon the road, or trespass against any person who digs up the soil of it—and that they may have every use and remedy, consistent with the right of passage in the public and with police regulations.

"As to the other class of streets, laid out under the law of 1807, and the revision thereof of 1813, (2 R. S., 414,) on the confirmation of the Commissioners' report, the Corporation become seised in fee of the land required for the streets,—"*in trust nevertheless* that the same be appropriated and kept open for a public street forever, *in like manner as the other public streets in the said city are, and of right ought to be.*" The streets last mentioned are opened by levying an assessment for the value of the land taken, and for the expenses thereof, upon the owners of the adjoining and contiguous property. The Corporation take the fee; but the owners pay for it. While therefore, the public at large have the right of using the street, because of its character as a common highway, the individual owners from the inherent right, resulting from their purchase and from the intrinsic character of their property, have a special interest in the street itself, as incident to their ownership of the adjoining land, and deprived of which, the land itself would become comparatively valueless. The streets in our city are opened, not only to subserve the ordinary uses of the public, but also and more especially for the benefit of those who thereby obtain a front upon the street, and at whose charge such street is made.

"In a very late case decided in Kentucky, (8 Dana, 294,) and particularly referred to hereafter, Chief Justice Robertson, whose opinions are of acknowledged authority, says, "The title to lots, contiguous to a public street, carries with it certain services and easements, almost indispensable, and as inviolable as the property itself, and the owners have a peculiar interest in the street, to which neither the local nor general public can pretend—a private right, of the nature of an incorporeal hereditament, legally attached to their contiguous ground, and without which, the property never would have been bought by them."

"The laws of our own state fully acknowledge this right, by providing that on closing a public street, the adjoining owners shall be paid the damages which they thereby sustain.

"We have thus seen, that as to the ancient streets and roads of the city, the fee remains in the adjoining owners, subject to the right of passage in the public, and to police regulation.

"That as to the new streets, the fee is vested in the Corporation, subject to the trust of "appropriating and keeping them open, in like manner as the other streets are and of right ought to be"—and that in this trust the adjacent owners have a special property.

"The Constitutions of the United States and our own State, provide that "No person shall be deprived of his property without due process of law, and that private property shall not be taken for public use *without just compensation.*"

"This provision is founded in natural equity, and is indispensable for the protection of private property.

"In 11 Wend., 151, the Supreme Court say that "the Constitution, by authorizing the appropriation of private property for *public* use, impliedly declares that for any other use, private property shall not be taken from one and applied to the *private* use of another. It would be in violation of natural right, and of the spirit of the Constitution." And in 19 Wend., 676, they say, "Our Constitution means that the Legislature should have no power to deprive one of his property and transfer it to another, by enacting a bargain between them, unless it be in the hands of the latter, a trust *for public use.*"

We have thus copied from this official document, and from the opinion of the learned Counsellor, a distinguished Corporation functionary and we have now a question to ask: What right have the Corporation to sell land under ground for Street vaults to those who already own it?

We shall hereafter review the opinion of the learned Counsel.

CHAPEL STREET SEWER.

The Corporation have agreed to pay Mrs. Flenders Five Hundred Dollars for the injury done her property by the Thomas Street Sewer, built at the same time and connected with the Chapel Street Sewer. The amount should have been five thousand dollars instead of five hundred.

Alderman Tillou has written a long criticism upon the Chapel Street Sewer Report, made by him and other members of the same committee prior to his embarkation for Europe, and printed in his absence. Alderman Tillou insists that printing was not properly conducted. We presume his remarks will be printed and extensively circulated.

The persons owning property upon Chapel and Thomas Streets should be paid one hundred thousand dollars at least, for damages done to their property by the destruction of the former sewer and the misconstruction of the present sewers.

every lot or parcel is separately valued, according to its local situation and advantages.

The following is a summary of the amount of each class, and will show the several and grand totals of the whole amount:

1.	Houses and Lots productive	405,200.00
2.	Lands and Buildings used for Public Purposes	1,731,036.62
3.	Productive Property at Brooklyn	62,150.00
4.	Unproductive do. do	1,950.00
5.	Ferries, including the necessary wharves and Piers,	122,000.00
6.	Common Lands productive	119,150.00
7.	Common Lands unproductive	37,800.00
8.	Common Lands payable in Wheat	2,650.00
9.	Common Lands, perpetual leases, rent payable in Coin	1,260.00
10.	Public Wharves, Piers and Slips	842,257.50
11.	City Lots, Rent payable in Wheat	5,200.00
12.	Personal property	65,564.00
	Grand Total	$3,396,218.12

(Signed) STEPHEN ALLEN.
JUDAH HAMMOND.
SAMUEL TOOKER.
BENJAMIN CRANE.

Public Purposes.—Almshouse, City Hall, Jail, Bridewell, Markets, Park and Bowling Green.

Description of the Property.	Valuation.
New Almshouse, Penitentiary, Dwelling, &c. &c. at Bellevue, cost for the building	415,233.18
Twenty-eight acres of Land belonging to the same, including the Avenue and Streets, valued at $2,000 per acre	56,000.00
City Hall	528,634.31
Debtors' Prison	10,000.00
Bridewell	12,000.00
Fly Markets	9,000.00
Catharine Markets	4,500.00
Gouverneur Market	350.00
Grand Street Market	500.00
Essex Market	475.00
Centre Market, including a triangular piece of ground fronting on Grand, Rynders, and Orange Street	6,200.00
Washington Markets, and the piece of land on which they are erected	79,714.13
Spring Street Market	400.00
Christopher or Greenwich Market, and the ground given by Trinity Church for a Market	2,000.00
Duane Street Market	2,500.00
Old Almshouse and the Stable	20,000.00
The Park, comprising all the land east of Broadway and west of Chatham Street, and south of the south line of the supposed extension of Warren Street, including the land on which the City Hall, Bridewell and Jail are built; and excluding therefrom the land on which the Free School is built, and the adjoining land and buildings heretofore valued to the south of said schoolhouse, and east of the jail yard; containing about seven acres, or 122 lots, valued at $1,000 per lot on the supposition that said land is to be hereafter used for a Park, and other public purposes	122,000.00
Bowling Green, an oval piece of land, enclosed with and including an iron fence at the south end of Broadway, near the Battery, containing by estimation 22,500 feet, equal to nine lots	25,000.00
	$1,294,506.62

We, the subscribers, certify that we have, by direction of the Honourable the Corporation of the City of New-York, made the foregoing appraisement of their property, to the best of our skill and judgment.

JONATHAN THOMPSON,
JOHN TARGEE,
WILLIAM S. SMITH. } Appraisers.

New-York, August 19, 1820.

CORPORATION PROPERTY.

We have given on this page, an extract from the Report made by JONATHAN THOMPSON and others, of the value of the public property in 1820. The Battery was not valued by these gentlemen, for that ground belongs to the State of New-York. The public Streets and public Squares were not valued, for these when no longer used for public purposes revert to the adjoining owners, *or* to those who have paid for the ground in assessments for benefit?

In 1838, the Corporation officers put in the list the Battery and Public Squares neither of which belong to the Corporation. It would be a blessing to the city if such men as Jonathan Thompson, Stephen Allen and John Targee, were now in the City Councils. Such men are becoming scarce.

STATEMENT

Of the aggregate valuations of Real and Personal estate in the several counties of this State, at the rate of taxation on each dollar of the corrected aggregate valuations for the year 1845.

Counties.	Assessed value of real estate.	Assessed value of personal estate.	Corrected aggregate valuations.	Rates of State, Co. and town taxes on $1 valu'n, —mills.
Albanytt	$11,102,930	$3,946,990	$15,603,161	11,4
Allegany	4,228,794	108,962	4,337,756	7,3
Broome	1,876,810	210 357	2,087,167	8.5
Cattaraugus	2,968,892	76,184	3,035,315	9,6
Cayuga	8,182,336	1,325,021	9,760,050	3,9
Chautauque	4,251,884	335,098	4,586,982	7,2
Chemung	2,221,170	242,967	2,464,634	5,3
Chenango	3,642,841	490,415	4,133,256	6,5
Clinton	1,591,427	74,713	1,666,140	14,8
Columbia	6,484,204	244,219	8,925,423	5.1
Cortland	2,174,018	144,190	2,174,018	7,5
Delaware	3,041,467	325,848	3,478,612	6,9
Dutchess	14,857,919	5,197,940	19,784,944	2.9
Erie	11,622,871	567,563	11,831,969	5.4
Franklin	1,492,500	92,290	1,584,790	10,1
Essex	1.332,848	150,288	1,483.136	14,1
Fulton	1,115,370	193,354	1,308,724	13,5
Genesee	5,415,357	442,716	5,873,385	4.6
Greene	2,378,045	591,628	2,969,673	9,6
Hamilton	338,778	450	339,228	33,4
Herkimertt	5,689,506	822,917	6,512,423	5,7
Jefferson	5.738,149	798 502	6,536,651	6,6
Kings	26,708,402	4,039,870	30.750,472	5,9
Lewis	1,451,343	223,657	1,675,000	8,2
Livingston	7,771,896	800,973	8,572,869	3,4
Madison	5,790,884	699,997	6,490,881	5,
Monroe	12,821,816	1,529,620	14,351 436	4,6
Montgomery	2,784,822	379,242	3,696,270	9,1
New-York	177,207,999	62,787,527	239,995,517	8,7
Niagara	4,592,363	333,726	4,926,089	6,2
Oneida	9,484,891	2,322,398	11,807,289	5,5
Onondaga	13,786,187	1,753 977	15.540,164	2,9
Ontario	10,886,947	1,737,490	12,624,438	2,8
Orange	9.067,327	2,252,103	11,319,430	4,6
Orleans	4,372,582	368,472	4,761,054	4.6
Oswego	4,961,320	370,765	5,332,085	7,9
Otsego	4,670,334	737,706	5,408,040	6,2
Putnam	2,479,113	450,255	2,929 368	3,5
Queens	8 060,600	3,507,750	11.568 350	2,2
Rensselaer	8,847,016	3,777,242	12,624.258	4,8
Richmondtt	1,191.359	181,920	1,373.279	6.4
Rockland	1,901,216	523,037	2,424,553	2,5
St. Lawrence	3,297,579	347,629	3 645.208	13,3
Saratoga	5,583,866	1,059,647	6.643,513	5,5
Schenectady	2,238,630	500.791	2,739,421	8.7
Schoharie	1,647,131	157,003	1,804,165	12,0
Seneca	5,085,115	588,919	5,674,034	3,7
Suffolk	4 752,685	1,209,933	5,962,618	3.6
Steuben	5,748,134	424,280	6,172,414	5.5
Sullivan	1,402,536	66.047	1,468,283	11 6
Tioga	1,521,389	382,852	1,804,211	11,8
Tompkins	3,300,000	601,701	4,001,719	5.7
Ulster	4.599,856	799,126	5,398,982	9.6
Warren	952,814	23,619	976,433	12,1
Washington	5,188,856	802,991	5,991,847	5.2
Wayne	6,280,675	325,854	6,818,533	3,8
Westchester	6,992,081	3,044,236	10,036.317	4,5
Wyomingtt	3,478,287	174,495	3.652.782	6,5
Yates	3,888,433	319,395	4,207,936	3,5
	486,490,121	115,968,895	605,646,095	6,88 88 100

tt No returns received from these counties for 1845, and therefore taken from the last annual report.

CANDIDATES FOR STATE CONVENTION.

We add to our list on the first page of this number, the following names:

Myndert Van Schaick, Edmund H. Pendleton,
Preserved Fish, William W. Fox,
Samuel F. Mott, Joseph Walker.

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, MARCH 4, 1846. [VOL. I....No. 39

STATE CONVENTION AND NEW-YORK CITY CHARTER.

The most wonderful move toward the amendment of the State Constitution is to be found in the frame of a bill to be presented to the legislature for to be passed into a law to amend the New-York City Charter, and which was on the 16th of February approved by the Board of Aldermen, and on the 19th of February approved by the Board of Assistants. These two bodies form the Common Council of the City, and were vested by the State Legislature with the Legislative powers of the Corporation, and these proceedings have been enacted in their *Legislative* capacity.

The proceeding is not a legislative act and the two boards have no jurisdiction in the premises—but to to the pith of the *wondrous wonder*—and here it is:

"Sec. 11. The Mayor of the City of New-York shall continue to be elected annually, until an amendment of the Constitution of this State shall authorise him to be elected for a longer TIME, after which he shall be elected for two years."

Section 10 of article 4 of the Constitution of this State as amended in 1833, read thus:

"§ 10. The Mayor of all the cities in this State shall be appointed annually by the Common Councils of the respective cities, *except in the city of New-York, in which city the Mayor shall be chosen annually by the electors thereof qualified to vote for other charter officers of the said city, and at the time of the election of such officers.*"

If the wonderful section 11, was the production of a single mind, it is a rare protegee for it is a burlesque upon the Constitution.

The last part of this section is a new mode of instructing the members of the Convention, but the beauty of it is that if the State Convention shall determine that the Mayor's of the cities shall hold office for *three* years, the Common Council of New-York ask the Legislature to limit the term to two years, *notwithstanding* that the Constitution declares otherwise.

The eleventh section, we have quoted, is a fair specimen of the whole bill—it is a wonderful production.

Section 18 *of the proposed Charter.*

"§ 18. The Seventh section of the act entitled, 'an act to amend the charter of the city of New-York,' passed April 7, 1830, and all provision of law and of charter, which are inconsistent with this act are hereby repealed."

Whatever provisions of charter or law, (and the charter is nothing but a legislative act) that are designed to be repealed should be designated by chapter and verse. The Seventh section of the act of April 7, 1830 is one of the most important provisions of the Statute aad the disregard of its provisions should be made punishable to an extent equalling the offence.

This wholesale mode of repealing laws is so loose that we wonder that a State Legislature should ever allow it to have a place in the Statute book.

A NEW-YORK ALDERMAN

Is by virtue of his office of Alderman:

Ex Officio Judge of the Court of Oyer and Terminer.

Commissioner of Excise.

Judge of the Court of General Sessions.

Supervisor of the County.

Judge of the Court of Special Sessions.

Commissioner of Highways.

Judge of the County Court.

Health Commissioner.

Magistrate in the Ward he Represents, &c.

THE ROYAL GRANT OF CHARTER TO THE CITY OF NEW-YORK.

The charter of the city of New-York was never signed by the King or Queen of Great Britain.

The numerous proceedings in relation to the New-York City Charter, will be found in the first four numbers of this Journal. In 1683 a lengthy petition was presented by the Mayor and Common Council of New-York to Gov. Dongan for a charter, which we reprinted to go along side of the bill now proposed by the Common Council to increase their own powers and remove all restrictions and restraints upon their own acts.

PETITION FOR A CHARTER.

On our 2d page will be found the petition of the Mayor, Aldermen and Commonalty of the City for a charter. It was presented to Col. Dongan, the Provincial Governor, in 1683, and is a curious document, and although we had printed it in one of our previous numbers we deem it important to reprint it to put it along side of the present application for a charter from the Common Council in 1846. Thus we present at the same view the present charter, the proposed charter, the petition for a charter in 1683, and each member of the Legislature will be furnished with a printed copy of the address of the members of the City Convention in 1830. These will give each member of the legislature a pretty comprehensive view of the whole subject in a connected form. Extra copies of the testimony taken before the Hon. the Senate Committee in 1842, will also be forwarded to the members of the Legislature.

TAXES.

The time for making application to the Board of Supervisors for the correction of erroneous taxes will expire in the firstweek in April, and a penalty of near SIX per cent. on unpaid taxes will attach on the first of April.

CANDIDATES FOR THE STATE CONVENTION.

It is high time to call public attention to the selection of candidates for the State Convention, as members of that body from the county of New-York. We present the following list of names selected from the three political parties, viz:

James Kent,
Albert Gallatin,
Jonathan Thompson,
Stephen Allen,
Saul Alley,
Jonathan Goodhue,
John M. Bradhurst,
Solomon Townsend,
Peter Cooper,
James Harper,
Wm. F. Havemeyer,
Burtis Skidmore,
Richard Mott,
Lora Nash,
F. R. Tillou,
Luther Bradish,
Peter Lorrilard, jr.,
Henry Grinnel,
Richard S. Williams,
James Boorman,
Myndert Van Schaick,
Preserved Fish,
Samuel F. Mott,
George Douglass,
Abraham G. Thompson,
Abraham Van Nest,
Gulian C. Verplanck,
Wm. B. Crosby,
Charles H. Russell,
Peter Schermerhorn,
James I. Jones,
Robert Smith,
Murray Hoffman,
David Hale,
Philip Hone,
J. I. Coddington,
Theodore Sedgwick,
Samuel Thompson,
James Donaldson,
Thomas T. Woodruff,
Elisha P; Hurlbut,
John David Wolfe,
Hiram Ketchum.
Edmund H. Pendleton,
William W. Fox,
Joseph Walker.

CITY CHARTER MOVEMENT.

On the third and fourth page of this Number of the Municipal Gazette, will be found the draft of a bill agreed upon by the New-York Common Council, for amending the Charter of the city, prefaced with our brief comments thereon.

The bill is the worst we have ever seen drawn up for the frame of a City Government, and should never become a law. The Charter of the City of New-York, adopted in 1830, is a thousand times snperior to the bill proposed, but the *Departments* of the city government disregard it.

The State Convetnion which is to assemble in June will probably take the City Charter in hand with a view to a general modification conformable in principle to the doctrines of a free government.

In 1833, the British government issued a commission for the purpose of enquiring into the State of the Municipal Corporations throughout the United Kingdom of Great Britain and Ireland.

The elaborate report made to Parliament had especial reference to the affairs of the Corporation of the city of London, and in terms of unsparing condemnation exposed the abuses resulting from its long continued execrise of the many privileges of Jurisdiction, incident to its feudal constitution, and though a bill was enacted in pursuance thereof for the reformation of the country municipalities, the government promised to introduce a separate measure in reference to the city of London, nevertheless, owing to the overwhelming influence of the city corporation, combined with the magnitude of the interests involved in the preservation of its extensive powers on the one hand, and the weakness of the Whig Administration on the other, it has remained unmolested to the present hour.

LORD BROUGHAM in the House of Lords said of the Corporation of London, "From its design of an useful and efficient instrument of local government, the great metropolitan corporation has been perverted to "GIANT ABUSE," and so it is denominated. It has lost the confidence of the people." With a view to amend it, Lord Brougham moved an address to the Queen.

INDEPENDENT NEWSPAPER.

A public spirited citizen, possessing a surplus of this worlds goods, has volunteered pecuniary aid to sustain an independent newspaper to be published in the city of New-York. Two gentlemen have agreed to undertake the publication, trusting that they will be sustained by the citizens with such advertising patronage and subscription list as will enable them to refund the amount thus so generously advanced.

The Anti-Assessment Committee have volunteered the needful aid in the editorial department, free of charge.

The abuses of the city government and its officers, are to be given in great detail, and it is hoped that the exposure of these abuses will prevent a repetition of them.

The new Journal will discuss the question of more equal taxation in great detail.

Public matters, touching the administration of the National, State, and Corporate Government, will be freely treated of.

We have no doubt that the new Journal will be one of the most valuable newspapers in the Union.

A well conducted paper of the kind proposed, will in process of time, if persevered in, do more to correct municipal abuses than every thing else put together. We wish the publishers great success, for their gain will be that of the people.

River except he was a Freeman and had been arrival Inhabitant of this Citty offor ye space of 3 years, and if any ffreeman should be absent out of ye Citty ye space of 12 month, and not keep ffire and candle & pay seat and cott, should loose his freedome.

10th. All ye Inhabitants up Hudson River were forbid to trade over sea.

11th. No Flower was to be bolted or Packed or Biskett made for exportation but in ye Citty of New Yorke, being for ye Incouragement of trade and keeping up ye reputatiou of New Yorke fflower, which is in great request in ye West India and ye (Inhabitants) only support and maintenance of ye Inhabitants of this Citty, and if not confirmed to them, will ruin and depopulate ye same.

12th. That ye said Citty had a Common seale to serve ffor ye dealing of all and singular their affairs matters and business touching ye said Corporation.

All which said ancient customs privileges and lybertys ye said Mayor and Aldermen in behalf of themselves and ye Citizens of ye said Citty do humbly present & make known to yr Honour, humbly beseching yr honor in their behalf to Interceed & procure that ye same be Confirmed to them by charter ffrom his Royall Highnesse with these additions following:

1. That ye said Corporation be divided into six Wards.

2. That ye ffreemen in each Ward do once every year ellect their own officers to say Aldermen, Common Councilmen, Constables, Overseers of ye poor, Scavengengers, Questmen or other officers useful and necessary ffor ye said Corporation & Wards.

3. That there be a Mayor & a Recorder, who with ye said six Aldermen & Common Councillors shall represeut ye whole body of ye said Citty & Corporation & shall have power to make pecular Laws and ordinances ffor ye good Government and support thereof.

4. That a Mayor be appointed every year by Governour & Councill, & to be one of ye Aldermen choen as aforesaid.

5. That all Magistrates so chosen shall not be admitted to ye execution of their offices until sworn before ye Governor and Council.

6. That ye Recorder be appointed by ye Governor and Council, who shall be judge of ye city and corporation and be ayding and assisting ye Mayor, Aldermen and Common Council in all matters yt relate to ye well being thereof.

7. That a Sheriffe be annually appointed by the Governor and Council.

7. That ye Coroner and Towne Clark be appointed by the Governor and Councill.

9. That ye Mayor, Recorder, Aldermen and Commom Councill do appoint a Treasurer for collecting and paying all public debts and Revenues.

This and whatsoever else your Honor and his Royall Highnesse shall think ffit, necessary and convenient ffor ye good rule, order and welfare of this citty or Corporation, your Petitioners humbly pray may be granted and confirmed to them, in as full and ample manner and fform as his majesty hath been graciously pleased to grant to other Corporations within his Realme of England, ffor ye.

Of which they again humbly begg your honor to become their supplyant, whose kindness and service therein shall be most thankfully acknowledged.

New York, 9bre, ye 9th. 1683. And as in duty bound, your petitioners shall ever pray, &c.

EXPLANATION ASKED OF THE MAYOR, &c. AS TO CERTAIN PARTS OF THE FOREGOING PETITION BY THE GOVERNOR AND COUNCIL.

Some objections made by ye Governor and Councill to ye petition presented in the name of the Mayor, Aldermen and Commonalty with desire to be explained.

Att a Councill held in New Yorke ye 10th 9bre, 1683.

Present

The Governor,
Mr. Frederick Phillips,
Mr. Lewis Sancton.

A Petition from ye Deputy Mayor, Aldermen and Commonalty of ye citty of New Yorke being read, was conclnded as follows:

In answer to the first article it is thought reasonable that the Towne of Harlem shall have liberty to determine all matters yt come before them under 40s., att their own Towne Court. To ye third article it is answered that there being these words, these Magistrates had power to appoint all Inferior Officers, and Constables, Overseers, under Sheriffs, Cryers and Marshals, it is desired that it may be explained what is meant by Marshall in ye second article; it is also desired yt it may be explained what is meant by peculiar Laws, and how far they will extend, as likewise what is meant by Court of Judicature. and how ffar ye s'd Court is to extend, and yt ye Court of Judicature under forty shillings being allowed it is thought convenient to distinguish betwixt ye s'd Courts and make two articles of this one, being ye third article to ye fourth article, it is thought yt ye water Bailiffs belongs to ye admiralty, and ye seventh article Jews are to be accepted who are left to ye discretion of ye Governor.

By order in Councill,

JOHN SPRAGG, Sec'ry.

EXPLANATIONS TO THE FOREGOING, GIVEN BY THE MAYOR, &c.

An explanation of several heads contained in ye petition lately presented to his honor ye Governor, by ye Mayor Aldermen and Commonalty of ye citty of New Yorke, pursuant to ye desire of the Governor and Councill, Humbly presented to his honor's further consideration.

The Towne of Harlem is a village belonging to this Citty and Corporation ffor ye more easy administration and dispatch of Justice. Officers have been annually appointed by ye Mayor and Aldermen to hold Courts and determine matters not exceeding 40s., both at Harlem and the Bowery, and shall do ye like for ye future, and is intended to be one of ye six Wards.

3. Marshall is an under officer assistant to ye Sheriffe in serving writs, summoning Jurys, looking after prisoners and attending ye Court, and that Officer and the Cryer has hetherto been one person.

Pecular Laws, and Laws and Ordanancees by the Mayor, Aldermen and Common Councill, ffor ye well and good government of this Citty and Corporation and to extend as ffarr as the limit thereof.

Court of Judicature is a Court to hear and determine all causes and matters whatsoever brought before them, both Civill and Criminall, not extending to life, limb, or member, and had jurisdiction over all the harbours and Bayes, Coves, Creeks and Inletts belonging to ye same.

The whole Island being one Corporation, ye inhabitants are all members of one body and conceive no need of distinction. The Mayor, Aldermen and Common Councill having ye care and charge to make all things easy and convenient ffor ye Inhabitants as possible, and will have the same regard thereto as formerly.

A Water Bailliffe is an officer belonging to a Corporation, and ye Sheriffe of this Citty hath useually exercised the office by serving arrests and attachments in ye harbours, Bayes, Coves, Creeks and Inletts belonging to this Corporation, by Warrant ffrom ye Mayor, Sheriffe or other his superiors to him directed as Sheriffe or Watter Bailliffe, as well in Civill as Criminall matters.

What belongeth to the Governor or prerogative, think not fitt to meddle with or any way restrane.

New Yorke, 9bre. 19th, 1683.

REMARKS.

ARBITRARY POWER.

The foregoing petition and explanations, although made 163 years ago, are very much of the same character of the present proceedings of the Common Council of New-York in their present application to the Legislature.

The Common Council of New-York are administrative officers—they connot enact Statute law, that power is vested in the Senate and Assembly of this State, and these two bodies forming the Legislature of the State, cannot delegate this power to *an* officer of the New-York Corporation, nor to the Common Council of N. York, nor to any other individual or body of men. The City of New-York is a part of the State of New-York, and is governed by the laws of the State and not by the ordinances of a subordinate Corporation created by Statute, a mere creation of the Legislature, which the Supreme Court can dissolve and make void for abuse of power.

PROPOSED CHARTER OF 1846.

We have re-printed from the Journal of Commerce of Wednesday the eighteenth of February, the draft of a Bill which has been approved by the Board of Aldermen for ameuding the City Charter. We have not reprinted the Editorial commendation of the Bill which accompanied its publication, inasmuch as we think the worthy editors of that valuable public journal have greatly erred in *the commendatory notice*, and we hope to be able to convince them of this in our review of the provisions of the Bill in detail.

It was formerly the custom in legislative enactments to accompany the Bill with a preamble reciting the mischiefs its provisions were intended to remedy—it was a good custom and should not have been discontinued.

Had that been done in this case, the Bill would demonstrate an absurdity, for the mischief is in the departments, and not with the newly elected Aldermen.

Abuses of an aggravated and alarming character have been committed, and the great enquiry is—by whom?

Here is the foundation to begin at. The Departments of the City Government have been wretchedly administered. Corruption and abuses of an aggravated character have existed in the departments to such an alarming extent that if a scrutiny was to be had and the abuses fully exposed, the citizens would raise *en masse* and demand their abolition.

Take up any particular act of the corporation that is complained of, and begin with its commencement in the common Council, and follow its details to its final consummation through the departments, and it will be readily seen where the mischief attached, and in which department of the City Government the fault lies, and what particular officer the blame attaches to.

Much is said about the inexperience of members of the Common Council, and this it is suggested in the Bill, can be remedied by making the term of Aldermen of three years durationf in place of one year.

Experience is universally acknowledged to be the best schoolmaster, and we have this developed most satisfactorily in the records of the common council since the adoption of the amended charter in 1830, and before that change. Many of the members of the Common Council have been re-elected for years in succession, and there are now in that board gentlemen who have for several years been members of the Common Council. Contrasting these gentlemen with their associates of lesser experience, and thus obtain the sought for *desideratum*, if attainable by means of extended terms of office. We forbear any comparison which may be deemed personal, but state the case as a matter of general application. Our conclusion is that the experiment has been tried and found a failure.

The advocates of the bill in hand, are warm in their expressions of admiration of the general frame of our State fundamental law, and claim in this bill to copy after it, but section two repudiates the very doctrines they advocate, for by the Constitution, members of the legislature cannot at the same time hold or fill any other civil office, but this section of the bill provides that all the powers given to the Mayor, Aldermen and Commonalty shall continue to be *vested* in that body. Thus a member of the Board of Aldermen is by virtue of his office of Alderman, Judge of the Court of Oyer and Terminer, Judge of the Court of General Sessions, Judge of the Court of Special Sessions, Judge of the County Court, Commissioner of Excise, Health Commissioner, Supervisor of the County, Commissioner of Highways, Magistrate in his Ward, and if made President of the Board, acting Mayor of the City. Now then where is the great regard for great principles contained in the Constitution?

An Alderman cannot discharge the duties of all these ex officio offices, and besides all of them are incompatible with the office of a member of the Common Council possessing the Legislative powers of the Corporation.

The first section of the bill is a needless provision which will be readily seen when compared with section one of chapter 122 of the laws of 1830.

Section 2, is a dangerous and ruinous provision. Whatever powers are intended to be given to the Common Council, should be plainly and distinctly stated, and all not intended to be given should be interdicted.

Section 3, provides for 18 aldermen. Since 1836, application was made to the Legislature to increase the number from 16 to 17, for the reason that in 1836, the number of Whig Aldermen were 8, and the Democratic Aldermen 8, which made a tie vote, and two months time was consumed in organizing the Board, during which time no public business could be transacted by the Board.

Section 4, provides for a longer term of office. We have discussed that point in our prefatory remarks.

Section 5, increases the number of Assistants, and inasmuch as the members are to be paid $750 per year, by ordinance to be passed by themselves, the increased expenditures in this will be near $30,000 per annum for Assistants, and more than $13,000 for the Aldermen, besides gold pencil cases, stationery, maps, sets of volumes of natural history, &c. &c.

Section 7, is a substitute for the same section in chap. 122 of 1830, and is intended to defeat the restraints upon that necessary provision of that act, which was more dwelt upon as to its importance in the Convention which framed it than any other.

The 8th section is unnecessary, as by the act of 1830 the Common Council can fix the session in any way they shall see fit to determine by a joint rule of the two boards, and the same remark will apply to section 9.

Section 10 does not reinforce the Mayor's Veto, but leaves it as it is with one qualification growing out of periodical sessions of less frequency than now held, but that same provision is contained substantially in chapter 122 of the laws of 1830.

Section 11 is an absurdity. The State Constitution provides for the election of the Mayor annually and an attempt to dictate to the State Convention to assemble in 1846, as to extending the term to two years is improper.

If the members of the Common Council were all allowed to serve two years, it would be well, but electing only a part, does not lessen the frequency of Charter Elections.

Section 12 treats of Executive power. The Supreme Court say, some of powers of the Corporation are in part Executive, Judiciary and Legislative, and we add, others are administrative and others ministerial. The act should define the powers by express provision. The nomination of officers by the Mayor to the Board of Aldermen is a good provision, but he should have power to suspend an officer for misconduct, and the Board which consents to his appointment should have the power of prompt removal from office for good cause. These remarks are also applicable to section 13 and 14.

Section 15 provides for compensation to members of the Common Council. These officers should be paid compensation for each days session in the day time, but it should be in lieu of all other pay, and they should hold but the one office. This last remark applies to section 16.

Section 17, is well enough, but it should provide for a record, which record should be approved by the Mayor, and be open for inspection.

Section 18, is a deliberate wrong of untold and incalculable magnitude. Those who have adopted it, have been deceived as to its import.

The business of the Corporation should be managed by departments suitably organized, and under proper and salutary restrictions, and each should be independent of the other. Most of the duties that pertain to departments are administrative, or ministerial. The Heads of the Departments should be elected by the People. This remark is applicable to the remaining sections of the bill, all of which are badly framed, and not calculated to meet the expectations of those who are desirous of reform and retrenchment in City expenditures.

This Bill was not published until it was passed by the Board of Aldermen and was in three days after concurred in by the Board of Assistants and hurried off to the Legislature to be passed into a law and then to be submitted to the people the second week in March. *Why this great haste?* The submission to the people should be made at a general election, and full publicity should be given to the Bill.

The Bill should have been drawn up by such men as Stephen Allen, Gulian C. Verplanck, Saul Alley, Jonathan Thompson, Walter Bowne, Philip Hone, John Morse, Robert H. Morris, W. W. Fox, Thomas T. Woodruff, George B. Smith, F. R. Tillou, Burtis Skidmore, Richard Mott, Murray Hoffman, James Harper, Robert Smith, Edmund H. Pendleton, Abm. G. Thompson, and other citizens of the like experience in public concerns. It should be a deliberte work and well matured. The great majority of the citizens are in favor of restricting the powers of both the officers of the Corporation and of the members of the Common Council. The provisions of this bill will not accomplish that end.

In 1824 an act was passed entitled an act to alter the organization of the Common Council. *See session laws of* 1824. A similar act was passed in 1828. *See Session Laws of that year.* Both these acts were rejected by the People. In 1830, a convention was called to frame a bill for the legislature to pass into a law. This was accepted by the People and subsequently enacted by the Legislature, and is now the law, and the difficulty is that the Corporation officers as well as the Common Council disregard its provisions.

Chief Justice Bronson in an opinion recently given by him touching the seventh section of the amended charter, said, "The language is imperative—the ayes and noes shall be called. When the particular mode in which the Corporation is to act is thus specially declared by its charter, I think it can only be in the prescribed form. The contrary doctrine wants the sanction of legal authority, and is fraught with the most dangerous consequences. It would place Corporations above the laws, and there is reason to fear that they would soon become an intolerable nuisance."

AN ACT

To Amend the Charter of the City of New-York.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. The Legislative power of the Corporation of the City of New-York, shall continue to be vested in a Board of Aldermen, and a Board of Assistants, who, together, shall form the Common Council of the City.

§ 2. All of the provisions of the City Charter, and State law, now in force, and appertaining to the Mayor, Aldermen and Commonalty of the City of New-York, shall continue to apply to them, except as hereinafter provided.

§ 3. The Board of Aldermen shall consist of eighteen members, who shall be elected for three years; the Board of Assistants shall consist of thirty-seven members, until after the next enumeration of the inhabitants of the City provided for by the Constitution of the State, and they shall be annually elected.

§ 4. Each Ward shall elect one Alderman and as soon as the Board of Aldermen shall meet after the first election held in pursuance of this Charter, they shall cause the Aldermen to be divided by lot into three classes, of six each, to be numbered one, two, and three; the seats of the first class to be vacated at the end of the first year; of the second class, at the end of the second year; of the third class at the end of the third year; so that one third of the members shall be annually elected.

§ 5, The members of the Board of Assistants shall be elected within the respective words, in the proportion, as nearly as may be, of one member to each ten thousand inhabitants; if the fraction in any ward shall amount to five thousand, such ward shall be entitled to a member of the same; if the fraction be less than five thousand, it shall not be entitled to a member; but each ward shall have at least one representative in the Board of Assistants.

§ 6. An appointment of members of the Board of Assistants, shall be made by the Common Council at its first session after the return of every enumeration provided for by the Constitution of this State, and, when made, shall remain unaltered until another enumeration shall have been taken.

§ 7. Whenever a vote shall be taken in either Board upon the passage of a resolution, or ordinance, which shall contemplate any specific improvement, or involve the appropriation or expenditure of public monies, or the taking or assessing of the citizens of said city, the ayes and noes shall be called, and recorded upon the journal, and be published as a part of the proceedings.

§ 8. There shall be held in each year, three sessions of the Common Council, during which the legislative business of the city shall be transacted, except as hereinafter provided. The first session shall commence on the second Tuesday in May, and on the second Tuesday June; the second session shall commence on the second Tuesday in September, and

which the Corporation is concerned, either as debtor or creditor. The chief Officer of this Department shall be called "The Comptroller of the City of New-York." There shall be a bureau in this Department for the collection of the revenue accruing from taxes; the chief officer thereof, shall be called the "Receiver of Taxes;" who shall appoint so many Clerks as shall be authorised by the Common Council. There shall be a bureau in this Department for the collection of the revenue accruing from rents, and interest on bonds and mortgages, and for the performance of such other duties as may be directed by the Common Council, the Chief officer of which shall be called the Collector of the City Revenue. There shall be a bureau in this Department for the prosecution of all delinquencies in the payment of rent on real estate, water grants, and on leases of docks and slips; and for encroachments upon public property; and for the drawing of leases, deeds, &c., connected with the Finance Department; the officer of which shall be called the "Attorney of the Treasury."

§ 22. There shall be an executive Department, for the reception of all monies paid into the Treasury of the city, and for the payment of monies therefrom, on the warrants drawn by the Comptroller, and countersigned by the Mayor and Clerk, under the denomination of the "Treasury Department:" and the chief officer thereof shall be called the "Chamberlain of the City of New-York."

§ 23. There shall be an Executive Department, under the denomination of the "Department of Trust Expenditures," which shall have cognizance of opening, regulating and paving streets; digging and building wells; building public sewers, and the construction of public roads, when done by assessments; the filling up of sunken lots, under Ordinances presented to the Common Council from the City Inspector's Department. It shall also have cognizance of collecting the assessments connected with such expenditures. The chief officer thereof shall be called the "Trust Commissioner." There shall be a bureau in this Department for the collection of the Assessments, and the chief officer thereof shall be called the "Collector of Assessments," and his assistants "Deputy Collectors." All acts of the Legislature of this State, which apply to the "Street Commissioner," shall hereafter be applied to the "Trust Commissioner."

§ 24. There shall be an Executive Department, to be denominated the "Department of Repairs and Supplies," which shall have the cognizance of building wharves and piers, and of all repairs and supplies of and for wharves and piers, roads and avenues, public pavements, repairs to the public buildings, and to fire engines and apparatus of the Fire Department; and the chief officer thereof shall be called the "Commissioner of Repairs and supplies." There shall be five bureaus, or branches, in this Department, and the chief officers thereof shall be respectively denominated the "Superintendent of Wharves and Piers," "Superintendent of Roads," "Superintendent of Repairs to Public Buildings," "Superintendent of Pavements," and "Chief Engineer of the Fire Department."

§ 25. There shall be an Executive Department. to be denominated the "Department of Streets and Lamps," which shall have cognizance of procuring the necessary supplies for, and of lighting the public streets and places lighted at the expense of the Corporation; and of cleaning the public streets, and collecting the revenue arising from the sale of the manure; and also of the transferring of butchers' stalls in the public markets. The chief officer thereof shall be denominated the "Commissioner of streets and lamps." There shall be three bureaus in this Department, and the chief officers thereof shall be called the "Superintendent of Lamps and Gas," "Superintendent of Streets," and "Superintendent of Markets."

§ 26. There shall be an Executive Department, under the denomination of "Croton Aqueduct Department," which shall have the Charge of the Croton Aqueduct, its reservoirs, and the other constructions connected therewith. It shall have cognizance of all repairs to the same, and of the laying of the water pipes in the streets of the City, and of the collection of the revenue arising from the sale of the water. The chief officer thereof shall be called the "Commissioner of the Croton Aqueduct." There shall be a bureau in this Department for the collection of the revenues derived from the sale of the water, and the chief officer thereof shall be called the "Water Register." Thre shall be a bureau in this Department which shall have the superintendence of the laying and repairing of the water pipes, the officer of which shall be called the "Wate- Purveyor."

§ 27. Nothing contained in the preceding section shall be construed to prevent the Water Commissioners from completing the Acqueduct according to law.

§ 28. There shall continue to be an Executive Department under the denomination of the "Alms House Department," which shall have cognizance of all matters relating to the Alms House and Prisons of the sad City. The chief officer thereof shall be called the "Commissioner of tha Alms House Department." There shall be several bureaus in said Department, and the chief officers thereof shall be called the "Superintendent of the Alms House," "Superintendent of the Penitentiary," "Superintendant of the City Prisons," "Resident Physician," and "Superintendent of the Nursery." All other officers of this Department, which shall be authorized by the Common Council, shall be appointed by the Commissioners of the Alms House Department.

§ 29. There shall be an Executive Department under the denomination of the City Inspector,s Department, which shall have cognizance of matters relative to the public health of said City, and the chief officer thereof shall be called the "City Inspector."

§ 30. There shall be an Executive Department, under the denomination of the "Law Department," which shall have cognizance of the law business of the Corporation. The chief officer thereof shall be called the "Counsel of the Corporation." The Counsel shall take cognizance of such suits as shall be brought by the Attorney of the Treasury, when requested to do so by the Comptroller. There shall be a bureau in this Department for the prosecution of violation of the City Ordinances, the officer of which shall be called the "Corporation Attorney." There shall be a bureau in this Department for the settlement of Intestate Estates, the chief officer of which shall be called the "Public Administrator."

§ 31. It shall be lawful for the Mayor and Common Council of said City to establish such other bureaus to the several Departments as they, in their discretion, may deem the public interest to require.

§ 32. It shall be the duty of the several Heads of Departments, at the commencement of each session, to communicate to the Common Council such suggestions in relation to the improvement of the affairs of their respective Departments as they may deem advisable; and it shall be the duty of the Common Council to refer the same to the appropriate Committee for investigation and report.

§ 33. The Mayor may require the opinions, in writing, of the Heads of each of the Departments, upon any subject relating to their respective Departments.

§ 34. The duties of the several Executive Departments shall be performed in accordance with the Ordinances which shall be passed by the Common Council, not inconsistent with this Act.

§ 35. All contracts to be made or let by authority of the corporation, whether for work to be done, or supplies to be furnished, shall be made by the appropriate Heads of Departments, under such regulations as shall be established by Ordinances of the Common Council.

§ 36. This Act shall be submitted for the approval of the electors of the City and County of New-York, at an election to be held in said City, on the second Tuesday in March, for which the Common Council of the City shall make the necessary arrangements. The tickets which shall be polled at said election, shall contain either the words "In favor of proposed Charter," or "Against proposed Charter;" and if a majority of all the persons voting at said election shall vote the ticket "In favor of proposed Charter," this Act shall become a law; if a majority of such persons shall vote "Against proposed Charter," this Act shall be void.

§ 37. In case this Act shall be approved by a majority of the electors of said City as aforesaid, and become a law, it shall go into effect at the ensuing charter election.

§ 38. All officers of the Corporation, now in office, shall continue to discharge the duties of their respective offices until their successors shall have been appointed and sworn in.

PRESENT CHARTER.

Prepared by Peter A. Jay, Stephen Allen, Phillip Hone, Saul Alley, John Duer, Thos. Bolton, Gulian C. Verplanck, John M. Bradhurst, Lambert Suydam, William Paulding, and about 50 other citizens, in Sept. 1829; approved by the citizens at the November election in 1829, and enacted by the Legislature April 7, 1830.

☞ Compare this with the proposed bill on the opposite page.

An act to amend the Charter of the City of New-York.

Passed April 7, 1830.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. The legislative power of the corporation of the city of New-York, shall be vested in a board of aldermen and a board of assistants, who together shall form the common council of the city.

§ 2. Each ward of the city shall be entitled to elect one person, to be denominated the alderman of the ward; and the persons so chosen, together, shall form the board of aldermen: And each ward shall also be entitled to elect one person, to be denominated an assistant alderman; and the persons so chosen, together shall form the board of assistants.

§ 3. The aldermen and assistant aldermen, shall be chosen for one year; and no person shall be elegible to either office, who shall not, at the time of his election, be a resident of the ward for which he is chosen.

§ 4. The annual election for charter officers shall commence on the second Tuesday in April, and the officers elected shall be sworn into office on the second Tuesday in May thereafter: And all the provisions of law now in force in regard to the notification, duration, and conduct of elections for members of assembly, and in regard to the appointment, powers, and duties of the inspectors holding the same, shall apply to the annual election of charter officers.

§ 5. The first election for charter officers, after the passage of this law, shall take place on the second Tuesday in April, one thousand eight hundred and thirty-one; and all those persons who shall have been elected under the former laws regulating the election of charter officers, and shall be in office at the time of the passage of this law, shall continue in office until the officers elected under this law shall be entitled to be sworn into office.

§ 6. The board of aldermen shall have power to direct a special election to be held, to supply the place of any alderman whose seat shall become vacant by death, removal from the city, resignation or otherwise; and the board of assistants shall also have power to direct a special election, to supply any vacancy that may occur in the board of assistants: and in both cases, the person elected to supply the vacancy, shall hold his seat only for the residue of the term of office of his immediate predecessor.

§ 7. The boards shall meet in separate chambers, and a majority of each shall be a quorum to do business. Each board shall appoint a president from its own body, and shall also choose its clerk and other officers, determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each board shall keep a journal of its proceedings, and the doors of each shall be kept open, except when the public welfare shall require secrecy: And all resolutions and reports of committees, which shall recommend any specific improvement involving the appropriation of public moneys, or taxing or assessing the citizens of said city, shall be published immediately after the adjournment of the board, under the authority of the common council, in all the newspapers employed by the corporation; and whenever a vote is taken in relation thereto, the ayes and noes shall be called and published in the same manner.

§ 8. Each board shall have the authority to compel the attendance of absent members, to punish its members for disorderly behavior, and to expel a member, with the concurrence of two-thisds of the members elected to the board; and the member so expelled, shall, by such expulsion, forfeit all his rights and powers as an alderman or assistant alderman.

§ 9. The stated and occasional meetings of each board of the common council, shall be regulated by its own ordinances; and both boards may meet on the same or different days, as they may severally judge expedient.

§ 10. Any law ordinance, or resolution of the common council, may originate in either board; and when it shall have passed one board, may be rejected or amended by the other.

§ 11. No member of either board shall, during the period for which he was elected, be appointed to, or be competent to hold any office, of which the emoluments are paid from the city treasury, or by fees directed to be paid by any ordinance or act of the common council, or be directly or indirectly interested in any contract, the expenses or consideration whereof are to be paid under any ordinance of the common council; but this section shall not be construed to deprive any alderman or assistant of any emoluments or fees which he is entitled to by virtue of his office.

§ 12, Every act, ordinance, or resolution which shall have passed the two boards of the common council, before it shall take effect, shall be presented, duly certified, to the mayor of the city, for his approbation: if he approve, he shall sign it; if not, he shall return it, with his objections, to the board in which it originated, within ten days thereafter; or if such board be not then in session, at its next stated meeting. The board to which it shall be returned, shall enter the objections at large on their journal, and cause the same to be published in one or more of the public newspapers of the city.

§ 13. The board to which such act, ordinance, or resolution, shall have been so returned, shall, after the expiration of not less than ten days thereafter, proceed to reconsider the same. If, after such reconsideration, a majority of the members elected to the board shall agree to pass the same, it shall be sent, together with the objections, to the other board, by which it shall be likewise reconsidered; and if approved by a majority of all the members elected to such board, it shall take effect as an act or law of the corportion. In all such cases, the votes of both boards shall be determined by yeas and nays; and the names of the persons voting for and against the passage of the measure reconsidered, shall be entered on the journal of each board respectively.

§ 14. If the mayor shall not return any act, ordiaance or resolution so presented to him, within the time above limited for that purpose, it shall take effect in the same manner as if he had signed it.

§ 15. Neither the mayor nor recorder of the city of New-York shall be a member of the Common council thereof, after the second Tuesday of May, one thousand eight hundred and thirty one.

§ 16. Whenever there shall be a vacancy in the office of Mayor, and whenever the Mayor shall be absent from the city, or be prevented by sickness or any other cause from attending to the duties of his office, the president of the board of aldermen shall act as mayor and shall possess all the rights and powers of the mayor, during the continuance of such vacancy, absence or disability.

§ 17. It shall be the duty of the mayor,

1. To communicate to the common council, at least once a year, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city, in relation to its government, finances, and improvements.

2. To recommend to the adoption of the common council, all such measures connected with the police, security, health, cleanliness, and ornament of the city, and the improvement of its government and finances, as he shall deem expedient.

3. To be vigilant and active in causing the laws and ordinances of the government of the city to be duly executed and enforced.

4. To exercise a constant supervision and control over the conduct and acts of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and generally to perform all such duties as may be prescribed to him by the charter and city ordinances, and the laws of this State and the United States.

§ 18. Annual and occasional appropriations shall be made by proper ordinances of the common council, for every branch and object of city expenditure; nor shall any money be drawn from the city treasury, except the same shall have been previously appropriated to the purpose for which it was drawn.

§ 19. The common council shall not have authority to borrow any sums of money whatever, on the credit of the corporation, except in anticipation of the revenue of the year in which such loan shall be made, unless authorized by a special act of the legislature.

§ 20. It shall be the duty of the common council to publish, two months before the annual election of charter officers, in each year for the general information of the citizens of New-York, a full and detailed statement of the receipts and expenditures of the corporation, during the year ending on the first day of the month in which such publication is made; and in every such statement, the different sources of city revenue and the amount received from each; the several appropriations made by the common council, the objects for which the same were made, and the amount of moneys expended under each; the moneys borrowed on the credit of the corporation, the authority under which each loan was made, and the terms on which the same was obtained, shall be clearly and particularly specified.

§ 21. The executive business of the corporation of New-York shall hereafter be performed by distinct departments, which it shall be the duty of the common council to organize and appoint for that purpose.

§ 22. It shall be the duty of the common council to provide for the accountability of all officers and other persons, to whom the receipt or expenditure of the funds of the city shall be entrusted, by requiring from them sufficient security for the performance of their duties or trust, which security shall be annually renewed; but the security first taken, shall remain in force until new security shall be given.

§ 23. The clerk of the board of aldermen shall, by virtue of his office, be clerk of the common council, and shall perform all the duties heretofore performed by the clerk of the common council, except such as shall be assigned to the clerk of the board of assistant aldermen; and it shall be his duty to keep open for inspection, at all reasonable times, the records and minutes of the proceedings of the common council, except such as shall be specially ordered otherwise.

§ 24. The division of the common council into two boards shall not take effect until the officers to be elected under this law enter on the duties of their office. Each board shall hold its first meeting, for the purpose of organizing, on the second Tuesday of May in each year; at which time the mayor or clerk of common council shall attend, by whom the oath of office shall be administered to the members elected. In the absence of the mayor and clerk, such oath may be administered by the recorder or first judge of the city, or by any of the justices of the superior court.

§ 25. None of the provisions of this act, except the eighteenth, nineteenth, twentieth, and twenty-second sections, shall be construed as applying to the common council as now constituted.

§ 26. Such parts of the charter of the city of New-York, and of the several acts of the legislature amending the same, as are not inconsistent with the provisions of this law, shall not be construed as repealed, modified, or in any manner affected thereby; but shall continue and remain in full force.

Session Laws, 1830, *Ch.* 122.

PROPOSED CHARTER OF 1846.

The Bill which is to be found on the two preceding pages, viz: page 531, and 532, is called "KING JOHN'S CHARTER" and is said to be from the pen of that city AUTOCRAT. We are disposed to think there is a mistake in this, for we had always given that individual credit for more ability of intellect than the draft of this bill gives evidence of. But *nevertheless*, if this bill is from his pen, then we have heretofore over estimated the talents of the city King. It is said PRINCE GEORGE is looking to the succession, hence his admiration of the provisions of this bill, and his desire of having it made law.

It is said that the Corporation of city of New-York has gone bodily to Albany—to lobby through the Charter.

What are the evils and defects of the present charter? What the abuses? What are the remedies administered by the proposed scheme? One evil complained of, is a want of equal representation. Strange the plan proposed actually perpetuates this evil! One abuse complained of is the increase of taxes; this is not the fault of the charter, but the abuse of the members of the Common Council in unjustly and illegally squandering the money of the city; does the proposed plan provide a remedy for this? Not at all. Does it prohibit the spending of large sums of money for entertainments under pretence of City hospitalities, tea room refreshments, visits to Blackwell's Island, &c. Does it diminish the number of useless officers—does it mitigate the burdens of the people? No—on the contrary it specifically adds pay to the Aldermen, increasing the burden thus $30,000 per annum, and increases the number of officers under the name of Bureaus. Another abuse complained of is that the business is not done by Executive Departments, and why? Simply and only because the members violate in this the present charter! The present charter expressly tells them that the business is to be done by Executive Departments. Yet they do it by Committees.

But look over this proposed charter, and see if it really provides, under proper penalties, against the mis-application of the public money? If it is calculated to diminish expense; if it provides proper checks against fraud, tyrannic power, or extravagance; if it is clear, perspicuous in its language, in its method or arrangement; if it will give rise to no conflict of opinion, no difficulty of interpretation, if it duly conforms to the great principles of enlightened jurisprudence and civil liberty, that no one class be oppressed, no one right or privilege destroyed, if it is efficient, yet just to all—calculated to give security to right, punishment to wrong—to secure economy, good will, and happiness to the population which it is to govern.

All these things should be materially weighed and considered by the people in convention, not by a legislative body, before an instrument of so high a narure should be adopted.

THE WOUNDED DOG.

On Tuesday morning the 20th of January, a favorite dog, about twelve months old, came to the door covered with blood, crying most piteously, and in an agony of suffering. Some unfeeling creature in human shape had destroyed one of his eyes and otherwise mangled him. The door was quickly opened, and the bleeding animal came into the house and rushed into his master's arms, and with him came a stranger dog. This animal licked the bleeding wounds of his suffering companion, as he lay at his master's feet, and staid beside and watched over him with a constancy and devotion that would be a bright gem in the adorning of a human bosom. This faithful animal has not left the wounded dog night nor day for a whole week. Such affectionate kindness is a lovely picture to contemplate; and the contrast with him who inflicted the wounds, and the faithful animal who with his tender tongue is endeavoring to heal them, presents to view the two extremes—the cruel—the kind. The stranger dog, who had no home, has earned one by his kind offices, which he will be sure to obtain.

The services of the faithful dog of Sabinas, the Roman General, shines upon the page of history, while the acts of the cruel persecutors of his master are stamped with an enduring hate. Sabinas suffered death for his attachment to the House of Germanicus, and his dead body was exposed upon the walls of the Germonesse to deter others who should feel disposed to befriend the House of Germanicus. No friend had courage to approach his dead body—*one only, remained true*—his faithful dog. For three days the animal continued to watch the body—his pathetic howling awakened the sympathy of every heart. Food was brought him which he was kindly encouraged to eat, but on taking the bread, instead of obeying the impulse of hunger, he fondly laid it at his master's mouth and renewed his lamentations, but did not quit the body. The corpse was at length thrown into the Tiber, and the faithful dog leaped in after it, and clasped the body between his paws, and vainly endeavored to preserve it from sinking. My wounded dog is lying at my feet, and beside him his faithful companion—a picture that no painter's pencil can do justice to.

THE NEW-YORK CORPORATION have gone to Albany to procure the passage of a law to enable the present Common Council to appoint the present incumbents in the departments to office for three years before they go out of office. *Hence the great haste.*

They dare not trust to a new election, and the heads of departments would stand no chance if these officers were made elective.

This is the object of the New Charter, with those who are behind the curtains.

THE APPLICATION FOR A NEW CHARTER.

The applicants have not given such notice of the intended application by a publication in a newspaper, six weeks, as required by the provision of the Revised Statutes.

☞ The Common Council have not published a statement of the Receipts and Expenditures in detail as required by section 20 of the amended charter, to be made two months before the election, which by section 4 of the same act is to take place on the second Tuesday of April, but have gone almost bodily to Albany to ask a repeal of said section, and for authority to levy an immense tax.

☞ The Board of Supervisors of the City and County, which by section 17 of page 361 of vol. I of the Revised Statutes, are the Mayor, Recorder, and Aldermen, have not published an annual detailed statement of disbursements as required in sec. 1 of chap. 369 of the laws of 1839, but have gone to Albany to ask for authority to raise the largest tax ever imposed without this compliance with the law.

INDEPENDENT TICKET.

In proposed to circulate printed Tickets under cover throughout the City addressed to citizens by name, which will afford them the opportunity of voting for the right kind of men.

AMERICAN SALT.

We have prepared a lengthy article on AMERICAN SALT, which we we are obliged to defer till our next publication which will follow this week. or early the week following.

HON. ROBERT H. MORRIS,

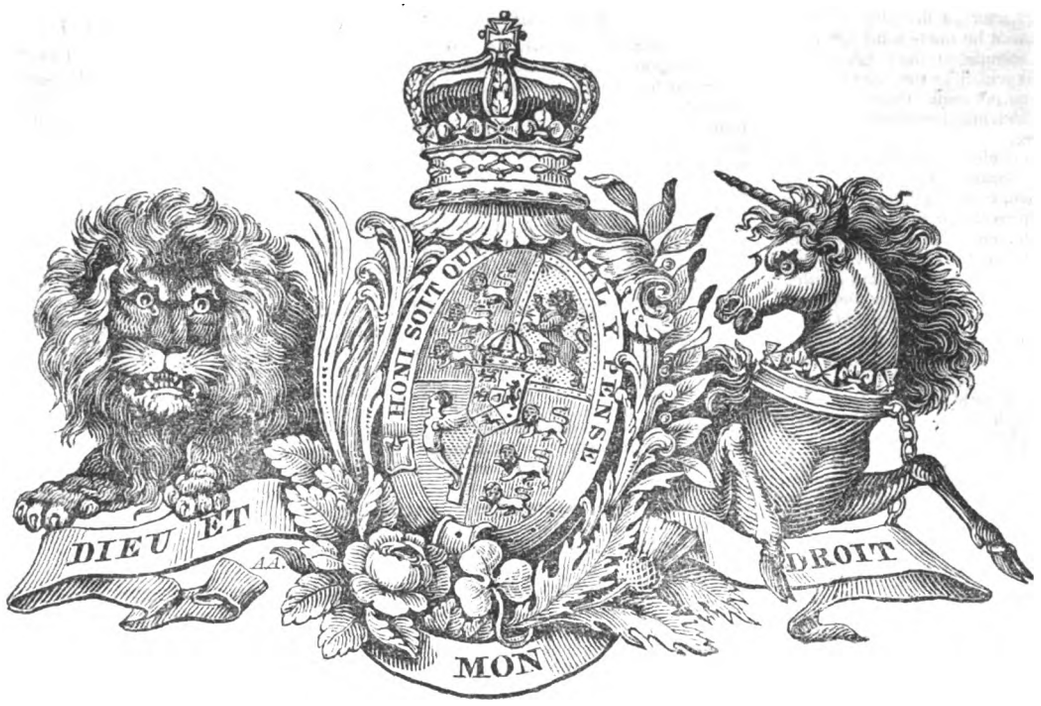
EX-MAYOR OF NEW-YORK,

Is opposed to King John's Charter. Mr. Morris was a faithful public officer and a very intelligent Mayor. His views upon this question are entitled to the highest consideration.

NOTE.

*The communication of a distingushed citizen, on this page, contains one paragraph marked thus * which we shall notice in our next as not being exactly orthodox.

BY THE KING.



WILLIAM III.
May 11th, 1697.

ROYAL ANTI-CHARTER, APPROVED BY THE KING.

The following Act was passed by the Colonial Assembly of the Province of New-York, in 1695, and was approved by KING WILLIAM III, May 11th 1697, O. S.

This act was in force when the Constitution of this State was adopted in 1777, and was confirmed by section 35 of that instrument.

The repealing act of 1787, specified certain colonial acts which it repealed by their respective titles, and confirmed all not thus designated. The Constitution of 1821, by section 13, of article 7, confirmed all colonial laws then in force, and continued them in force, subject to the future disposal of the legislature.

In the revision of the Statutes of the State in 1830, all Colonial laws were repealed by the general repealing clause, in vol. 3 of the Revised Statutes, and shortly after this the New-York City Charter, was amended, and this amended charter is now in force.

The following act speaks volumes. What the Corporation of New-York was then, it is now—stretching forward for arbitrary power—and abusing it to an extent beyond conception.

AN ACT AGAINST UNLAWFUL BY-LAWS AND UNREASONABLE FORFEITURES.

In all humble manner the representatives of this their Majesties Province of New York, show and complain unto your Excellancy, and their Majesties' Council, That the People of the City of New York, under color and pretext of their Charter, or custom, or both, have taken upon them to make and publish certain by-laws, orders, ordinances and regulations, whereby they forbid the bringing of any Flour or Bread, for exportation, to New York, under the penalty of forfeiture of the same; which said city being the principal port of this province for sending forth the produce and manufacturage thereof, and the Chief Market within the same, they thereby not only prohibit the importation and selling such Flour and Bread at the same city, and obstruct and hinder all bolting of Flour and baking of Bread for exportation, which are lawful mysteries, crafts, and trades in all other parts of the province; but also arrogate to themselves the sole bolting, bakeing, using, making, and selling, of all such flour and bread, raised or to be produced within this Province; and under color and pretence of the said Orders, By-Laws, Ordinances, and regulations, have taken, condemned, and converted to their own uses, divers quantities of flour belonging to several of their Majesties' good subjects of this province —ALL WHICH BEING CONTRARY TO LAW, to the grevious damage and impoverishing of many of their Majesties' good people, and the said By-Laws and orders, are unreasonable, and of evil, dangerous, and pernicious consequence to all their Majesties' subjects of this province—They therefore most earnestly pray that it may be enacted, and it hereby enacted, by his Excellency, the Council, and Representatives of their Majesties' Province, in General Assembly met and assembled, and by authority of the same, That the said pretended By-Laws, orders, ordinances, and regulations of the people of New York, made in the name of Mayor, Aldermen, and Commonalty of the city of New York, or in or by any other name or stile whatsever, annd every claim or thing in the same, or any other rule, order, or ordinance contained, in any wise concerning the restraint of bolting of Flour, Baking of Bread, or importing of Flour or Bread to New York aforesaid, OR CONCERNING OR RELATING TO THE PROHIBITION, OBSTRUCTION, OR HINDRANCE OF THE USING, PRACTICING, OR ENJOYING OF ANY OTHER LAWFUL TRADE, MYSTERY, OR OCCUPATION, or against the importing in or to, or exporting from the city of New York, or any other lawful port in the province, any Wine, Corn, Flour, Bread, Flesh, Fish, Victuals, Wares, Merchandize, and all other things vendable and not, by the Common Law or Statues of the realme prohibited; and all process, proceedings, judgements, and executions thereupon hereafter to be issued, ordered, entred, awarded, published, or executed, shall be entirely void and holden for none; and they are hereby declaired void and null to all intents and purposes whatsoever: any pretended by-law, order ordinance, custom, usage, or practice, to the contrary hereof in any wise notwithstanding.

And further, Be it Enacted, &c., That if any time after the making and publishing this Act, any officer, minister, or other person or persons whatsoever, shall presume, by or under color of any such pretended by-laws, ordinances, or regulations, to take, seize, condemn, or convert so his or their own uses, any flour, or other goods or merchandize whatsoever, not by law prohibited at any time to be imported from the said city of New York, or any other lawful port in this province, *he and they, and every of them shall forfeit to the owner of such flour, bread and other goods or merchandize, treble the vulue of the flour, bread, or other goods or merchandize, so to be taken, seized, condemned, or converted as aforesaid, and also his treble costs, to be recovered by action of debt in any of the Majesties' Courts within this province, wherein no essoign protection or wager of Law, nor any more than one imparlance shall be allowed,* Provided always, and it is the true intent and meaning of this Act, that no officer, minister, or other perron or persons, shall at any time be impeached, prosecuted, condemned, troubled ordisquieted, by virtue of this Act, or upon any construction or interpretation of the same, for any fact, matter or thing acted, done, perpetrated or committed at any time before the making or publication hereof; but that such officer, minister, or other person or persons, as to any fact, matter or thing, heretofore acted, done, perpetrated or committed, shall be and remain in such plight, state, and condition, as if this Act, and every clause therein contained, had never been made, any thing before herein expressed to the contrary hereof in any wise notwithstanding. WM. III. pp. 23 and 24, Law 1719, London Edition, Acts passed by the General Assembly of the Colony of New York, in March, July. and October, 1695.—This volume is in the STATE LIBRARY.

MUNICIPAL CORPORATIONS.

In Europe, many municipal Corporations are by *prescription*, having been in operation before the memory of man—others are by *Grant* and others by *Statute*. In the United States, all municipal Corporations are created by Statute, and are governed by the laws of the State of which they respectively form a part.

SYSTEM OF TAXATION.

Who shall be taxed?

The public taxes should be borne equally by all persons resident in the city benefitted by the expenditure of the money thus raised. It has been proposed to tax non-residents. Such a tax would be both impolitic and unjust. The other counties of the State are equally a portion of the great commonwealth, and should share equally in the support of its public expenditures by citizens resident in their respective boundaries in the producing part of the year. If a citizen raises his bread in Westchester, shall he be made to pay a tax upon it in the city of New-York because he came to the city in winter to expend his money.

There are certain impositions called Taxes which are not impositions of that class, but are more appropriately local assessments. The cleaning of the public streets is one of this class, and a law was passed on the first of October, 1691, for assessing the expense on the party intended to be benefitted whether owner or occupant. This act was repealed in 1787, and was re-enacted in the same form the same year, and was again incorporated into the general law in 1813. See section 175 and 176.

The lighting of the streets and the watching of the property of the citizens, and also the providing of Croton water to extinguish fires, and for the use of the inhabitants should be assessed on the parties benefitted. These charges have never been treated in the tax law as a general tax, but have been specially imposed upon the residents of a local district defined by geographical boundaries in the act.

The New-York tax law provides for the taxing of inhabitant and resident of the ward in which he resides at the time the assessment is made—and if he happen to reside at that time in a ward where there is no watch, no lamps, or no Croton Water, he should certainly not be made to pay a tax for these on his personal property not benefitted thereby.

Aliens, resident in the city of New-York, are taxable the same as citizens, they being, in the language of the law, inhabitants and residents, and not exempted from taxation, by treaties with the Government of which they are still subjects.

Firms should be taxed as individuals, but if an individual member of a firm resides without the city and is taxed for personal property at the place of his residence that portion of the Tax should be deducted from his New-York Tax. This would be equitable and just.

SYSTEM OF TAXATION.

What shall be taxed!

For the Croton, the Lamps, the Watch and the cleaning of Streets and repairing of wharves, the real and personal estate within the district where the benefit is derived should be taxed to the owner. A person residing in the first ward, owning stock in a Boston Bank should not pay a tax on that investment for these local expenditures, nor should a merchant residing in the first ward pay a tax for these local outlays on capital invested in a ship engaged in a three year's whaling voyage in the Pacific Ocean.

SYSTEM OF TAXATION.

Who shall assess the Tax?

A Board of Permanent Assessors similar to the Boston Board of Permanent Assessors, should be organized by the Legislature and these officers should be elected for three, four and five years, and be composed of three persons, and they should have an Assistant in each Ward. The Board of Permanent Assessors should have a permanent office in which should be deposited all the Ward maps. The Assistant Assessors should commence the assessment on the second Wednesday in May and complete it by the first of September. The books should remain open at the office of the Permanent Assessors one month for examination, and after the expiration of that time a copy should be delivered over to the Receiver of Taxes for collection.

The Board of Assessors should have power to correct erroneous taxes at any time within six months after the assessment is completed.

A return of the names of all persons votiug at the election should be made out in a list and returned to the assessors at the close of every election.

OPENING STREETS.

"Mons. Tonson come again."

THE NATIVES.

The New-York Express and Evening Post, each contain three notices of three sets of Commissioners, which were appointed by one of the Justices of the Supreme Court in September 1845, to make an estimate and assessment for three street openings viz: Widening Houston Street; widening the Bloomingdale Road; and extending Leroy Street. Wm. Paxson Hallet, a clerk of the Supreme Court, is Commissioner in two of the proceedings; J. W. C. Leveridge, son of John Leveridge, the Counsel of the Native Common Council, in three of the proceedings; C. A. Whitney, a Clerk of the Native Common Council in three of the proceedings, and Joseph Hufty, a member of the Native Finance Committee, in one of the proceedings. We learn that the confirmation of the Reports of these Commissioners will be opposed by RICHARD MOTT, Esq. We shall notice these proceedings in great detail hereafter.

INDEPENDENT OF THE MAYOR.

Section 32 of the proposed bill provides that the Heads of Departments shall communicate to the Common Council. Their Reports should be made to the Mayor of the City. The Mayor is more to be relied upon than any other officer of the City Government. Such has been the case for years past. It is true that we have sometimes had ignorant men for Mayors, but we do not recollect but a solitary instance of this kind.

WHARVES, PIERS AND SLIPS.

The Wharves, Piers and Slips of the city of New-York are not exactly corporation property, but are the property of the county having been constructed by monies derived from a county tax. It is not in the power of the corporation to sell these improvements.

The Wharves and Piers in New-York should be kept in a decent state. It is often that the piers are in an unmentionable condition.

DISBURSEMENTS OF THE PUBLIC MONIES.

There should be organized by law a board of auditors to audit all public accounts. All bills audited by the board should be open to the inspection of the citizens, and a copy on demand should be furnished to every person applying therefor, on his paying for such copy the actual expense of making the transcript.

THE LIGHTNING.

In our last number we stated that we would in our next number give a synopsis of our lightning records. The record will occupy so much of the paper that we are under the necessity of deferring its publication a few days. The record is vastly important as it will embrace more than two hundred different records of as many thunderbolts. It is from the testimony of the lightning itself—from its records, that we are to draw conclusions that are instructive.

THE MUNICIPAL GAZETTE.

This paper is circulated in every county in this State. We have received several communications from individuals residing in the country requesting us to forward to them the back Numbers, and expressing a delicacy in making the application on account of the publication being a gratuitous distribution. As a general reply to these suggestions, we state that the object of this publication is to diffuse useful information, and the back numbers will be most cheerfully forwarded to any person desiring the same. A correspondent under date of Feb. 20th, in a letter addressed to the editor says: "Having accidentally seen a number of the MUNICIPAL GAZETTE, and finding it it in my judgment a most valuable publication at this time, and during the approaching Convention to remodel the organic law of the State," &c. &c.

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, APRIL 2, 1846. [VOL. I....NO. 40

STATE CONVENTION.

The Convention, when organized in June next, will have before them a labor of vast importance. Principles never change, it is said—but the habits of the People change—new discoveries are continually being made—new improvements introduced, producing changes of vast and surprising extent. When the former Constitution of this State was adopted, in 1777, steam power as applied to the navigation of the vast waters which cover a great portion of the surface of our globe, was unknown, and metallic railways as now used as great highways, were also unknown. It will be seen on reference to the session laws of this State enacted in 1686, that the Legislature were applied to by an individual named JOHN FITCH, of Bucks County, Pennsylvania, for a grant of exclusive right of navigation of the rivers and waters of this State by vessels or boats propelled by steam, or fire, for the term of 50 years. The Legislature entertained the application and passed an act in conformity with the prayer of the petitioner. JOHN FITCH was an humble individual, but his great mind gave birth to the discovery which has revolutioned the civilized globe. *He died poor and friendless*, and probably not a stone marks the gaave where the ashes which enveloped the spirit of the discoverer, sleeps.

This grant by the legislature, was for a *meritorious* object, but it has been decided to have been a violation of the Constitution of the United Stales, and therefore was declared void.

In the forming of a new Constitution for this State, or in amending the fundamental law now in force, it becomes necessary to examine the Constitution of the United States in order to avoid difficulties in assuming powers, and rights previously disposed of to the General Governments.

We have said that steam power has produced changes, and now, another discovery, that of conveying information by means of electricity, instantaneously from one extremity of the continent to the other.

What this will attain to, remains to be ascertained.

These changes, produce new interests, and call for new regulations. Formerly, the great roads, or highways, were constructed at the expense of the public, but this new system requires too great an outlay of capital to be borne by the public treasury, hence individuals have associated together, and furnished the means to make these improvements, in consideration of being allowed to charge a compensation for transporting Passengers, Merchandize, &c., upon them. These associations have been authorised by the Legislature to take land for the roads, paying the owner a just compensation therefor. Doubts have been expressed whether the Constitution authorised the taking of land in cases of individual associations for such use—the improvement being that of limited associations, and therefore not in the language of the Constitution, being the taking of private property for *public use*, as that term was for erly understood.

PUBLIC CITY OBLIGATIONS.

The Bonds now extant should be registered in the office of the Mayor of the City where these are signed, and also in the office of the clerk of the Common Council, where Corporation Bonds are also signed, and every one issued or extant, should have the registering page in each office upon its surface. These heretofore issued have not been so recorded.

EXAMINATION OF PUBLIC OFFICES.

The pecuniary concerns of the public offices have never to our knowledge been examined. The Street Commissioners office, and that of the City Comptroller should undergo this scrutiny for the past, and annually, for the future.

CANDIDATES FOR THE STATE CONVENTION.

It is high time to call public attention to the selection of candidates for the State Convention, as members of that body from the county of New-York. We present the following list of names selected from the three political parties, viz:

James Kent,	George Douglass,
Albert Gallatin,	Abraham G. Thompson,
Jonathan Thompson,	Abraham Van Nest,
Stephen Allen,	Gulian C. Verplanck,
Saul Alley,	Wm. B. Crosby,
Jonathan Goodhue,	Charles H. Russell,
John M. Bradhurst,	Peter Schermerhorn,
Solomon Townsend,	James I. Jones,
Peter Cooper,	Robert Smith,
James Harper,	Murray Hoffman,
Wm. F. Havemeyer,	David Hale,
Burtis Skidmore,	Philip Hone,
Richard Mott,	J. I. Coddington,
Lora Nash,	Theodore Sedgwick,
F. R. Tillou,	Samuel Thompson,
Luther Bradish,	James Donaldson,
Peter Lorrilard, jr.,	Thomas T. Woodruff,
Henry Grinnel,	Elisha P; Hurlbut,
Richard S. Williams,	John David Wolfe,
James Boorman,	Hiram Ketchum.
Myndert Van Schaick,	Edmund H. Pendleton,
Preserved Fish,	William W. Fox,
Samuel F. Mott,	Thatcher T. Payne.

PUBLIC SALINES OF THIS STATE.

The Constitution of this State provides as follows: "together with the duties on the manufacture of salt, as established by the act of the fifteenth of April 1817, "shall be and remain inviolably appropriated &c., and the Legislature shall never sell or dispose of the salt springs belonging to this State, nor the land contiguous thereto, which may be necessary or convenient for their use, but the same shall remain the property of this State. Art. 7, Section 10, Con. 1821.

Amendment of the Constitution in 1833.

"*Amendment No.* 3. That the duties on the manufacture of salt, as established by the act of April 15, 1817, and by the 10th section of the seventh article of the Constitution of this State, may at any time hereafter be reduced by an act of the Legislature of this State, but shall not while the same is appropriated and pledged by the said section be reduced below the sum of six cents upon each and every bushel; and the said duties shall remain inviolably appropriated and applied by said tenth section:

"And that so much of the said tenth section of the seventh article of the Constitution of this State, as is inconsistent with the amendment be abrogated."

We find in the Report of Mr. Spencer, Saperintendant of the State Salines to the Legislature in 1843, on page 54 of that Report the following.

The State came into possession of the springs in the following manner, viz:

"By a Treaty with the Onondago Indians, held at Fort Schuyler, September 12, 1788, the said Indians ceded to the State of New-York, all their lands forever, excepting certain '*tracts reserved.*' In the treaty they reserve: *Fourthly.* The Salt Lake, and the lands for one mile round the same shall forever remain for the common benefit of the people of the State of New-York, and the Onondagos and their posterity, for the purpose of making salt, and shall not be granted or *otherwise disposed of* for other purposes.'

"By Treaty held at Cayuga Ferry, dated July 20, 1795, the said Indians ceded to the state the said Salt Lake, and one mile around it, in order to render the common right formerly reserved more productive. They also ceded another tract on the west side of the creek, running from the northern boundary of the square tract surrounding their village to the Salt Lake an extent of one half a mile from said Creek.

"In consideration of which cession, the sum of $500 was then paid to the said Indians for the said Indians for the said common right, and $200 for the said half mile; and it is stipulated that the sum of $500 and $200, and *one hundred bushels of salt*, should be paid the said Indians annually thereafter, on the first day of June."

Mr. Spencer states that the salt duty collected from 1818 to 1824, both years inclusive, was $452,593.29. From the Report of Mr. Marks, State Superintendant of Salines, made to the Legislature the present session, it appears that the duty collected from 1825 to 1845, both years inclusive was 3,366.736.85, making in all from 1818 to 1845, both years inclusive, the sum of $3,759,329,84.

The duty thus collected was applied to making and completing a great highway to these salines, although not a public highway, for there are turnpike gates upon it.

The imposition of the duty by putting up turnpike gates upon the Salt Springs, and making toll gates upon the canal are proceedings of that questionable shape that it becomes a matter of paramount importance in the framing of a new fundamental law as to what kind of provision is called for in the premises.

The faith of the State is pledged for the payment of the public debt, and when that is extinguished none other should be created.

A tax upon every bushel of wheat, upon every bushel of potatoes, upon every ton of hay, &c. &c., would be an equal tax, but it would be found oppressive, and so is the Salt tax, and it is exceedingly so when the demand for salt is light, for the salt maker when in moderate circumstances is dependent on his sales, and he cannot sell his salt until he pays the State tribute. By the act of April 15, 1817, the duty was 12½ cents for 56 lbs. of salt,

The State has established an inspection of salt, but it is mere formal as most of the other inspections of articles of merchandize in this State have been found to be.

The State have abused the grant of 1788 and 1789 from the Indians.

It is by no means certain that the saline waters at Onondago are inexhaustable, and if abundant it is not improbable that these may deteriorate and become incorporated with lime and magnesia to a greater extent than now exists.

We have made extensive examinations of the saline waters of this region on both sides of Lake Ontario and have in our cabinet samples of salt water from numerous wells and springs.

The quantity of water which fell at the Onondago Salines from the clouds in 1845, was accordig to the recorded observation of L. W. Conkey, Esq., 37 85-100 inches. This is not half so much as falls during the same time at the Islands where the Rock Salt and Turk's Island Salt is made, but the heat of the sun is much greater at Turk's Island than at Onondago, and consequently the evaporation greater, and besides that the saline waters have a much higher average temperature.

We have taken up several pages of this present number of our Journal in the matters pertaintng to American Salt, with a view to the constitutional amendments on this behalf.

The analyses of salt made by the heat of fire from the saline waters of the Great Salt Lake, by Captain Freemont, in his recent tour across the continent, is as follows:

Chloride of sodium	97,80
Chloride of calcium	0,61
Chloride of magnesium	0,24
Sulphate of soda	0,23
Sulphate of lime	1,12
	100,00

The sulphate of lime is an almost insoluble salt. One pound of the chrystalized sulphate of lime requires about 65 gallons of cold water to dissolve it, or about 55 gallons of hot water. This combination in salt is therefore not injurious to salt for the packing of provisions. The chloride of calcium, and the chloride of magnesium are the combinations that are injurious to salt, for these deliquiate at a temperature above 32° of Fahrenheit.

Professor Beck states that the salt analized by him was reduced to a dry state by heat of 400 or 500°. We think he erred in this, solar salt should not be made to undergo this change of temperature.

We have before us an analysis of Saltville (south western Virginia) salt, vitrified by heat, which tested as follows:

Chloride of sodium	90,510
Sulphate of lime	9,311
Carbonate of lime	0,126
Chloride of calcium	0,050
	100,000

There can be little doubt that this change was produced to some extent by heat, as a heat sufficient to fuse the salt with its combinations, is sufficient to calcine the sulphate of lime. We know that the alkaline salts are effected to a very great extent by the peculiar mode of applying heat, and that caustic alkalines that are subjected for some time to heat, lose their caustic properties and acquire acid, and for the purposes of making soap are thus rendered unfit for that use. We have abundant instruction as to the degree of heat necessary to chrystalize salt. The brine pits or salt ponds at Turk's Island are never heated beyond 150 degrees of Fahrenheit, which is far short of the heat of boiling water. It follows from this that the brine should not be heated to such an extent as to produce ebulition, but should be heated gradually to 150°. We have for a period of more than 20 years used both foreign and American salt for chemical purposes to the extent of 30 or 40,000 bushels. We have also used salt for curing Butter for export and also for curing Beef and Pork which has given us the means of knowing much of the quality of the different kinds of salt. For some purposes we would give a decided preference to Onondaga solar salt over Turk's Island, and for others, to Turk's Island salt over Onondaga solar Salt. The rock salt of Commerce, which is the Bonaire and Cuaracoa salt, is made from sea water in the same way that Onondaga solar salt is made from the brine raised from the salt wells. The sea water is open to the atmosphere, and the Onondaga Saline waters are covered up with earth. Both rock salt, and Onondaga solar salt, are made by the heat of the sun. We have specimens of the saline waters of nearly all the salines in the United States, which we shall notice more particularly hereafter.

The import of Foreign Salt into the Port of New-York for the year ending Nov. 30th, 1845, was 1,040,456 bushels of 56lb. each, of which 604,084 bushels were from Liverpool, England. The proportion of coarse solar salt imported, is therefore not large.

This is the smallest importation of salt for many years.

The coarse salt made at the Onondaga Salines by solar evaporation, during the year ending December 31, 1845, was 353,455 bushels, of 56 lbs. each.

The fine salt made at the same salines by the heat of fire, during the year ending December 31, 1845, was 3,408,903 bushels, of 56lb. each, making the aggregate product of the Onondaga Salines in 1845, 3,762,358 bushels of Salt.

The salt manufactured at the Onondaga Salines from 1826 to 1845, both years inclusive, has been forty-three millions, five hundred and thirteen thousand six hundred and three bushels.

The Superintendant of the Salines in his report to the Legislature, states that the solar salt weighs about 77 lbs. to the measured bushel, and the salt made by the heat of fire, from 42 to 56 to the bushel; that made in the back kettles the lightest, and that in the front kettles the heaviest. The salt made in the back kettles is without any doubt the best of the two, as it is made with less heat.

The Superintendent of the Salines states that the brine from the wells at Liverpool, has become weaker than those of Salina and Syracuse. When I visited the Salines in 1842, the brine at the Liverpool well was the best at the Salines and was within less than 100 feet of the surface, while the best brine at Syracuse was then obtained from a depth of more than 300 feet. The natural reservoirs are therefore unequal in their dimensions, that at Liverpool being soonest exhausted.

By the records of the state of the salometer, it appears from the report, that the brine at Syracuse stood at 74 and 74½, from January 1 to April 26, during which time the rain gauge denoted a fall of water from the clouds of 11,59-100 inches. During the four months named above, but 237,515.61 bushels of salt, in all, was made. The temperature of the brine remained during this whole period, at 52° of Fahrenheit. The *second* apportionment of about 4 months, extending from April 26, to August 16, there was made at the salines 1,656,059 bushels of salt. The temperature of the brine remained at 52°. The salometer was from 71½ to 73½, with the exception of the 4th of August when it was 74°. During this period the rain gauge denoted an aggregate fall of water from the clouds of 15,22-100 inches, and the fall of water was greatest when the brine was the best. The remaining of the year from August 16, to Dec. 31, there was made at the salines 1,797,182 bushels of salt. The temperature of the brine remained at 52°, and the salometer on fifteen of the trial days was at 73; one day 74; two days, 73½, and two days 72½. The Rain guage for the same time denoting an aggregate fall of rain at 13,93-100 inches. The brine in the Liverpool well from January 1st to April 26, was at 68°, and from April 26, to August 16, was of an average of 66½; from August 16 to Dec. 31, it was 66 to 71°.

The Salina wells in January, February and March, were at 71; April, 70 and 69; May, 69; June, 69 to 71; July, 69 to 72; August, 71; September 69 to 72; Oct. 71; Nov. 71 to 73; Dec. 72 to 74°.

In 1840, Mr. Spencer Reports to the Legislature, the brine at Syracuse, in April, at 57; May and June 56; and in a new well 62 to 64; July 73 to 76; Aug. 77 to 78; Dec. 75 to 78. In 1841, the Syracuse brine was at 77 throughout the season, and the same during 1842. In 1843, the salometer tables are not contained in the Report of the newly appointed Superintendant, Dr. Wright. In 1844, Dr. Wright the superintendant gives the record of the salometer from January to June, inclusive, at 74°: July to September, inclusive, 72 to 73°; the residue of the year 74°. The Liverpool waters in 1840, show a fluctuation of from 65 to 72°; in 1841, from 64 to 74; 1842 from 70 to 78; 1844 from 66 to 71°. 1845, 66 to 71.

I have heretofore noticed the decrease of the saline properties in the water at these salines and have mentioned the fact to JOHN TOWNSEND, Esq., of Albany, who is one of the proprietors of the original village of Syracuse, as being a snbject requiring careful investigation.

The brine at each of the wells should be tested every week throughout the year in an accurate chemical analyses. The salt of each manufacturer, should undergo the same scrutiny, at the same periods, and these two scrutinies together in their results would determine facts of great importance.

It has been the policy of the State government to derive the utmost possible revenue from the salines, but such a policy is ruinous in the extreme.

There seems to be no certain information as to the extent of the saline deposit at Onondaga.

The location of the mineral, from which the water derives its saline properties, has never been ascertained. At Montezuma, a well has been sunk to the depth of 604 feet; and at Lockpit to the depth of 401 feet, and Syracuse to the depth 316 feet, but the greatest depth does not necessarily determine any important fact, for in the Saltville mines a well or boring was made to the depth of 400 feet, without obtaining salt water, but at the distance of 40 feet

another boring was made to the depth of 214 feet, and an inexhaustible supply of brine obtained.

During the continuance of cold weather, while Onondaga Lake was covered with ice, an examination should have been made of its surface, and of the stratas upon which it rests. My examinations of that lake led me to conclude that its lower surface once formed the surface of the ground, and that this lake has resulted from a breaking down of the surface from the removal of the substratum. The crust was clay and whether it reposed upon loose sand, or fossil salt, cannot now be determined, as the sand may have left its bed, and thenfilled that vacated by the salt, but if it was fossil salt the strata was probably of greater depth than the present waters of the lake and the lower stratas may yet remain and be reached by boring through a strata corresponding with that of the shore well at Liverpool.

GREAT AMERICAN SALT LAKE.

From Capt. Freemont's Report, made to Congress, and recently published by that Body.

"*September* 9.—The day was clear and calm; the thermometer at sunrise at 49°. As is usual with the trappers on the eve of any enterprise, our people had had dreams, and theirs happened to be a bad one —one which always preceded evil—and consequently they looked very gloomy this morning; but we hurried through our breakfast, in order to make an early start, and have all the day before us for our adventure. The channel in a short distance became so shallow that our navigation was at an end, being merely a sheet of soft mud, with a few inches of water, and sometimes none at all, forming the low-water shore of the lake. All this place was absolutely covered with flocks of screaming plover. We took off our clothes, and, getting overboard, commenced dragging the boat —making, by this operation, a very curious trail, and a very disagreeable smell in stirring up the mud, as we sank above the knee at every step. The water here was still fresh, with only an insipid and disagreeable taste, probably derived from the bed of fetid mud. After proceeding in this way about a mile, we came to a small black ridge on the bottom, beyond which the water became suddenly salt, beginning gradually to deepen, and the bottom was sandy and firm. It was a remarkable division, separating the fresh water of the rivers from the briny water of the lake, which was entirely *saturated* with common salt. Pushing our little vessel across the narrow boundary, we sprang on board, and at length were afloat on the waters of the unknown sea.

"We did not steer for the mountainous islands, but directed our course towards a lower one, which it had been decided we should first visit, the summit of which was formed like the crater at the upper end of Bear river valley. So long as we could touch the bottom with our paddles, we were very gay; but gradually, as the water deepened, we became more still in our frail batteau of gum cloth distended with air, and with pasted seams. Although the day was very calm, there was a considerable swell on the lake; and there were patches of foam on the surface, which were slowly moving to the southward, indicating the set of a current in that direction, and recalling the recollection of the whirlpool stories. The water continued to deepen as we advanced; the lake becoming almost transparently clear, of an extremely beautiful bright-green color; and the spray, which was thrown into the boat and over our clothes, was directly converted into a crust of common salt, which covered also our hands and arms. "Captain," said Carson, who for some time had been looking supiciously at some whitening appearances outside the nearest islands, "what are those yonder?—won't you just take a look with the glass?" We ceased paddling for a moment, and found them to be the caps of the waves that were begining to break under the force of a strong breeze that was coming up the lake. The form of the boat seemed to be an admirable one, and it rode on the waves like a water bird; but, at the same time, it was extremely slow in progress. When we were a little more than half-way across the reach, two of the divisions between the cylinders gave way, and it required the constant use of the bellows to keep in a sufficient quantity of air. For a long time we scarcely seemed to approach our island, but gradually we worked across the rougher sea of the open channel, into the smoother water under the lee of the island; and began to discover that what we took for a long row of pelicans ranged on the beach, were only low cliffs whitened with salt by the spray of the waves; and about noon we reached the shore, the transparency of the water enabling us to see the bottom at a considerable depth.

"It was a handsome broad beach where we landed, behind which the hill, into which the island was gathered, rose somewhat abruptly; and a point of rock at one end enclosed it in a sheltering way; and as there was an abundance of drift-wood along the shore, it offered us a pleasant encampment. We did not suffer our fragile boat to touch the sharp rocks; but, getting overboard, discharged the baggage, and lifting it gently out of water, carried it to the upper part of the beach, which was composed of very small fragments of rock.

"Among the successive banks of the beach, formed by the action of the waves, our attention, as we approached the island, had been attracted by one 10 to 20 feet in breadth, of a dark-brown color. Being more closely examined, this was found to be composed, to the depth of seven or eight, and twelve inches, entirely of the *larvæ* of insects, or, in common language, of the skins of worms, about the size of a grain of oats, which had been washed up by the waters of the lake.

"Alluding to this subject some months afterwards, when travelling through a more southern portion of this region, in company with Mr. Joseph Walker, an old hunter, I was informed by him, that, wandering with a party of men in a mountain country east of the great Californian range, he surprised a party of several Indian families encamped near a salt lake, who abandoned their lodges at his approach, leaving everything behind them. Being in a starving condition, they were delighted to find in the abandoned lodges a number of skin bags, containing a quantity of what appeared to be fish, dried and pounded. On this they made a hearty supper; and were gathering around an abundant breakfast the next morning, when Mr. Walker discovered that it was with these, or with a similar worm, that the bags had been filled. The stomachs of the stout trappers were not proof against their prejudices, and the repulsive food was suddenly ejected. Mr. Walker had further opportunities of seeing these worms used as an article of food; and I am inclined to think they are the same as those we saw, and appear to be a product of the salt lakes. It may be well to recall to your mind that Mr. Walker was associated with Captain Bonneville in his expedition to the Rocky mountains; and has since that time remained in the country, generally residing in some of the Snake villages, when not engaged in one of his numerous trapping expeditions, in which he is celebrated as one of the best and bravest leaders who have ever been in the country.

"The cliffs and masses of rock along the shore were whitened by an incrustation of salt where the waves dashed up against them; and the evaporating water, which had been left in holes and hollows on the surface of the rocks, was covered with a crust of salt about one-eighth of an inch in thickness. It appeared strange that, in the midst of this grand reservoir, one of our greatest wants lately had been salt. Exposed to be more perfectly dried in the sun, this became very white and fine, having the usual flavor of very excellent common salt, without any foreign taste; but only a little was collected for present use, as there was in it a number of small black insects.

"Carrying with us the barometer and other instruments, in the afternoon we ascended to the highest point of the island—a bare rocky peak, 800 feet above the lake. Standing on the summit, we enjoyed an extended view of the lake, enclosed in a basin of rugged mountains, which sometimes left marshy flats and extensive bottoms between them and the shore, and in other places came directly down into the water with bold and precipitous bluffs. Following with our glasses the irregular shores, we searched for some indications of a communication with other bodies of water, or the entrance of other rivers; but the distance was so great, that we could make out nothing with certainty. To the southward, several peninsular mountains 3 or 4,000 ft. high entered the lake appearing, so far as the distance and our position enabled us to determine, to be connected with flats and low ridges, with the mountains in the rear. Although these are probably the islands usually indicated on maps of this region as entirely detached from the shore, as we have preferred to represent them in the small map on the preceding page, precisely as we were enabled to sketch them on the ground, leaving their more complete delineation for a future survey. The sketch, of which the scale is nearly 16 miles to an inch, is introduced only to show clearly the extent of our operations, which it will be remembered, were made when the waters were at their lowest stage. At the season of high waters in the spring, it is probable that all the the marshes and low grounds are overflowed, and the surface of the lake considerably greater. In several places (which will be indicated to you in the sketch, by the absence of the bordering mountains) the view was of unlimited extent—here and there a rocky islet appearing above the water at a great distance; and beyond, everything was vague and undefined. As we looked over the vast expanse of water spread out beneath us, and strained our eyes along the silent shores over which hung so much doubt and uncertainty and which were so full of interest to us, I could hardly repress the almost irresistible desire to continue our exploration; but the lengthening snow on the mountains was a plain indication of the advancing season, and our frail linen boat appeared so insecure that I was unwilling to trust our lives to the uncertainties of the lake. I therefore unwillingly resolved to terminate our survey here, and remain satisfied for the present with what we had been able to add to the unknown geography of the region. We felt pleasure also in remembering that we were the first who, in the traditionary annals of the country, had visited the islands, and broken, with the cheerful sound of human voices, the long solitude of the place. From the point where we were standing, the ground fell off on every side to the water, giving us a perfect view of the island, which is twelve or thirteen miles in circumference, being simply a rocky hill, on which there is neither water or trees of any kind; although the *Fremontia vermicularis*, which was in great abundance, might easily be mistaken for timber at a distance. The plant seemed here to delight in a congenial air, growing in extraordinary luxuriance seven to eight feet high, and was very abundant on the upper parts of the island, where it was almost the only plant. This is eminently a saline shrub; its leaves have a very salt taste; and it luxuriates in saline soils, where it is usually characteristic. It is widely diffused over all this country. A chenopodiaceous shrub, which is a new species of ONION, (O. rigida, *Torr. & Frem.*,) was equally characteristic of the lower parts of the island. These two are the striking plants on the island, and belong to a class of plants which form a prominent feature in the vegetation of this country. On the lower parts of the island also a prickly pear of very large size was frequent. On the shore, near the water, was a woolly species of *phaca*; and a new species of umbelliferous plant (*leptotænia*) was scattered about in very considerable abundance. These constituted all the vegetation that now appeared upon the island.

"I accidentally left on the summit the brass cover to the object end of my spy-glass; and as it will probably remain there undisturbed by Indians, it will furnish matter of speculation to some future traveller. In our excursions about the island, we did not meet with any kind of animal; a magpie, and another larger bird, probably attracted by the smoke of our fire, paid us a visit from the shore, and were the only living things seen during our stay. The rock constituting the cliffs along the shore where we were encamped, is a talcous rock, or steaite, with brown spar.

"At sunset, the temperature was 70°. We had arrived just in time to obtain a meridian altitude of the sun, and other observations were obtained this evening, which place our camp in latitude 41° 10′ 42″, and longitude 112° 21′ 05″, from Greenwich. From a discussion of the barometrical observations made during our stay on the shores of the lake, we have adopted 4,200 feet for its elevation above the gulf of Mexico. In the first disappointment we felt from the dissipation of our dream of the fertile islands, I called this *Disappointment island.*

"Out of the driftwood, we made ourselves pleasant little lodges, open to the water, and, after having kindled large fires to excite the wonder of any straggling savage on the lake shores, lay down, for the first time in a long journey, in perfect security; no one thinking about his arms. The evening was extremely bright and pleasant; but the wind rose during

"Glancing your eye along the map, you will see a small stream entering the *Utah lake*, south of the Spanish fork, and the first waters of that lake which our road of 1844 crosses in coming up from the southward. When I was on this stream with Mr. Walker in that year, he informed me that on the upper part of the river are immense beds of rock salt of very great thickness, which he had frequently visited. Farther to the southward, the rivers which are affluent to the Colorado, such as the Rio Virgen, and Gila river, near their mouths, are impregnated with salt by the cliffs of rock salt between which they pass. These mines occur in the same ridge in which about 120 miles to the northward, and subsequently in their more immediate neighborhood, we discovered the fossils belonging to the oolitic period, and they are probably connected with that formation, and are the deposite from which the Great Lake obtains its salt. Had we remained longer, we should have found them in its bed, and in the mountains around its shores.

By observation, the latitude of this camp is 41°, 15′ 50″, and longitude 112° 06′ 43″.

The observations made during our stay give for the rate of the chronometer 31″.72, corresponding almost exactly with the rate obtained at St. Vrain's fort. Barometrical observations were made hourly during the day. This morning we breakfasted on yampah, and had only kamas for supper; but a cup of good coffee still distinguished us from our *digger* acquaintances.

"*September* 12.—The morning was clear and calm, with a temperature at sunrise of 33°. We resumed our journey late in the day, returning by nearly the same route which we had travelled in coming to the the lake; and avoiding the passage of Hawthorn creek, struck the hills a little below the hot salt springs. The flat plain we had here passed over consisted alternately of tolerably good sandy soil and of saline plats. We encamped early on Clear creek, at the foot of the high ridge: one of the peaks of which we ascertained by measurement to be 4,210 feet above the lake, or about eight thousand four hundred ft. above the sea. Behind these front peaks the ridge rises towards the Bear river mountains, which are probably as high as the Wind river chain. This creek is here unusually well timbered with a variety of trees. Among them were birch (*betula*,) the narrow-leaved poplar (*populus angustifolia*,) several kinds of willow, (*salix*) hawthorn, (*cratægus*,) alder, (*alnus viridus*,) and *cerasus*, with an oak allied to *quercus alba*, but very distinct from that or any other species in the United States.

"We had to-night a supper of sea-gulls, which Carson killed near the lake. Although cool, the thermometer standing at 47°, musquitos were sufficiently numerous to be troublesome this evening.

"*September* 13.—Continuing up the river valley, we crossed several small streams; the mountains on the right appearing to consist of the blue lime stone, which we had observed in the same ridge to the northward, alternating here with a granular quartz already mentioned. One of these streams, which forms a smaller lake near the river, was broken up into several channels; and the irrigated bottom of fertile soil was covered with innumerable flowers, among which were fields of *eupatorium purpureum*, with helianthi, a handsome solidago (*S. Canadensis*,) and a variety of other plants in bloom. Continuing along the foot of the hills, in the afternoon we found five or six hot spsings gushing out together, beneath a conglomerate, consisting principally of fragments of a grayish-blue limestone, effloresceing a salt upon the surface. The temperature of these springs was 134°, and the rocks in the bed were colored with a red deposite, and there was common salt crystallized on the margin. There was also a white incrustation upon leaves and roots, consisting principally of carbonate of lime. There were rushes seen along the road this afternoon, and the soil under the hills was very black, and apparently very good; but at this time the grass is entirely dried up. We encamped on Bear river, immediately below a cut-off, the cañon by which the river enters this valley bearing north by compass. The night was mild, with a very clear sky; and I obtained a very excellent observation of annocultation of Tani Arietis, with other observations. Both immersion and emersion of the star were observed; but, as our observations have shown, the phase at the bright limb generally gives incorrect longitudes, and we have adopted the result obtained from the emersion at the dark limb, without allowing any weight to the immersion. According to these observations, the longitude is 112° 05′ 12″, and the latitude 41° 42′ 43″. All the longitudes on the line of our outward journey, between St. Vrain's fort and the Dalles of the Columbia, which were not directly determined by satellites, have been chronometrically referred to this place.

NORTH WESTERN VIRGINIA....KANAWHA SALINES.

New-York May, 1, 1845.

Dear Sir: I send to three addresses in your place some newspapers, containing accounts of the salt formation, gas springs, &c., and also several to yourself, hoping that they may be found useful.

I am extremely anxious to ascertain the temperature of the water which rises in your deepest wells, for the aid of science. Can you name to me any individual in your place to whom I can address a letter upon that subject?

The abundant gas which underlays your place presents a very interesting and important fact—for I presume it is entirely covered by water; and such being the fact, there is no danger to be apprehended from the electric discharges from the clouds. In Kentucky, near the banks of Green river, a body of hydrogen gas was reached in boring for salt water, which was ignited by a torch, and being mixed with atmospheric air in the cavities below, it exploded, throwing up rocks and uprooting large trees. This happened in a limestone region, and no water overlaying the gas. You have no limestone, unless that rock has been reached in recent deep borings.

During my travels in the Canadian forests last summer, I found that the hydrogen gas underlays an extensive range of country in these northern latitudes, but it is in all cases covered by water.

Many scientific gentlemen express the opinion, that the temperature of the earth increases in the increase of depth. My investigations hitherto have not convinced me of that fact, for I find a variation on this continent which seems to contradict that theory. In Europe an increase of heat has been found, and on that continent there may be a local causes to produce this result.

The newspapers represent some of your wells at 1500 feet. I presume this is an error; 1000 feet is the extent of the former borings. If the depth of 1500 feet has been reached, it would follow, according to the theory of increased heat, that the water should test by the thermometer near 80° of Farenheit's scale. The estimate is, that the increase of temperature is 1° for every 55 feet descent. Assuming the surface rate at 53° of mean temperature, the depth of 1500 feet would give even greater heat than 80° —and at this rate, at the depth of 225 miles, the heat would be sufficient to fuse iron, giving to the centre of our globe a heat of almost inconceivable intensity. We know that above our heads the cold is intense at a given elevation. I have found in my mountain tours that the decrease was about 1° to 130 or 140 feet. This decrease is demonstrated by the perpetual frost on high mountains.

I have been informed that the gas at the Kanawha Salines encrusts the surface it strikes upon, forming a species of enamel. Have you any information upon this point?

I shall feel very grateful for a reply.

Yours with great respect,

EBEN. MERIAM.

Postmaster, Kanawha Salines, Va.

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"In answer to the inquiries contained in the above letter, which has been placed in our hands by the gentleman to whom it was addressed, we remark: There has been no misrepresentation in the newspapers in relation to the depth of the salt wells. Several of them are from 1200 to 1600 feet. Mr. C. Reynolds assures us that his well is 1650, and that below the *surface of the rock*, which is nearly twenty feet below the surface of the earth. One of Messrs. Dickinson and Shrewsbury's by accurate measurement is 1500 feet.

"As to the increase of temperature, we answer, it has never been tested; and, we believe, cannot be by putting down the thermometer. But there are abundant evidences that there is no increase of the temperature at the depth reached in any of the wells.

First, the water that is drawn or forced up from all the wells is very cold. At one, of the depth of 1500 feet—and which is tubed 600 feet so as to exclude all the water, fresh or salt, to that depth—and it is quite certain that the water comes from the depth of 1500 feet, for at that depth the stream of salt water was struck—the water is as cold as that of the very coldest spring water, such as gushes out from the base of our mountains. Second. The workmen at the furnaces, in warm weather, are in the habit of filling jugs with river water, and immersing them in the cisterns of salt water as it is thrown up. The water in the jugs soon becomes, not quite so cold as ice water, but as cold as the coldest spring water. Third. The gas, which comes from the lowest depths of the wells, with the water, if not, according to the supposition expressed in the above letter, from beneath the water, is as cold as a northern blast in winter. To be exposed to even a moderate stream of this gas, in tubing the wells, is extremely disagreeable to the workmen. In the hottest days it chills them through in a short time.

"These facts every body here considers conclusive, that the temperature does *not* increase in proportion to the depth below the surface of the earth.

"That the gas forms incrustations resembling enamel on the surface of objects against which it strikes, we think, is all a mistake.

"The formations on the sides of the furnaces in which gas alone is burnt, are certainly curiosities. These furnaces we stated in a former account, are generally 100 feet long, 6 high, and 4 wide. The whole of this space, when gas is burnt, is filled with a pure flame. In a short time are formed, on the sides, concresences firmly adhering to the stone, in appearance like soot, but increase in the form of moss or sponge, to such an extent as to choke up the furnace. When disengaged in large pieces from the well, it is found to be a hard porous body, with veins or fibres running through it of a lighter color than the main body, and which it is almost impossible to pulverize. Whether, if submitted to a chemical analysis, it would prove to be any thing more than a common cinder, we do not know."

We have received a piece of the conreto formation in the salt furnaces resulting from the combustion of carburetted hydrogen gas, and from a hasty examination it appears like pummice stone. We intend to examine it with care. It is a singular and extraordinary formation, and it is possible may be increased in the furnaces by the droppings of the salt water, and the material of which the walls of the furnaces are made may have also had an influence upon the more rapid formation of the incrustation. I have noticed upon a stone which is placed upon the top of a kitchen chimney 30 feet high that the smoke condenses more rapidly upon it than upon the brick, and this forms a chrystalization resembling bituminous coal, and answers for combustion all the purposes of that mineral being easily ignited, and burning freely and with much flame. Since the reply to my enquiry was given by Mr. Newton, Editor of the Kanawha Republican, some of the salt wells have ceased their discharges of both gas and Salt Water. The interior gasometer has become exhausted. These wells were a wonder indeed —leading the human mind to contemplate with awe and admiration the wonders of nature thus displayed in the machinery of its works. Here is a large population living upon a surface in great apparent security, with a gasometer of inflamable gas beneath their feet —yet it is often the same population witness the burning, and also the icy clouds above their heads in which red hot thunderbolts hang suspended in chains of fire. All nature is full of wonders.

We find the following in the Kanawha Republican of the same date the following:

Kanawha Co., May 20, 1845.

"Mr. Editor: When I settled in these Salines 30 years ago, there was in this county one young Doctor, who had just finished his studies at Philadelphia, a talented young man. There was at the bar of this Court a lawyer from Scotland, and one from Ireland. Not one clergyman in the country, and the citizens applied to the Legislature to pass a law to authorize a citizen of the county to be appointed by the Court, to solemnize the rites of matrimony. There were then two small retail stores in the county, and a number of whiskey shops, kept in small huts, *hollow trees, &c.* But a few causes were on the Court docket. In the summer time, when the streams got low, the citizens had to beat their meal.

"We have now twenty lawyers, twenty physicians, twelve or fifteen preachers of the gospel, and about thirty stores with general assortments of merchandize, a branch of the Bank of Virginia, about fifty steam engines to draw salt water, many grist mills and saw mills operated both by steam and water power; foundries to cast all kinds of pans, kettles, &c.; a number of coppersmith establishments to manufacture all kinds of hollow ware, tubes, &c., and articles of brass, and several tinner's shops. On our river there are from five to eight steamboats. Our exports are from 2,000,000 to 2,500,000 bushels of salt per annum, which gives employment to more than 2,000 laborers, who, with their families, would number upwards of 6,000 people.

"Thus you see the beneficial result of our manufacturing establishments generally. Although the manufacturers are not individually, prospering, yet the the community in general are largely benefitted."

SOUTH WESTERN VIRGINIA....SALTVILLE SALT MINES.

LETTERS EROM A. McCALL, Esq.

Saltville, Va., Sept. 28, 1845.

Eben. Meriam. Esq.:

Dear Sir—We would negociate the sale of ⅞ shares of King's Salt Works, Washington Co., Va. The mean rents and profits for near 50 years past, averaged per annum $18,000, while the rival Preston Estate, lying adjacent, has yielded about $12,000. For 5 years James White rented both at $48,500 per year, and during 7 years we paid the annual sum of $34,500, being $18,500 for King's works, and $16,000 for Preston's works, thereby securing a monopoly. We also continued the same rent during 5 years, ending January last, for Preston's while Findlay, Mitchell & Co. conducted King's well in competition. The present price of salt is 50 cents at the works, and 75 cts. per 50 lbs. along the river depots. On the North Holston River we forward salt in winter in boats carrying 200 barrels, and insurance is worth 2 per cent. About 200,000 bushels annually is taken or may be consumed by the market, while the works yield water enough to make one million of bushels yearly.

In King's well the *rock mineral salt* lies 100 feet in depth and so saturates the water that three bushels of water (24 galls) will make 50 lbs. of salt, or as some say 18 gallons may do it.

There is no trace of bittine (muriate of magnesia) in the water, and but a slight amount of gypsum, so that the salt is white, and naturally the purest yet discovered. The cost of making salt has been rated at from 12 to 16 cents per bushel.

The blocking adheres to the kettles with great tenacity, and no good experiment has been made testing solar evaporation, or the steam plans of making salt. Kettles holding 100 galls cost, delivered, about $58 per ton, and wood $1,50 per cord, no stone coal being convenient, but immense forests of timber could be had at $1 per acre, along the river at points to which the water may pass in tubes.

A SENCOND LETTER FROM THE SAME GENTLEMAN.

Oct, 28, 1845.

"Our salt water was conveyed in tubes two miles, and ought to be taken six miles down the banks of the river where wood could be had at $1 per cord 4 feet by 4, and 8 feet long, of oak, beech and sugar tree. We are contracting for wood delivered at the salt well at $1.50 per cord.

Every 1000 or 1200 bushels of salt made, will on an average fracture one kettle, which may be once patched for an average cost of $5 answering as well as at first. The broken metal sells at $12 for 2240 lbs.; for five tons a cupola near at hand, will send us one ton of kettles. A small forge in the vicinity makes fine iron from the broken metal. The wholesale price of iron and hollow ware is 2¼ cents per lb.; pork is $3; beef $2.50; hay $6 per ton; flour $4 per barrel; bacon 6 to 7 cents; corn 30 to 40 cents per bushel at the works; negro hire $70 per annum, white hirelings 8 to $10 monthly; boats $100, carrying salt down the Holston and Tennessee to Alabama usullay 175 or 200 barrels to the boat. Salt sells 50 cents per bushel at the works and 75 cents at the depots, and the market in the present state of roads and navigation scarcely consumes 200,000 bushels per annum. The cash value of flasked or rough heavy kettles is $50 delivered at Saltville.

Saw mills or flour mills here are so numerous as to be valueless and barrels holding 300 lbs. net salt cost 25 cents, and about 5 cents for nails, coopering, and packing and sell at 40 cents to consumers of the salt. I could procure an engine with 2 boilers, not now in use, at Hywassen for $1000, The daily summer rains and fogs would make much against solar evaporation.

With *fresh water steam* raised in covered square kettles Mr. Findlay made salt in wooden cisterns conveying the steam in iron pipes some 200 feet or more, but the salt caked on the wood, and blocked on the pipes, causing as great waste as the blocking in kettles. The salt water being *naturally saturated* could not be employed *for making steam* under cover, and it was certain that unconfined steam imparts 33 per cent. less of caloric than was required to generate it.

In the steam generating, or fire heating about 20 per cent. of caloric or consumption of fuel is wasted through the air, the walls and the basis of the furnace, and his mode of applying steam heated to 212o in the generator, never raised the temperature of the salt water in the evaporating cisterns above 150 or 160°. The condensing process in the hollow of the tubes consumed the remainder of the heat which was conveyed off by the water thus formed, and always streaming out of the steam pipes.

Our brine begins to grain when the kettles commence boiling (without necessity for any clarifying process) and why it is that in England the brine saturated from the rock salt is boiled in kettles or wrought iron pans, where they so well understand the most economical modes of applying caloric through the medium of steam? If our water was 40 gallons to 50 lb. of salt instead of 20 or 24 gallons, the advantage of steam would be evident in reducing it to brine, but employing brine only, would you find *fresh water* more economical in graining than the direct mode of applying fuel? You could easily test it where the apparatus is already made. A comparison should be instituted without *reference to machine power* in a region abounding as this does with hundreds of untenanted waterfalls and mill-sites. Two furnaces in one building of fire brick or stone so placed as to allow the salt to drain back its water to the kettles and the salt then rolled on frames to side rooms for packing, would employ six hands daily, and would consume 10 cords of wood including that necessary for light among the dense fog from the kettles. For such rough business cheap houses are best, moving along as wood is consumed. Were the river a little improved and allum salt made for the western pork-packers, perhaps 1,000,000 bushels yearly may some day be sent off from here. But I will mention that Mr. Preston has 25 hands and 50 mules with 12 wagons and with officers and managers about the place whose salaries, I presume are about $4,500 annually.

I will describe the five furnaces which he works, built by us side by side, in an open shed 120 feet long, with chimnies 6 feet high, and the base of the furnaces ascending a slope of 5°. Each flue or furnace has two rows of kettles leaning together without a centre wall and resting on the sides of the flue, dug out of dry earth and lined with stone. The double line of kettles contain 37, weighing from 700 to 1000 weight each, the heavy metal being for the front. Troughs conveying the water over the kettles from the cistern, and a plug drawn lets it into every kettle, after dipping salt when the kettle is two-thirds boiled down. The salt drains out of hand baskets hung over the kettles containing each 14 lb., four of which baskets one man carries off to the side entries of the salt rooms.

The grates for fire are placed 26 inches below the kettles, and the ash-hole 20 inches deep is under the grates reaching back six or 8 feet from which the flues widen to 4 feet and of depth sufficient for a man to crawl through to rake out salt and ashes once weekly; for which purpose the boiling ceases at 12 o'clock on Saturday and begins again 12 o'clock Monday.

By the breaking of a kettle, or by water running out, the flue is often nearly closed with salt suddenly made in it and the pass so interrupted causes the heat to accumulate in front so that blocking third days boiling 6 or 8 inches thick over the interior bottoms of the kettles get red hot and the iron drips from the

much of the surrounding country. When I do so, I will give you a more minute account.

The valley in which the salt springs are, is about a half mile wide, with precipitous mountains on either side, about 200 feet high. The mountains, however, are not continuous ranges, but divided into conical hills, some of which are more lofty than others. Near the base of these hills and half way up the sides, a hard, flinty, pale yellow rock crops out. It resembles very compact French burr, such as is used in New-York for mill-stone. It is called here, "the mill-stone grit," and is used for that purpose. Above it is limestone and mixed in with it a rotten soft stone, which stands fire very well. Here it is called soap stone, but I think improperly.

The salt springs are about two miles from the north fork of the Holston River, which is approached through a gap in the mountains, or rather a pass way between two conical hills.

The height of land of the Clinch Mountains is distant from this place westerly about eight miles. It rises above this valley about 1200 feet. All the surrounding hills and mountains are yet covered with snow, but it has rained for the past 12 hours, and I think the snow will soon disappear. The weather is cold and unpleasant. Night before last the ice formed nearly one inch thick, and the rain now forms a soft ice upon the half frozen ground as it falls.

The valley of the James River, up which I passed in my journey, is pleasant and fertile. The bottom lands are from 1 to 2 miles wide for fifty miles above Richmond, and very fertile. In rear of the bottoms the country is beautifully rolling, and very little of it too steep for cultivation.

I passed up the canal from Richmond to Lynchburg, a distance of 143 miles. We passed 53 locks of about 8 or 9 feet each, all of which were ascending, (if I remember) but four of which locked down into the river. The locks upon the easterly section of the canal are built of a beautiful compact granite, which is found in great abundance upon the immediate bank of the Canal and River for the first 40 or 50 miles above Richmond. Above this the granite disappears, and gneis takes its place, and the country becomes more rough and precipitous, and the river bottoms become narrow, and at Lynchburg, precipitous mountains ascend from the river bank.

In ascending James River the weather was mild, and the farmers were plowing, but in crossing the Blue Ridge and Alleganies I found a different climate, and was detained nearly a week by bad roads and a severe snow storm. I was compelled to remain four days at one place, or expose my limbs and health in a manner that I was unwilling to hazard. The roads were the worst that I ever witnessed, but I was told that they were better in the summer. The whole country across the mountains is very broken with very little valley land. The gaps are narrow, and the hills too precipitous for cultivation, and the cattle generally starving for fodder. This winter has been unusually severe.

The Blue Ridge is chiefly gneis, and the Alleganies mostly a rough ill-shaped limestone, apparently combined with silicious matter.

The brine of the salt springs at this place stands at 90° by my salometer, and it contains more impurities than I expected. It contains (I think) as much sulphate of lime and oxide of iron as the Syracuse water.

Letter from JOHN MEAD, Esq., *dated Lockpit, Wayne Co.*, 1845.

"We have been prosecuting the boring seventy-one feet further, which makes the present depth four hundred and one feet, we still continue in the red rock, occasionally passing a stratum of bluish green clay slate, and a good many stratums of the mineral salt. They occur more often and are thicker in width. At three hundred and seventy-five feet I passed a stratum of solid salt of at least five inches in thickness and they have occurred as often as once in two feet for the last fifty feet, of various thicknesses, from one inch to two in thickness. When we are passing one of these stratas of salt, the water at the top of the tube will foam and froth like the strongest brine. The clay rock, or mostly so, that we are boring into adheres to the auger when we pull it out for the purpose of clearing the sediment out of the well is as salt as the salt itself.

"We have saved the specimens of the last boring, and I purpose to send them to you the first opportunity that presents itself, for your examination. I don't think that we have hit any veins of water, the last one hundred and eighty feet. The rock appears to be quite soft, and the water from above settles down and we are continually bringing up the salt; it brings the water to a point of saturation. We have inserted a tin pipe two inches in diameter within two feet of the bottom, and attached a pump at the top, and after pumping about an hour we exhausted the strong brine, but brine continued to flow of a weaker strength through the pump at the rate of about 28 thousand gallons for the 24 hours. I think this water would bear manufacturing, but if we could get a supply of our strongest water, 24 gallons would make a bushel of salt, while at Syracuse the manufacturers told me this summer that it took 40 gallons of their water to make a bushel—a wide difference. Then take into consideration the difference in the price of wood.—Here it could be obtained for a long time for one dollar per cord, while there it costs two dollars per cord. I wish you would have the goodness to inform me what is the geological calculation of the thickness of this red or saliferous rock, the texture of the rock was getting much coarser and more like slate. I have seen some calculations that the thickness of this rock was from 75 feet to 150 feet thick; we are now 161 feet into it, and we were in hopes of getting through it at 150 feet; we were also in hopes at that point of striking a full supply of our strong brine.

"Any information you can give me from your knowledge and experience will be gratefully received. The mineral salt that we raised was in small quantities, mixed with the clay rock, and of colors, redish and white almost transparent, and bluish green, which specimens we have on hand. and will forward to you soon.

"I should be pleased if you could make it convenient, to make us a visit and examine the whole of the specimens here and the location. I think there can be no doubt of the eventual success of this work if it is prosecuted, either by continuing the present well deeper or by commencing a new well close by. I wish you to have the goodness to give me your opinion in full upon the subject for which I shall be greatly obliged."

We have since the date of Mr. Mead's letter, quoted above, received from him the borings of the well at Lockpit, from a depth of 330 feet to 400 feet; also a jug of the brine.

We have a letter from Mr. L. I. Rice, dated Montezuma June 26, 1842, in which he says:

"The boring has just been completed to the depth of 605 feet. In boring this depth, the cuttings are mostly indurated clay, red and blue, some plaster rock (*sulphate of lime*), and some slate. At 190 ft. struck the first vein of salt water, by the hydrometer 44°; second vein 225 feet 48° and third vein 501 feet 52° and the last vein 598 feet 100° or full saturation."

We have a sample of the Montezuma brine raised from a depth of 598 feet. It is of the same specific gravity of that of Lockpit, viz; 1, 1895. One pint contains 1024 grains of chloride of sodium, and 1088 grains of chloride of calcium, chloride of magnesium, &c.

The thicknees of the saliferous strata about which Mr. Mead makes enquiry, is explained by the above quotation from the letter of Mr. Rice. The distance from Montezuma to Lockpit is six miles.

From an examination of the borings of the Lockpit well it appears that deep in the earth, stratas of transparent salenite exist. An erroneous opinion is quite extensively entertained that salt water can be found any where by boring into the earth to the level of the sea. Such is not the fact, but fresh water is frequently found under the bed of the ocean. The water of the ocean itself is of different degrees of density. Near the equator the ocean holds more salt in solution than toward the poles.

THE EARTHQUAKES AND THE STORMS.

On Monday, April 7th, 1845, a severe shock of an earthquake was experienced at the city of Mexico, at 53 minutes past 3 o'clock, P. M. Two other shocks were experienced at the same place, the same evening, between 6 and 8 o'clock. Much damage was done, and several lives were lost. At the same time a snow storm was raging at Chicago, in the State of Illinois, and nearly at the same moment of the last shock, a snow storm came up suddenly on the Hudson River, during which the steamboat Swallow stranded on the rock at Athens, and made fearful shipwreck.

The temperature at Syracuse, the 7th of April, by Mr. Conkey's observations, at 3 o'clock, P. M., was 46 deg., and cloudy.—Dew Point 24 deg, barometer 29, 48, to 29, 60.

On the 23d of December, 1845, at 30 minutes past 9 o'clock, in the evening, a severe shock of an earthquake was experienced at Memphis, Tennessee. It happened while I was making meteorological observations on Brooklyn Heights, and I was surprised at the almost instantaneous depression of the mercury in my thermometer three degrees, and named the extraor. dinary circumstance to my family that evening, and the next day I communicated the fact for publication in the Brooklyn Star. This was between 9 and 10 o'clock in the evening.

I copy from the Brooklyn Star, in which these memorandums were published, as follows:

From the Star of December 24th.

"After sunset, last evening, snow clouds bordered the southern and western horizon. At 9 o'clock in the evening temperature 28 deg.; 10 o'clock, 25 deg., at which it remained during the night, and was the same at 8 o'clock this morning."

From the Star of December 23d.

I copy as follows:

"The highest temperature attained yesterday was 24 deg.; at one time, in the afternoon, there appeared to be a much warmer atmosphere over head. At 7 o'clock last evening the temperature was 24 deg., and the same at 1 o'clock, P. M., the atmosphere was completely overcast. Temperature this morning at 7 o'clock, 20 deg. with snow clouds in the west and south before sunrise. Overhead the atmosphere is in that peculiar state, that a change of temperature will cloud it. The variation in the temperature the last twenty-four hours has not exceeded four degrees, and is in the descendant. A white frost was visible this morning. Place of observation, lat. 40 deg. 43 min., lon. 74 deg. 2 min. 30, altitude 62 feet."

From the Star of Dec. 26th, (25th being Christmas).

I copy as follows:

"Snow commenced falling on Wednesday morning (the 24th), at 9 o'clock, and continued to fall, moderately during portions of that day and during the night.—The quantity on the ground at 4 o'clock on Thursday morning was not more than four inches. The temperature on Wednesday at 1 o'clock, P. M., was 27 deg., and continued at that till 10 o'clock in the evening; Thursday morning, at 4 o'clock, 29 deg. The fluctuation for the 24 hours has been 4 degrees."

From Mr. Conkey's record, kept at Syracuee, we copy, as follows:

Dec. 23d, 9 o'clock, P. M.—Barometer, 29, 86. Sunrise on the morning of 24th, 29, 86, and the same at the same hour on the morning of the 25th. The temperature on the morning of the 23d, 24 deg. Sunrise on the morning of the 24th, 18 deg.

On the morning of the 28th of February, 1846, a shock of an earthquake was experienced at Cincinnatti, Ohio, at half past 8 o'clock, in the morning.

From the Brooklyn Star of February 28th, 1846.

I copy as follows:

"Temperature was 1 deg. lower yesterday morning, at 7 o'clock, than at 6 o'clock. At 6 o'clock, 8 deg.; at 7 o'clock, 7 deg.; 9 o'clock. 10 deg.; 10 o'clock, 12 deg.; 11 o'clock, 13 deg.; at 12 o'clock, 14 deg.; 1 o'clock, 18 deg.; 2 o'olock, 19 deg.; 5 o'clock, 20 deg.; 7 o'clock, 18 deg.; 9 o'clock, 18 deg.; and at 7 o'clock this morning, 17 deg. or 9 deg. warmer than the same hour yesterday morning. The present appearance of the weather is strongly in favor of a storm, the low temp. of the atmosphere being the only hindrance at present. The temperature of yesterday, compared with that of the day previous, presents a contrast, for, after 12 o'clock the previous day the mercury rose, the latter day it fell."

From the Star of March 2d, 1846.

I copy as follows:

"At half past 9, Saturday morning, the 28th, the temperature rose to 20 deg., being a fall of 3 deg. from 7 o'clock to 9, and with this rise of temperature snow commenced falling. At 1 o'clock, P. M., 21 deg.; 2 o'clock, 20 deg.; 4 o'clock, 18 deg.; 9 o'clock, 16 deg.; and continued at that without any change throughout the night. Sunday morning, at 8 o'clock, 16 deg.; 1 o'clock, P. M., 24 deg.; 7 o'clock, 20 deg., with a close atmosphere, indicating another fall of snow. Snow fell on Saturday to the depth of 3 or 4 inches."

From L. W. Conkey, Esq., we have received a transcript of his meteorlogical record of February 28th, 1845, which is as follows: Temperature, sunrise, Feb. 28th, 6 deg.; 9 o'clock, A. M., 15 deg. March 1st, sunrise, 5 deg.; 9 o'clock, 3 deg. The barometer, 28th, sunrise, 29, 60; 9 o'clock, A. M., 29, 66.

On the night of the 30th of January, 1846, a severe shock of an earthquake was felt at the Belgian settlement of Santa Tomas, near the equator. The sound resembled the discharge of a heavy piece of ordnance.

From the Brooklyn Star of February 2d, 1846.

I copy as follows:

"Saturday (31st) was the warmest day in the month of January—the temperature rose to 42 deg. at 2 o'clock, P. M., at the same time a black cloud appeared in the Northwest, which in half an hour reduced the temperature to 41 deg.; at midnight, it had reached 22 deg., at which point it continued for 11 hours, and at 12 o'clock, Sunday noon, was 23 deg.—at 5 o'clock, P. M., 52 deg.—rose one degree during the night; and at 7 o'clock, Monday morning, was 26 deg. Saturday, to near 1 o'clock, P. M., 31st, the East River was covered with a fog so dense that it was with difficulty the ferry boats crossed over, and not without the aid of shore bells. Thursday evening, January 29, at about 5 o'clock, P. M., snow fell in a few sprinklings, and was followed by rain during the night in a moderate quantity.—Rain fell on Friday night the 30th of January,"

It will be seen by the above statement that four earthquakes occurred during a period of less than 12 months, and each attended by a storm; and it will also be seen that the temperature on each night which succeeded the shock of December, January and February was succeeded by a stationary position of the mercury in the thermometer. We have placed these facts together for the information and examination of our friend, Mr. Halleck, of the Journal of Commerce. In January, that gentleman appended a note to our communication in relation to the Memphis earthquake, in which he dissented from the conclusions we drew from the premises we stated. Since that time the Journal has published the accounts of the earthquakes of January and February, and the Brooklyn Star, which publishes our meteorological observations daily, contains the above memorandums.—These meteorological records of ours are made in the morning before sunrise—they are useful to refer to, as it is by observations carerully and systematically made that we acquire knowledge. We advance no theory here—we merely record facts which the earthquakes, the storms, the frost and the lightning furnish us with. It is not improbable that what is sometimes believed to be earthquakes are meteoric explosions in the high atmosphere.

MINERAL TABLET.

I have recently received from the Hot Springs, in Arkansas, a beautiful tablet of about 15 inches long, 12 inches wide and three-fourths of an inch in thickness. It is of chalky white—straight lines, drawn in deep red color, cross it, and these are intersected by other straight lines forming right, acute, and obtuse angles. In the centre is a beautiful red cloud, in the middle of which is a splendid figure of delicate white. The inscriptions on this tablet, which penetrate deep, were written by a pen dipped in sunbeams. It is beautiful—it is delicate—it is splendid. It is in the mineral kingdom

THE ADIRONDACK MOUNTAINS.

I have prepared a lightning chain for the highest peak of the Adirondacks. It consists of bright circular plates of tin, 8 inches in diameter, linked together by pieces of iron wire, one foot in length. This will be surmounted by a bright spindle, one foot in length, and the whole be connected at the lower end with a copper wire, terminated in a tin bottle filled with water. In October last, I carried this apparatus with me to the mountain to affix upon its summit, but the snow met me there and the weather became cold, I therefore deemed the spring or summer a more appropriate season for the work. My object is to test the ability of the small wires to sustain the weight of a thunder bolt among the lofty clouds, in a locality where even a failure will be harmless, and where the lightning has abundant room for its operations, uninfluenced by surrounding objects.

The pinnacle of a lofty mountain, whether mantled in a cloud in which the lightning has its council chambers, or adorned with drapery made of brilliant sunbeams, or wrapt in the robes of midnight—is a fit place for contemplation. The etherial essence which rests upon its summit is a mental stimulant, so gentle, so mild, yet so enrapturing, that it becomes to the spiritual tenant of the mortal frame that feeds upon it, what the morning dew and gentle sunshine is to the rose bud in its opening.

I have stood at midnight upon the mountain top, and, with folded arms, looked upward—there, in the midst of the stillness of silence that was overwhelming, I have gazed upon the distant stars in the mighty firmament and endeavoured to traverse their bright surfaces in the ærial vehicles of thought—but, alas! they were far, far beyond the reach even of almost boundless thought. Silence, at midnight, upon the mountain top, is intensely impressive when attempted to be measured by the human mind in the moment of calm and tranquil meditation. The lightning, in its robes of fire, adorned with chains of liquid flame, discoursing in the thunder's voice, amid the mountains of sable clouds which are piled up high in the atmosphere---their lofty summits gilded with sunbeams, produce in the mind of the beholder sensations of fear—of dread--of solemnity---but all these are unequal to the solemn--the impressive--the overwhelming influence of the stillness of deep silence in a region where even breathing is without an echo. I have reposed in sleep upon the mountain top—and slept sweetly. I have reposed in sleep upon the cliffs of the Niagara where the reverberaitons of the thunders of the waters of the great cataract shook the pillow of my couch and lulled me to sleep, but I found nothing there to equal the deep silence in an atmosphere above the clouds.

The wilderness of the Adirondacks, altho' a vast and uncultivated forest, is no longer the home of the red man of the woods—at St. Regis, on the St. Lawrence, at Onondago Valley, near the lake of that name, and near the Oneida Castle, to the south west of Oneida Lake, is, at each place, a remnant of a nation, once numerous, once powerful, and brave—but now, almost a ruin.

These mountains, which have echoed their cries of distress, and these 'rocky ravines' which have 'reverberated' their piteous lamentation, have each treasured up the complaints thus committed to their keeping, and when these mountains shall be melted, and these 'rocky ravines' enveloped in the great conflagration, each will render up to Him who is to judge all nations with a righteous judgment, the record of woe, the catalogue of wrong.

Many look with wonder upon the declaration of the sacred record, as to the greatness of the multitude of human beings that inhabited our earth when the flood came uponits surface—then more than 16 centuries of time had elapsed, reckoning back to the creation, and what a change when brought in contrast with that period when only two individuals of our species formed the whole human family—but here is an illustration: 250 years ago, that portion of our continent now settled by the citizens of the United States was thickly inhabited by the people of numerous nations of red men—but now—where are they? gone, gone—and of many of these nations it may be said, in the language of Logan, " not a drop of their blood runs in any human veins."

Ere the flood came, the mountains had been framed, for these were the measure of the mighty deep—for, says the record of the inspired peman:

" And the waters prevailed exceedingly upon the earth, and the high hills under the whole heavens were covered," " and the mountains were covered."

When I gazed upon the surface of the white face peak of the Adirondack and looked upon that part of it covered with vegetation, and then upon that other part in which the mountain torrent had excavated its path to the base of the lofty eminence, I perceived that I was standing upon a mighty rock reared by the hand of Almighty, and since covered with a few feet of soil to support its vegetation. What an observatory, this, to occupy!

When the red men of the forest, ere the white man came, ascended this lofty mountain to its top, they deposited on an isolated rock or cleft a *memento* of their visit—a spontaneous offering up of tribute to Him who laid the foundations of these mountains.

These mountains are the great acqualogical laboratories, where the greater portion of the fresh waters of our State is produced, from these mountains flow eight rivers, and the wilderness which encompass them is dotted over with chrystal lakes—and although these rivers are constantly discharging their mighty waters, yet notwithstanding this they are never exhausted. How delightful, how cheerful and invigorating the high mountain air, amid the beauteous scenery which is there spread out in the field of view.

WINTER BIRDS.

I have near my window a box in which I feed the little Birds that frequent the groves in this latitude in winter. I have as daily visitors some forty or fifty snow birds and sparrows and occasionally a Virginia Red-bird makes his appearance among them. The visits of this bird are few and far between. It appears to be the guest of one of the Sparrows. The Sparrows, frequently in the spring, bring with them stranger birds—they are very hospitable. The birds have visited me for several years—they are cheerful companions of the pen, and give activity to thought. Birds possess intelligence—they have memory—they are grateful, and if kindly treated are very confiding.

I expressed to a very worthy citizen of Brooklyn a desire to invite the Birds to take up their residence in the grove in Greenwood Cemetry, where the grounds are enclosed, and where the little innocents would be protected from the cruelties of hard-hearted and unfeeling sportsmen, who wound and torture the poor birds.

I have received from the gentleman I have referred to above, the following note:

"Brooklyn, Saturday, 7th Feb. 1846.

"Dear Sir:

"I have not had the pleasure of meeting you for some time and write to say Mr. Perry would be very happy to promote your benevolent intentions in regard to the birds in Greenwood. Will you some time, when you are passing the office No. 39 Wall Street, suggest to him how you wish to attain the object, the keeper on the ground would assist in distributing the seed. If you have selected a lot, it may be made head quarters for these "minstrels of the wood," by placing your alms on it.

"Truly yours,

"HENRY E. PIERREPONT.

"Mr. E. Meriam.

Birds possessed this earth ere man was formed from its dust—it was the birds that sung the first morning anthem on earth, to the praise of Him who made the world, and this was on the second solar morning.

I often call to mind the plaintive notes of the little bird, which I call the Adirondack Solitary, which I heard sounding its notes at evening on a broken tree which stood near the Stranger's Grave, on the borders of the wilderness. This little songster would be an acquisition to the groves of Greenwood Cemetry, its plaintive notes would awaken in the minds of the visitors of the "City of the Dead" a feeling which would bow down human pride and lead the mind to meditate and contemplate, a suitable state of feeling to occupy the spiritual bosom of the material form while meditating among the tombs.

The Adirondack Solitary, as I call the little feathered minstrel, sings during the night, as well as the day—it sounds its notes at midnight, thrice, and then a pause—a long silence—and then again the three-fold measured sound is heard. Oft, oft do I call to mind the sweet notes of this little warbler; they have arrested my step when journeying the paths of the forest. An inhabitant of Black Brook who frequently was awake during the night attending upon the burning of lime kilns, informed me that he frequently heard these birds at all hours of the night, and at a considerable distance, but he had never seen one of them, and the same answer was given me by every person I enquired of. I saw but one of these birds upon the limbless top of a broken tree, but it was so hid by the stump that it was impossible to discover its color accurately or its size, except that it was a small bird.

My feathered visitors are sweet little creatures, their bright eyes kindling up into an expression of gratitude, speaks a language that is intelligible to the human bosom when in a state of quiet contemplation.

One of these little birds is lame. The lame bird has paid me two visits, and I watched its motions with much care, in order to endeavor to discover whether its helpless condition brought to its aid its mates.

The feeding of these little creatures is a labor, and the watching over them a care, yet it is of the agreeable and useful kind that makes it pleasant and instructive.

Two of these birds are dead—one, a snow bird fell down upon the ground while I was watching their movements, and before I could open the door and get to it, died. Another, also a snow bird, was killed at an early hour in the morning by a favorite cat. Poor pussy, had, unobserved by me, got into the yard and seized one of the little creatures, but my wounded dog interfered, seized poor puss and rolled her over and over in the snow, and then took her in his mouth and carefully brought her into the house without injury, and then gave me plainly to understand that something was wrong. I followed the faithful animal and he went direct to the little bird which lay dead upon the ground—when he saw me pick it up he was satisfied, but he does not allow poor pussy to interfere with the birds any more.

Thus, in the midst of the little pleasurable employments that are interspersed through the path of the journey of life there are scenes which mingle the bitter with the sweet.

It was the pretty Dove that brought the Olive Branch to the Great Captain of the deep, when he was on its bosom and gave him the first knowledge that our globe had ceased to be one vast ocean—a fit messenger from the King of Kings to his creature man.

It was the Raven that carried the food to Elijah—the feathered messenger of Him who made the world commissioned by Him on this very errand of mercy.

It whs the sweet Robin Red-Breast that gathered the leaves to enshroud the bodies of the children who made their grave in the wood. These sweet "minstrel's of the wood" thus provided the infant bodies with a sepulchre. "*Greenwood*" is a fit place for the pretty birds, and the pretty birds appropriate guardians to hover over the treasury of the grave.

ROCKLAND MOUNTAINS.

I have made several excursions to these mountains and made minute examinations of the rock formations of that locality. These present a wide field for investigation. The Pleonaste, a pretty stone which takes a high polish, is found there; the Lydius Stone, called by some the touch stone, is also found here. This stone is used in many parts of the world to determine the quality of gold coin. On the banks of the Hudson River, a little below the Dunderberg Mountain is a beautiful strata of porphyry of various colors. I found here also the ———— or mountain cork, so light that it floats upon the water.

The Rock formation on the top of the Dunderberg is the same as its base. The fissures which have been made in the rock, at various times, are filled with a mixture of purple and blue quartz.

To the west of the Rockland Mountains, in years long past and gone, Behemoth had his home. The monster beast seemed to have herded on that portion of the country watered by the Walkill. Numerous skeletons have been found there beneath the surface, one of which I examined and described on page 130 of this volume.

Our mountains afford a great field for investigation and one that imparts pleasure to the contemplative mind.

The mountain atmosphere possesses a peculiarity that gives to those who breathe it a mental energy found no where else—the northern mountaineer, is both peaceful and healthful.

THE ARKANSITE & THERMALITE.

Near the Hot Springs, a short distance from the Washitta River in the State of Arkansas is a mine of an extent not yet ascertained, belonging to John H. Ward ,Esq., from which the formation which I have denominated the Arkansite, and also that which I have denominated the Thermalite is obtained. Mr. Ward has presented me with specimens of the Arkansite, and also with specimens of the Thermalite, and I have recently received from him at two different times, via New Orleans, various other geological specimens of great interest, and also an aquaological specimen, being a bottle of the water of the Hot Springs, which when taken from the spring was of the temperature of 148° of Farenheit.

The Thermalite is an offspring of the Thermal Waters, and hence its name. One which I have weighs 35 ounces. It has the hardness of the Agate, and the lustre, when seen on its even surface in a proper angle of light equal to that of a polished mirror, and will reflect upon its surface objects ten miles distant. The colors of the Thermalite are red, yellow, purple, and white. It is opaque and has the peculiar property of transmitting one color and reflecting another. The Thermalite which I have is more than two inches thick, and when brought in the proper angle with the reflected rays of the sun and the light transmitted through a green curtain placed nearly horizontal over it, and at some feet distant from it and thrown upon it, a green color of a very delicate tint is transmitted through the curtain and thrown upon the surface of a white paper placed beside it, and at the same time a beautiful purple is reflected and borders that of the green.

Some of the colors of the Thermalite are a beautiful pink bordered by delicate chromic tints. The crystalization of the Thermalite is a spherdid. The Thermalite is of great value, is capable of giving a keen edge to fine instruments made of steel, and unlike all other substances it is subjected to no wear but cuts away the metal with surprising rapidity. I have no doubt that the Thermalite will come into a more extensive use than any other substance yet discovered. The Thermalite is as brittle as glass and has a ring like silver. Although it is of great density, and appears perfectly solid, yet its smooth surface is found on minute examiuation with a powerful magnifier to be made up of millions of little edges arranged in spherical order, that cut off the metal of an edged instrument like a file. I shall hereafter notice the thermalite more in detail.

The *Arkansite* is of a chalky whiteness, and when taken from the mine is opaque, but on being saturated with a fluid becomes translucent. It possesses the same property of transmitting one color and reflecting another, the same density and the same hardness as the thermalite, and is found in the same mine. This stone is invaluable as a hone for edged instruments of every kind. The English cutlery houses, where the finest cutlery is made, the Bank Note Engravers, and the Dentists, that have used the *Arkansite* pronounce it superior to any thing they have ever used. An Arkansite from this mine made into shape for a razor hone, is to be seen at the store of Messrs. Platt & Brothers, No. 12 Maiden Lane, valued by Mr. Ward at $15. Messrs. Platt & Brothers have several pieces of the Arkansite for sale, calculated for various kinds of edged instruments. Abraham G. Thompson, Esq., purchased an Arkansite about five inches long, for which he paid five or six dollars, for a razor hone. He informed us that he would not part with it for its weight in gold.

Robert Smith, Esq., has also one of the Arkansites for a similar purpose which he values greatly.

Mr. Adams, the accomplished engraver on wood, attached to the large publishing establishment of Harper & Brothers, speaks in the highest terms of the Arkansite.

Mr. Watson, a Lapidary in New-York, of near 30 years experience, cut one of the Arkansites, and he informs us that it used up the diamond dust faster than any substance he ever put on his wheel, except the diamond itself. I gave to this the name of Arkansite for the reason that it came from the mines of the State of Arkansas. I have abundant precedent for this, as good reason for such a designation. 'Strontian' derived its name from that which designated the town in the mines of which it was first discovered.

I have among the specimens sent me by Mr. Ward, a substance taken from the bottom of one of the springs. It is white as chalk, opaque and studded with minute and brilliant crystals of great beauty. At my earliest leisure I intend to examine these specimens minutely and will after that give a further account of them.

ASSESSMENT SUIT.

An important suit was to have been tried in the Circuit Court last week, but the Corporation were unwilling to go on with it, for fear, as is said, of scareing away the *bidders* at the assessment sales. The Corporation *Peter Funks*, are not easily scared—they generally bid the more spirited in such cases. They are old *sogers*.

SECOND AVENUE SEWER.

A suit has been brought by Richard Mott, Esq., for a gentleman who has suffered in his property by this sewer. and we understand that the counsellor will search this sewer to the bottom, and bring the whole matter before the Court.

"Hast thou known the variety of the cloude?

"For hee beholdeth the endes of the world, and seeeth all that is under heaven—:o make the weight of the windes and to weigh the waters by measure, when he made a decree for the raine and *a way for the lightning of the thunders.*"

The mysteries that pertain to him who framed the universe are beyond the reach of human research, but there are some things declared and written down by a pen moved by the source of all knoweldge, and to these things heed should be given.

I have not yet seen a lightning storm beneath me when standing on a mountain top, but I have been an astonished and admiring beholdor of a woundrous display of the brilliant adorning of the clouds that mantled the whole terrestrial surface which was far beneath me. I have gazed at the bright canopy of ethereal blue above me—at the morning sun as it entered the field of view from its morning chambers, and beheld it when risen but a few degrees above the shadow of the terrestrial surface, shining in all its glory, the clouds piled on clouds beneath me lighted up with its beauteous rays, in all the brilliancy of beauty—in all the splendor of magnificence—mountains, valleys, precipices, cataracts, grottos and extensive plains, all decorated with sunbeams and moving in all the variety of motion—these resembled an ocean of brilliants, it was then I could imagine what would have been the sublimity of the scenery had a thunderbolt thrown a brilliant chain of liquid fire among the aqueous gems of the mighty casket—but I dare not unbosom the thought that possessed the mind—my pen * * * * *—it has paused, for the thought was too gigantic for utterance.

The Lightning Record of 1844 presents a catalogue of 50 deaths—3 human beings killed by two thunder bolts, 4 at each time—14 persons killed by seven bolts, 2 at each time—and 28 persons killed by as many different thunderbolts, or one at each time.

The record of 1845, presents a greater number of deaths than those of 1844.

Four persons are stated to have been killed by a single thunderbolt; twelve persons by four bolts, three at each time: Sixteen persons by eight bolts, two at each time; forty-four persons by as many different bolts, and fifteen persons by one thunderbolt, besides between 40 and 50 persons also killed by the same electric charge in the same vicinity. This is but a part of the record of 1845. It is a fearful catalogue.

We had intended in this number of our paper to have made a synopsis of the catalogue presented, but the increased size of the Gazette has absorbed all the type of the office not already in use, I therefore shall defer it till the next number.

I will, however, remark that the result of the ivestigations I have so far made, is, that lightning conductors terminating in water have never failed to conduct all the lightning that entered upon them.

That lightning rods which have had an improper termination, have caused the lightning to explode and leave the conductor.

That lightning rods that diverge are preferable to any others. Ship's conductors all diverge, and none have ever failed, although the lightning traversed a slender wire in the midst of hundreds of tons of metal lying in cannon upon the deck.

LIGHTNING IN 1844.

On the 30th of March, a house belonging to James Miller, in the northern part of the city of Mobile was struck by lightning at an early hour in the morning of that day, and the whole of one gable end of the building torn to splinters. The electric fluid, in its descent, shattered to pieces one of the posts of a bedstead, on which two of the inmates of the house were sleeping, without doing the least injury to the occupants of the bed. Another person, sleeping in an adjoining apartment, had his face burnt, his hair singed, and was seriously shocked, probably by the same current of this subtle fluid.—*Jour. of Com. April* 9.

During a thunder shower in Derry, N. H., on the 6th inst., the lightning struck a large two story double house, and set it on fire in three places, which, however, was soon extinguished. A son of the owner, Capt. Hoit, was somewhat scorched, but not seriously injured.—*Jour. of Com. April* 15.

On Wednesday the 20th ult., a young man by the name of Underwood, residing in the county of Orange, was struck by lightning in his own house, and instantly killed. A little child that was clinging to his pantaloons escaped entirely unhurt.—*Raleigh (N. C.) Star.*

We were visited yesterday afternoon with a smart thunder shower. Several flashes of lightning were very vivid, and the electric fluid struck a large American poplar tree, standing on the margin of Independent Square. on Sixth Street, nearly opposite George Street. The fluid struck several feet above the crotch, and passed down the body of the tree nearly the entire length on two opposite sides of it, taking off the bark, the whole distance, about an inch in width, and scattering it in every direction, producing a fissure about the thirty-second part of an inch in diameter, apparently extending clear through the body of the tree. The shock was sensibly felt by the residents on the west side of Sixth Street. Two persons in different buildings were stunned and knocked down but experienced no injury.

In addition to this, we learn that a compositor in the printing office of King & Baird, in George Street above Sixth, had a stickful of matter knocked from his hands into pi, by the shock.—*Philad. Ledger of April* 20.

On Friday last, six steers, belonging to Mr. John Sharpless, of Delaware county, Penn., whilst grazing in the field, were struck by lightning, and instantly killed. The electric fluid first struck a pine-tree, which it shivered to pieces.—*Jour. Com. May* 4.

A storm prevailed with much violence over Chesapeake Bay, on Thursday night. A boat belonging to one of the lines was struck by lightning and partially damaged. Many of the passengers were greatly alarmed, but none of them sustained injury.—*Jour. Com. May* 6.

The house of Nathaniel Greene, Esq., 4 and 6 Hudson Street, and occupied by him and Mr. Maynard, one of his clerks was struck by lightning, last evening, but no great damage done.—*Boston Mail.*

Sloop Arion, from New-York, of and for this port, was struck by lightning on Saturday night last, off Point Judith, in seven fathom water; the crew were knocked down by the shock, and when they recovered, the sloop was in three fathoms only. The lightning shivered the topmast very badly, splitting it all to pieces, cauried away the peak halliards, jib halliards, split jib, and passed away through the forecastle. Fortunately the crew were all aft at the time, so that no lives were lost.—*Prov. Gaz. Tuesday. Jour. Com. May* 9.

A few days since, the house of Mr. Beardsley Frisbee of this town was struck by lightning, set on fire. and himself seriously injured. Seeing a shower approaching, Mr. Frisbee went from the field where he was plonghing, to the house, and seated himself near the fire-place. The lightning struck the house and glanced on to Mr. Frisbee, passing down one side, tearing his clothes and bursting open one boot, and then passed off. The neighbors observing the house on fire, hastened to the spot, and found Mr. F. senseless on the floor. The fire was extinguished, and after considerable exertion, Mr. F. was restored to animation, and we learn that he is now doing well. The family was absent, and no person was in the house but Mr. Frisbee.—*Delhi, N. Y. Gaz. May* 8.

The thunder storm on Saturday was very severe at New-Haven. It commenced between nine and ten o'clock. The rain fell in torrents, and there was a continual roar of thunder. The lightning struck two buildings, one a dwelling house in Franklin Street,—the other a barn in the outskirts of the city. No person was injured. The barn was set on fire, but by the prompt application of water, was saved from destruction. A barouche carringe in the barn was stripped of its leather covering, while the damask lining under the leather was comparatively uninjured. A pitch fork was broken in two and thrown across the barn. Both buildings were considerably injured. For the ——— observations in regard to this tempest, we are indebted to Professor Olmstead of Yale College:

There was a severe thunder storm at Poughkeepsie on Saturday morning, during which the lightning struck and set fire to a barn which was consumed.

The stables of Mr. Conklin, proprietor of the Centreville race-cqurse, L. I., were on Saturday struck by lightning, and completely destroyed. Loss, $1000. No insurance.—*Jour. Com. May* 14.

The house of Simeon Doggett, in Ravnham, Mass., was struck by lightning during the violent tempest on Saturday night last, at 12 o'clock. The house was very much shattered. The furniture of the parlor, and several other rooms, was thrown into the utmost confusion, and most of it destroyed. It appears that the lightning did not descend from the cloud, but burst through the floor in the front entry, and in several other parts of the house.

A quantity of iron in the back cellar of True & Almy's store, on State Street was struck by lightning during the shower on Saturday morning. The fluid passed into the store and shattered the ceiling in several places.—*Rochester Dem. May* 15.

The dwelling house of Mr. Orris Barns, in Ashville, we learn was on Monday last struck by lightning, and much injured, one side of the roof bein g entirely torn off. Mrs. Barnes was knocked down, and her clothes were set on fire, but we are happy to hear that she is not seriously injured.—*Maysville Sentinel.*

At 10 A. M., on Saturday last, the house, of Mr D. B. Lent, occupied by Mrs. Rebecca Gay, on the corner of Mill and Garden Streets, and the dwelling of Mr. S. V. Frost, situated on the opposite corner of the same streets, were struck at the same time. The bolt did but little damage.

Almost at the same instant, the barn of Mrs. Overbaugh, situated in the rear of her dwelling, in Mill Street, was struck, fired, and soon consumed, with its contents.

In the evening we had another shower, accompanied by thunder and lightning. The latter then struck in Clinton Street, but did no damage.

Vincennes, Ind., was visited with a severe storm on the 2.1. One house was struck by lightning—the largest and stoutest trees torn up—chimneys through down—but, though much damage was done, no lives were lost.—*Pough. Tel. and Jour. Com. May* 16.

A violent thunder storm occurred here last Saturday evening. The house of Mr. Pixley Judson, in the north part of the town, was struck by lightning and injured slightly. A black man in the house was prostrated by the shock, but soon recovered. Several oxen and a cow, we learn, were killed in Weston. Mr. Sherman French's barn was struck in Trumbull; likewise the barn of Mr. James Sanford, in Redding. *Bridgeport (Ct.) Farm. and Jour. Com. May* 17.

During the storm of Monday last, Miss Deardorff, residing near Hampton, Adams Co., Pa., was killed instantly by lightning. The electric fluid passed down a tree under which she was washing. Her sister had left the same place but a few minutes before.

We had a tremendous fall of rain on Friday and Saturday of last week, attended by repeated flashes of lightning and peals of thunder. Isaac Brown, of this town, had a cow killed by a stroke of lightning. Abraham Haight, of Newcastle, lost two hog in the same manner. The lightning struck a new house, building by R. J. Haight, and tore out the entire gable end. A large basswood tree on the farm of Walter Hunt, was also struck. What is a little remarkable, is the fact that these accidents all occurred within the circuit of a mile, as we are informed.—*Sing Sing Chronicle and Jour. Com. May* 18.

There was a fearful thunder-storm in Richmond, Va., last Thursday evening, according to the compiler. The lightning took a great many liberties with property but distinguished itself rather by the eccentricity than the disaster of its movements.

We learn that one of the sail lofts in the Navy Yard was struck by lightning on Thursday night and took fire. One of the watchmen was also struck but not seriously injured. The fire was soon extinguished. The Norfolk Engines repaired to the spot.—*Norfolk Beacon, Saturday, and Jour. Com. May* 21.

The barn of James Powell, Jr., of the town of Hempstead, Queens Co. was struck by lightning about 3 o'clock on Tuesday morning, and consumed. Also a colt and a small quantity of hay.

After 12 o'clock on Thursday night, a terrific storm of wind and rain, with a fearful accompaniment of thunder and lightning, made the boldest hearts in our city beat with apprehension. The electric fluid struck several points but without injury to life. The Exchange Hotel, the "Old Academy," near the basin, the "Park House," and other buildings were touched by the lightning, but not seriously injured. A wooden tobacco factory, occupied by Mr. Kerr, was blown down by the wind.—*Richmond Enquirer, Tuesday, Jour. Com. May* 23*d.*

During the storm on Wednesday evening, a servant girl in the employ of Charles Libeaw, on Third Street, was stunned by lightning. She was on the roof of the house, in the act of taking a feather bed, which she had in her arms, out of the rain. She saw the flash, and heard the report, and then became unconscious from the stunning effect of the electric fluid, and fell through the door into the house, in a state of perfect insensibility. Several remedies were proposed and tried to resusitate her, but the application of ice-water was found to be the most effectual. There were no marks upon her person, caused by the shock, nor was there any damage done to any of the buildings in the neighborhood. The physician called in reports that she would have been instantly killed, had she not been protected by the feather bed.—*Cincinnati Messenger.*

During the thunder storm on Monday evening last, the carpenter's shop of Thomas Leitch, Esq., in Friendship, was struck by lightning, and the shop and its contents to the value of about $300 was totally destroyed.—*Annapolis Md. Herald, and Jour. of Com. May* 25.

The Upper Marlboro' (Md.) Gazette of the 23d inst. says: "During the storm of thunder and rain on Monday evening, a Tobacco House belonging to Mr. Jesse Talber, near this village, was struck by lightning, and a negro boy and girl instantly killed. Mr. T. was considerably stunned. The house was not materially injured.—*Jour Com. May* 27.

During the thunder shower on Monday last, a man named Jacob Brown, residing near Carlisle, Pa, was killed by the lightning. He was in his corn field at the time the lightning struck him, and survived the stroke but a few minutes.

During the storm on Thursday night last, the barn of Mr. John Hade. in Antrim township, near Chambersburg, Pa., was struck by lightning and entirely consumed. About 100 bushels of corn and some other articles of value were also destroyed.

Much and general feeling was produced in Elizabethtown last evening, by the intelligence that Benjamin Seaman, a venerable citizen of some seventy years, was killed by lightning during the thunder shower, late in the afternoon. He was standing in his door, contemplating the grandeur of the elements, when he was struck dead by a bolt, which perforated the upper part of the house like a bullet, and passed off through the cellar, where the earth was slightly disturbed. Mr. S.'s hat and clothes were torn, but no mark was left upon his person. He was an honored member and office bearer of the Episcopal Church, and society snffers a loss in his death.—*Newark Daily Adv.*

During the violent storm on Thursday night last, three valuable horses belonging to Samuel Ogden, near Battentown, in Cumberland Co., N. J., that had been left in the pasture field, were killed by the lightning. A fourth, not worth much, escaped.—*Jour. Com. May* 28.

On Saturday morning, the 11th inst, this section of the country was visited by a heavy thunder storm. Among the doings of the lightning, we have heard of the following:

In the stable belonging to Hinckley's Farmers' Hotel, in this village, a valuable horse was killed, a cow knocked down, and Mr. Wm. Hinckley, who was standing within a few feet of the horse, was slightly shocked; the barn is uninjured. A tree in the neighborhood of the village was converted into kindling wood. In Newfield, the house of widow Dudley was struck, and four of its inmates received a severe shock; and a boy who was engaged at some forty rods distance from a tree which was struck, was laid prostrate by the shock. In Danby a steer was killed between two barns only a few feet apart, while the barns remained unscathed.—*Tompkins (Ithaca) Dem. J. C., May* 29.

Accounts have reached town of a storm striking Quincy, Illinois, and doing some serious damage. Houses were struck by lightning, and the office of the Herald was injured.—*St. Louis Reveille,* 17.

A child about 1 year old was killed at Jerusalem, on Saturday evening the 11th inst., while lying in a cradle. Its hair was set on fire and its skin discolored. *Brooklyn Star. May* 29.

On Sunday afternoon last, a hay house of Benjamin Wiggins in Upper Makefield township, Bucks county, Pa., was struck by lightning and consumed, together with its contents.

On Sunday afternoon last a thunder storm swept over sections of the towns of Rhinebeck, Hyde Park, Pleasant Valley, Clinton, &c. In some places it was accompanied with severe wind, which tore branches from the trees, or prostrated trees that were not well rooted. It was also attended with heavy thunder and lightning. Mr. James H. Clapp, of Pleasant Valley, had two cows killed by lightning. They were standing near together in an open field.

We understand that Mr. Daniel H. Tweedy, of Stanford had a pair of oxen also killed by lightning during the same shower.—*Poughkeepsie Telegraph, of May* 29.

Springfield, Erie Co., May 25.—A barn belonging to John Nichols, in this town, was struck by lightning on the 12th inst, and two horses the property of Mr. Thomas Richmond were struck down.—*Jour. Com. May* 31.

We learn from the Goshen Whig that the house of Mr. Gamaliel Russell, of Amity, Orange Co., New-York, was struck by lightning on Wednesday 26th ult., tearing off about one third of the siding. The fluid struck the chimney, Fortunately no person in the house was injured, although the back was torn from a chair standing near Mrs. R.—*Brooklyn Star, July* 11.

Mr. Henry Harner's house, half a mile west of Lebanon, Ohio, on the Hamilton Road. was struck by lightning on Friday last, and four of his daughters instantly killed, the mother injured, Mr. Harner and his little boy stunned. The fluid seemed to pervade the building. Two of the young ladies were on the second and two on the first floor of the house. "The scene exhibited on this occasion," says the Star, "was heart-rending in the extreme." The young ladies so suddenly called into eternity were exemplary members of the Methodist Church—pious children of pious parents.—*Jour Com. June* 8.

A little boy named Snyder, 8 or 9 years of age, was killed by lightning at Columbus Ohio, on the 27th ult., while walking in the street with a few chips on his head. The electric fluid perforated the ground for the space of two or three feet, all around him. It tore his hat and clothes, and burned a portion of the hair off his head.

A small boy was killed by lightning the same day at Pittsburgh. A house in Pittsburgh, occupied by Messrs. Gillespie and Wood, was also struck by lightning the same day. The fluid came down the water spout in front, ran off that to the iron hinge of the shutter, thence on to the bar used for fastening the shutter, and about the middle of the window glanced off through a pane of glass shattering it and making a small hole through the bottom. Inside the window it set fire to some papers, struck the head of a stem in a glass nob, and finally went down the gas pipe, doing the whole very little damage. One of the firm who was sitting at the windows, was greatly dazzled by the sudden and brilliant glare of the fluid.

The barn of Mr. Fisher, near Emmittsburg, (Md.) was struck by lightning on Sunday evening, 26th ult., and two horses therein were killed—*Jour. Com. of June* 5.

During a thunder-storm which passed over Montrose, Pa., on the 24th ult., the Episcopal Church was struck by lightning.—*Jour. Com. June* 6.

During a thunder storm at Providence, R. I., on Sunday afternoon, the schooner Providence, lying at Fox Point was struck by lightning.

The house of Miss Bridges, South Trenton, N. J., was struck on Friday morning. The fluid passed down the chimney through several rooms to the cellar, tearing floors and walls and twisting nails on the way. Miss B. was thrown from her feet some five yards, but not injured. A barn in the vicinity was also struck.

During the thunder storm on Sunday, two houses at Russell's Mills, Dartmouth, Mass., were struck by lightning, both being considerably damaged. A young man named Head, was killed by the electric fluid. He had been recently married.—*Jour. Com. of June* 12.

The barn belonging to the late John Hooker, deceased, in Whitemarsh Township, Montgomery Co., Pa., was struck with lightning, about 5 o'clock on Friday morning last and consumed. A small quantity of grain and one cow were consumed, comprising pretty much the contents.—*Jour. Com. June* 14.

During the thunder storm on the 9th inst., a boat belonging to Mr. Harrishoff, lying at Poppasquash, R. I. was struck by lightning, and her mast shivered to pieces.

trees in the field. Two other men were under the same tree, farther from the trunk; the one was knocked over by the electric stroke, and the other greatly shocked; but neither of them permanently injured.—*Huntington Journal.—Jour. Com. July* 8.

On Thursday week, on the plantation of Messrs. Wood and Stutson, in Louisiana, about ten miles west of Vidalia, five oxen were killed by lightning.

Fourteen sheep, belonging to Mr. Alexander Day, of Ireland Parish, West Springfield Mass., were killed by lightning on Saturday last. They were found dead near a small oak tree.—*Jour. Com. July* 12.

During the thunder storm last evening, about 9 o'clock the barn of Mr. Charles Lines in Woodbridge, about five miles from the city. was struck by the lightning, and entirely destroyed. It contained a hay press, between 20 and 30 tons of hay, a quantity of grain, &c. The light was plainly visible in our streets, and the fire engines turned out at the alarm, but found the fire too far beyond their precincts to be reached in time. Mr. Lines's loss, we are informed, is some 5 to 700 dollars —whether insured or not we do not know.—*New-Haven Herald*, 11th inst.

During the shower on Wednesday, the barn of Mr. Jacob Frederick, in Guilderland, was struck by lightning, and with its contents entirely consumed. Luckily his crops were not in, but his farming utensils and some of last year's grain were lost.—*Albany Argus.—Jour. Com. July* 13.

During the thunder storm yesterday afternoon, the barn of a Mr. Peck, in Cheshire was struck by lightning and entirely consumed. The barn was filled with hay and grain.—*New-Haven Courier, Monday.*

During a heavy thunder shower on Saturday afternoon last, the barn of Mr. Peter M. Hubbell, of Brookfield, Ct., filled with hay, was struck by lightning and burned to the ground.—*Ib.*

From the Burlington, Vt Free Press of July 12.—On Wednesday morning our town was visited by a severe rain with violent thunder and lightning. The lightning struck the conductor of the Winooski Church, and the sidewalk near Mr. Catlin's on the hill.—*Jour. Com. July* 16.

The house of Mr. Morton, near New Paris, Ia., was struck by lightning, on the evening of the 5th, and his daughter, Miss Rosanna Morton killed. Miss M. was 17 or 18 years of age.—*Jour. Com. July* 18.

On Saturday the 13th inst., the barn of John C. Moffatt, of the town of Blooming Grove, in this county, was struck with lightning and consumed, together with 10 or 12 tons of hay.—*Goshen Clarion.*

From the Montreol Herald of Tuesday.—A house was struck by lightning and set on fire, but was speedily extinguished by the torrents of rain which poured down. The St. Pierre Pavillion was also struck with lightning, demolishing the walls of the kitchen and rending the stock of a fowling piece which was in that apartment of the house.—*Jour. Com. July* 19.

We had a severe storm last eveniug, and regret to learn that a young lady and a boy were killed by lightning, on Court Street, near Western Row. Their names were Henry Bump and Eliza Evans. An alarm of fire was started just as the storm subsided. It proceeded from the part of the house in which the persons were killed. being struck by lightning—*Cin. Gazette, Monday.*

The barns, sheds, &c., of Holloway Long, of York, were struck by lightning on Saturday morning last, and entirely consumed. About 300 bushels of Wheat entirely lost. We have not heard the extent of the loss.—*Livingston Republican.—Jour. Com. July* 20.

The thunder storm of Sunday last was one of unusual violence. At W. Ware, Esquire's property, a large tree was destroyed, and a second partially unlimbed. Two or three horses grazing in the fields in the vicinity and at Larotte, were also killed.—*Quebec Mercury.*

The Sullivan Whig states that in a severe thunder storm on Sunday last, during the afternoon service, the Presbyterian Church near the village of Liberty, in that county was struck by lightning, which knocked down some 10 or 12 of the congregation. None were killed on the spot, but Mr. Henry Burr was so badly injured that his life is despaired of, and a Mr. Young was se seriously burned that he is in great danger. Most of the others were also seriously burned and otherwise injured, but it was believed not fatally. The interior of the church was much shattered.

The Schooner Napolean, of Pittston, Bangor, with lumber, was struck by lightning on the 14th inst., which shivered foremast and foretop gallant mast.

Schooner Edward Burley, of Beverly, was at St. Thomas, Africa, May 29, bound to Princes' Island to repair, having been struck by lightning on the morn of April 23, while lying at Dix Cove, which badly injured the head of foremast, and shattered the mainmast so that it was of no further use, was supplied with a spare top-mast from U. S. ship Saratoga, for a jurymast.

Bark Palestine, Hunt, of Boston, was struck same morning, while lying at Anamboo—damage not ascertained.—Jour. Com. July 22.

On Wednesday the 9th inst., William Hutchings, aged 14 years son of Jonathan Hutchings of Carmel, was instantly killed by lightning in his father's house. He was standing at a window near the head of the stairs in company with another boy, and both were thrown to the foot of the stairs. The boy in company was stunned but recovered in a short time. The house was struck in two places and considerably injured. No other persons were hurt, although there were 16 in the house.—Bangor Whig. Jour. Com, July 24.

On Tuesday evening, during the violent thunder shower, the house owned and occupied by Jared St. John in Ridgefield, was struck with the fluid, and entirely consumed. The family in the house at the time consisted of four persons, who had retired They were unconscious of the situation of their tenement, until they were aroused to an examination by the collection of smoke in their sleeping apartments. The house was new, having been occupied but a short time. The furniture was saved. There being no insurance, the loss falls heavily upon a worthy and industrious man, of but moderate means.—Norwich (Conn.) Gaz.

A barn owned by Mr. Samuel Scovill, in Watertown, containing ten tons of hay and 57 shooks of rye, was struck by lightning and wholly consumed by fire on the 19th inst. The rye belonged to Mr. Reuben Hungerford. No insurance. Less about $300. —Hartford Journal.

We learn that Phineas Terry, Esq., a respectable citizen of Orange county, while visiting his friends in Lumberland, died very suddenly last Saturday afternoon. It is thought he was struck by lightning, as there was a thunder storm during his absence. No marks of the electric fluid, however, were found on his body.—Monticello Watchman.

On Wednesday last, during the thunder storm, the barn of Mr. John Hawley of South Egremont, was struck by lightning, and entirely consumed. A very valuable horse in the building was killed at the time.—Pittsfield Sun.—Jour. Com. July 25.

The house of Mr. James Alexander, about a mile and a half distant from Portsmouth, on Saturday last was struck by lightning. The chimney was severed in two perpendicularly, and the weather boardings of the gable end much injured. There were nine persons in the house at the time, all of whom were stunned and thrown prostrate upon the ground; Mr. Alexander was injured somewhat in the back by a splinter from the weather boarding, and Mr. Hall's clothes were burned, and one shoe torn from his foot; yet strange to say, no one was fatally injured. A dog belonging to one of the persons was found dead near the house, and a cat on the premises was also killed.—Portsmouth (Va.) Index.—Jour. Com. July 26.

A terrible thunder storm visited Harrisville, Missouri, on the 4th inst. A Mr. Elliott was killed by lightning. A large number of sheep were killed near that place. In Van Buren county, on the 5th, five horses were killed by lightning.—Jour. Com. July 29th.

The lightning struck a large tree, about 8 miles from Frankfort, on Thursday last, and scattered its fragments far and near. What rendered the circumstance remarkable was that there was just over the place struck a very small white cloud, scarcely to be noticed, and from which neither rain nor lightning could have been expected. Just rising above the horizon, there was a dark cloud, which really promised a tempest.—U. S. Gaz.—J. C. July 30.

The Schr. Grape Island, Capt. Secount, which arrived here on Saturday from Boston, was struck by lightning on the 23d inst., by which the foremast, mainmast, and main-top-mast were shivered, the foremast completely so from the hounds to the deck, decks ripped up, and sustained other damage. From the smoke which issued out of the hold, the Capt. entertained no doubt but that she was on fire below, but which was put out by the rain falling at the time. The electric fluid passed out thro' the hawser hole. The mate was the only person on board who felt the shock.—Norfolk Beacon, July 29.—J. C. July 31.

During a thunder shower on Friday last, Mr. Henry Fuller and a boy named Houghton, took shelter under the branches of an issolated oak. Not liking the sheltor, Mr. Fuller proposed seeking another, and set off on a run for that purpose, but before having made thirty feet from the tree, it was rent from top to bottom by lightning—the boy being hurled to the earth apparently lifeless. The body was immediately borne to the house, face upwards—when it was found that the falling water had restored animation. The boy soon recovered.—Rochester Adv.—J. C. Aug. 1.

Baltimore was visted on Wednesday afternoon by a tempest of exceeding violence. A row of small brick dwellings in a court near Monmouth Street, was struck by lightning, eight or ten females were stunned by the electric fluid, and one Julia Ann Pratt was instantly killed. The lightning struck two other houses, shattering them badly, and two vessels in the harbor.—Brooklyn Eve. Star, Aug. 2.

During the thunder shower of yesterday morning, the brick house occupied by Dr. Henry, on Clinton Avenue, was struck by lightning. It entered the chimney, demolishing a part of the same, and the fence in its course passed along the roof, tearing off the slutes, &c., whence it passed off by the tin leader into the cistern.—Ib. Aug. 5.

We understand that a sloop belonging to Troy was struck by lightning yesterday afternoon, somewhere between Bristol and Catskill landing; she had her masts shivered, a splinter from which struck one of the hands who is not expected to survive.—Albanian.

We learn from Capt. Betts, of the schr. Princess Anne, from North Carolina, that the schr. John C. Pettijohn was struck by lightning on Saturday last, while going from Plymouth Nag's Head, Both masts were shivered, and the decks were ripped up, and melancholy to relate, Mr. Lucas, a merchant of Plymouth was killed; a man and a boy were also much injured, the former so much so, that for three days his life was despaired of. There was a large party of ladies on board at the time, none of whom were injured.—Norfolk Beacon, Saturday.—Jour. Com. Aug. 6.

From the Hudson Gazette, Aug. 6.—On Thursday afternoon last, the barn of Philip Miller was struck by lightning and con-

sumed, together with considerable grain, which was in it and some stacks of hay which were near the barn.

The sloop Sally Ann, of this city, which was at anchor near Catskill, was struck by lightning, and a man named Barnum considerably injured. We understand however, that he is likely to recover.

Capt. Jarvis, of the brig Cameo, arrived at this port yesterday from Smyrna, reports that on the 2d inst., off Cape Cod, was struck by lightning, which shivered the main-top-mast, tore several sails badly, passed through the deck into the hold, and returned back through the deck, tearing up about eight feet of the planking and bringing with it some wool torn from the bales. The second officer who was upon the fore-top-gallant yard at the time, was stunned and fell, his back across a gasket, and his legs upon the cross-trees, in which perilous situation he remained until the people relieved him, when it was found that he was not dangerously hurt.—Bost Trans.—Jour. Com. Aug. 7.

During the storm in the forenoon on Sunday last, an ox standing near a barn in Far Rockaway, the property of Mr, Richard Mott, was struck by lightning, and instantly killed.—Brooklyn Star, Aug. 8.

Bark Herschell, of Bangor, from Baha, was struck by lightning no date, off Cape Palmas, had main-top-gallant and royal yards splintered, and a bale of tin ware in the hold set on fire and injured: the first and second officers, 3 seamen, the cook and two passengers were knocked down but not seriously hurt.—Jour. Com. Aug. 9.

On Wednesday morning last, a small house in Hill Street, New-Haven, which was supplied with a lightning rod, was struck with lightning, notwithstanding.—Jour Com. Aug. 10.

On Sunday morning last, at about daylight, a heavy thunder shower passed over this town and Hyde Park, and we regret to say that during its continuance a barn belonging to Mr. Gilbert Budd, in Hyde Park, was struck by lightning, and consumed, with its contents and the out buildings adjoining. Mr. Budd had just finished his harvest, having in his last load of oats the previous evening, which was left on the wagon, thus causing that also to be lost. The barn was very large, filled with grain and hay, and also containing several valuable farming implements. Loss about $1,500, on which there was no insurance.

Here is another instance, among the many recorded every season, showing the importance of having lightning rods to buildings and of having them insured.—Pough. Eagle, Saturday.—Jour. Com. Aug. 12.

In the storm on Wednesday evening last, the wife of James Cooper, of Bunker Hill, Ill., was instantly killed by the lightning. Mrs. Cooper was at the time sick in bed in the house.—Jour, of Com. Aug. 13.

The Court House in our city received a charge from the cloud that passed over yesterday. The flash is said to have passed off at the four corners of the building. No one was materially injured, a lady, however, was somewhat stunned for a few minutes. This was a fortunate escape, as the court at this time was in session.—Cin. Bulletin, 10th.—Jour. Com. Aug. 15.

The sloop 'Betsy and Ann,' of Hudson, was struck by lightning on the river about 3 miles below this place, during the thunder shower on Thursday last. The lightning descended the mast and we understand seriously injured one of the hands. During the same shower, a barn in the town of Germantown, Col. Co., nearly opposite this village, was struck, and with its contents entirely consumed.—Catskill Messenger.—Brooklyn Star of Aug. 15.

Last Wednesday about noon, as some of Dr. Patrick's negroes were cutting cord wood, in the rear of his plantation, in West Baton Rouge, one of them was killed on the spot by lightning and two others were knocked down but not seriously injured.—N. O. Bee.—Jour. Com. Aug. 17.

A hand on board of a sloop which was struck by lightning near Hudson a few days since, was coiling a chain cable near the bow at the time. After the flash, he walked to the stern and dropped senseless. By immediate application of cold water and camphor he was resuscitated, and will probably recover. This is the first instance recorded, within our knowledge, of any time elapsing between the stroke and the effects of lightning.—Kingston Jour. Jour. Com. Aug. 19.

A correspondent of the N. O. Republican writing from Jackson, Louisiana, 7th inst says:

This evening about 4 o'clock, as a young man named Barrett, was returning to Mr. E. S. Gordon's where he resided, from this place in company with another named Wm. Robbins, of this Parish, both of them were thrown from their horses almost at the same time. Robbins held his horse's bridle reins and was dragged along for a considerable distance before he recovered either strength or presence of mind to stop him, and on his return to the place where he and Barrett were thrown, the latter lay dead, and the horse he rode was just expiring.—Brooklyn Star. Aug. 19.

The ship Newark arrived at Savannah, Geo. 13th inst. from New York, on the night of the 10th inst., off Frying Pan Shoals, during a heavy squall from the north west, was struck by lightning, which carried away the main royal mast and yard, badly injuring main-top-mast, carrying away main-top-sail yard, and top-sail, passing down to the cabin deck, where it exploded, setting the deck on fire in every direction, and doing considerable damage to the forward part of the cabin; it then passed along the side of the cabin, and entering the water closet, did some damage there, broke 28 panes of window-glass from the cabin, and nearly all the crockery in the pantry. Two of the men were seriously injured, but have since partially recovered.—Jour. Com. Aug. 20.

On Friday, John Clendenon, an old gentleman of 60, and his nephew, James Clendenon, an orphan boy he was raising, aged 20, were both instantly killed by lightning, in Springfield township, Franklin County, Ia., while sitting under a large oak tree. They were making hay together, says the Cincinnati Commercial, when the shower came up, and took shelter under the old oak, which stood alone near by, not regarding the many warnings which have been from time to time given to avoid trees in a thunder storm. The clothes were nearly all torn off the old man, and his head was partially buried in the hole made by the lightning in the earth. It appeared as though the main charge struck his body, as the young man was apparently not much injured. Never upon any consideration take shelter under a tree in a thunder storm. We would as soon think of reposing under the end of a lightning rod.—Brooklyn Star, Aug. 20.

Several buildings were struck by lightning in different parts of Philadelphia, during a violent thunder-storm on Monday evening, and a number of persons were seriously affected. One was yesterday still lying dangerously ill. A large number of barns in the vicinity were also struck. The lightning also struck the ship Champlain, lying at Girard's Wharf, and the schooner H. Westcott, lying in the stream, shattering the main-mast of the former, and both masts of the latter.—Brooklyn Star, Aug. 21.

The thunder storm of Monday evening favored the citizens of Bristol Pa., with a touch of its quality. The house of Hugh Dungan was struck by lightning and all the windows in the upper stories were broken; also, the hickory pole connected with the house was struck and shattered from top to bottom; also the barn of Joseph Stackhouse was burned to the ground, and 800 bushels of oats and about 5 or 6 tons of hay; also a barn on the Jersey side belonging to Mr. Homer Jackson.—Brooklyn Star, Aug. 21.

Further particulars of the storm in Philadelphia in the Star of the 22d, with an account of the house of W. D. Fort, which was struck with lightning, though provided with a rod.

On Thursday afternoon, during the heavy thunder-shower, the lightning struck the house of a German named Conrad Hammond, in Alleghany City. The electric fluid tore open the roof and one of the gable ends of the house, and notwithstanding the shock was a very powerful one, two persons who were in the house lying upon a bed, were entirely uninjured. The fluid, after passing from the house, took the direction of the public schoolhouse of that ward, which stood near by, and gave the teacher, Mr. Leonard H. Eaton, as well as several of the scholars, a severe shock.—Pitts. Chronicle.—Brooklyn Star Aug. 27.

The storm on Monday afternoon, the 19th proved very destructive. The house of Mr. Shuster, near this place, was struck by the lightning and one end of it and the cellar wall very much injured, but was not set on fire. A little son of Mr. Shuster, we learn, was also considerably injured. At Carpenter's Landing a barn belonging to Mr. Bowman Sailor, Esq., was struck and burned down. At Sharpstown, we heard one or two barns were burned down. A barn near Burlington and one near Bristol, were also struck and destroyed.—Woodbury (West Jersey Const.—Jour. Com. Aug. 29.

J. B. Barre, candidate for the place of clerk to the convention, a resident near Jackson, Miss., was lately killed by lightning; the bolt striking behind the right ear. The fluid running through the interior of his body, came out under the right foot. His horse was also killed instantly.—Jour. Com. Aug. 30.

On Sunday last, Mr. Daniel Clements of Flushing, L. I., while on a visit to Mr. Samuel Greenock's in Flushing township, was struck by lightning. He was stunned by the shock, and remains delirious.—Brooklyn Star, Aug. 31.

During the thunder shower which passed over our city last night, the steeple attached to St. James' (Catholic) Church in Aisquith Street was struck by lightning. A hole, as if made by a cannon ball, was perforated in the steeple, and an arm of the cross upon its summit broken off.—Balt. Patriot, Tuesday.—Jour. Com. Sept. 3.

On the 22d ult. in Monroe Township, Preble county, Ohio, two daughters of Mr. Daniel Dashers, aged 10 and 13 years, when returning home from the orchard with a basket of apples, were instantly killed by a flash of lightning. A younger brother was with them, but escaped without material injury.

On the same day, and within two hours of the above calamity, the house of Mr. George Walker, of Twin Township, Darke co., Ohio, was struck by lightning, and one of his sons, aged four years was instantly killed; the arm of a younger brother was broken, and he was otherwise so seriously injured that little hopes were entertained of his recovery. Several other members of the family were more or less injured, but not dangerously.

We learn by Hale & Co.'s Express, direct from Reading, via Philadelphia, that during the violent storm on Monday evening, a locomotive with a train of 100 coal cars was struck by lightning, a little above reading, causing the locomotive to blow up, and instantly killing the conductor, engineer and two firemen.

Philadelphia was visited last evening with a shower, accompanied with sharp lightning and thunder. The clouds appeared to be considerably charged with the electric fluid, and some damage was done by it in different parts of the city. A brick house in Budd Street near the Germantown Road, N. J., was struck and several feet of the peak of the gable was knocked away. A woman in the house was stunned, but soon recovered. The electricity descended the water spout, and entering the rain-barrel, diverged and passed out in four distinct directions, making a hole through the staves of the hogshead at the various points where it touched.

A dwelling house in New-Market Street, Northern Liberties, was struck by lightning, and a portion of the roof torn off. No person was injured.—Jour. Com. Sept. 4.

The Schr. American Eagle, from Philadelphia for Savannah, was struck by lightning, on 2d inst., while at anchor below Reedy Island and had both mast shivered.—Jour Com. Sept. 6.

Mr. John Cartwright, of Algonac, Mich., was struck dead by lightning, on the 1st inst., while sitting with his family. The fluid passed down the chimney, and after doing its work of death, left no visible trace of its course.—Jour Com. Sept. 10.

Mrs. Phillips, of Montgomery county, Ga., was instantly killed by lightning on the 10th ult. The electric fluid struck a tree near which she was standing, and glancing off to her person broke her neck and split her breast bone.

We regret to state that the severe gust of wind, which, accompanied by thunder and lightning and a welcome rain, visited our city on Tuesday evening last, caused one of our esteemed citizens, Mrs. Ann Johnston, to suffer much in property.

The cotton house on her plantation, on the Ogechee, seven miles from Savannah, was struck by the electric fluid, and with its contents, 14 bales of S. I. cotton, of this year's crop, consumed by fire. The overseer, Mr W. Cole, with a number of negroes, had but a few moments previously left the cotton house.—Savannah Georg. Friday.—Jour. Com. Sept. 12.

A friend from Indiana informs us that Jacob M. Neely, a respectable citizen of Brown county in that State, was killed by lightning a few days since. He was returning home from Court, on horseback, and on the approach of the storm stopped under a tree by the road side. The lightning struck the tree and passed to Mr. Neely killing him and his horse instantly, it is supposed, as they were found lying side by side, quite dead.—Cin. Chron.—Jour. Com. Sept. 16.

LIGHTNING IN 1845.

On the 18th of March the brig Corsair, from New-Castle, England, bound to New-York, was struck by lightning, killing two of her crew, and seriously injuring two others.

On the 4th of April, Mr. Wesley Ivy was killed by lightning in Macopin county, Ill.

On the 5th of April, a negro woman, belonging to Mr. Williams of Perry county, Ala., was killed by lightning in her master's yard.

On the same day the lightning struck a tree standing near the piazza in front of the residence of Gabriel Fenn, Esq, of Westville, Miss., and glanced off in several directions, striking and badly stunning some 8 or 10 persons who were on the piazza, near the base of the tree, 3 of whom were instantly killed—namely, Bird Fenn; a son of Mrs. Alvord, and another name not given.

On the 17th of April, a barn in Manchester was struck by lightning, belonging to Adam Van Tyle, and consumed together with a fine span of horses, a double carriage and harness, and a considerable quantity of hay and grain.

On the same evening, the house of Mr. Frederick Young of Hagerstown, Md., was struck by lightning, by which the inmates were struck to the floor, and a cradle containing an infant, together with a stove were overturned. The floor rafters of the house, and other timbers, were much torn.

On the 25th of April, the dwelling house of Mr. Henry Knox, situated near Sykesville, Carroll co. Md., was struck by lightning, and Mr. Knox and his son, who were standing at the door, were instantly killed.

On the same day, Mrs. Torrey, wife of Jacob Torrey, residing near Hanover, York county, Pa., was killed by lightning. A little girl sitting by her side escaped unhurt.

On the same evening, the house of Mr. Quigly, near the Navy Yard, Washington City, D. C., was struck by lightning. The fluid passed down the chimney and shivered the mantel piece and china which rested on it to atoms. The son and daughter of Mr. Quigley, who were in the room at the time, were struck by the lightning and severely stunned, the young lady so much so that she did not recover until the following day. A cow near the residence of Mr. Quigley was instantly killed by the lightning.

On the same evening, the barn of Mr. Jacob Hoff, of Straban township, near Gettysburg, Pa., was struck by lightning, and entirely consumed with all its contents.

On the same day, young Mr. Wm. Wilson near York, Penn., was struck by lightning, and instantly killed. Mr. Mathew Placide who was near him at the time, was severely stunned but has recovered.

On the same evening, the lightning struck into the barn of Mr. Michael Waters, of North Codrus township, Pa., destroying five head of horned cattle, and burning the barn to the ground.

On the same evening, the lightning struck the large meeting house in Fitzwilliam, N. H., the fluid breaking the rod to pieces, and partially demolishing one part of the house. Many years since the house, which had been erected but for a short period, on the same spot, was struck, and the building burnt, by leaving shavings under the floor.

On the same day, the lightning struck the Methodist Parsonage in Newton, Sussex county N. J., which was considerably damaged. The tin gutter was twisted, blistered and torn in several places. Every pane of glass was broken. Fortunately the family (Rev. Mr. Winner's) was absent.

On the same day, Spencer's Tavern in Chicago, Illinois, was struck by lightning, and completely uncofed.

Same day, the barn of Col. Henry Lewis, near Hagerstown, Md. was struck by lightning.

On the same day, the Chemung Gazette says, a house was struck by lightning, tearing off a part of the roof and weather boards and stunning the inmates.

On the same day, the Warehouse of C. B. & L. Blair, of Michigan, was struck by lightning, killing one man and badly injuring another.

On the night of the 26th of April, the Catholic Church at Vincennes Va., was struck by lightning, which entirely ruined the town clock, and did considerable damage to the steeple.

On the morning of the 27th of April, the barn of James Wray, near Pittsburgh was struck by lightning, and entirely consumed.

On the night of the 23th of April, the Canal Schooner, Mary Piner, lying at Myers' Wharf, Norfolk, was struck by lightning. Her mainmast was shivered from the top-mast head to within about three feet of the deck. The lightning no doubt passed into the well of the centre board. Fortunately no person was injured.

On the afternoon of the 30th of April, a man was instantly killed by lightning in Girard, Mich. As was sitting in his house and holding a small child when struck. The child was stunned for the time but recovered.

In April, four men were killed by lightning in Morgan county, Ohio. Date not given.

In April, a young man, 18 or 20 years of age, son of Mr. Wm. Gallop, of Columbia, Michigan, was killed by lightning while standing under a tree. The only perceptible mark about his person was upon the top of his head, his hair being slightly singed.

In April, a barn in New-Jersey was consumed by lightning with its contents, consisting of hay, grain and flour, 1 horse, 2 cows, 10 sheep, and all the farming utensils.

On the 12th of May, the chimney of the store corner of Burling Slip and Front Street, New-York, was struck by lightning, which passed into the adjoining store, shivering an upright beam.

On the same afternoon, three persons were knocked down by a thunderbolt at Humphreysville, Conn. One of them, by the name of Thomas Barnell, was taken up entirely senseless, but recovered. The peal was terrific, and seemed to shake the whole village.

On the same day, a correspondent of the Adrian (Rich,) Watchtower, says: In Branch county, three persons were killed, a Miss Worden, and a Mr. Harris, also a boy 10 years of age. Several are blind.

On the 13th of May, the lightning struck and burned Mr. Allston's tide mill on Richmond plantation, S. C., together with a considerable quantity of clean rice, which was ready for market.

On the 19th of May, a house in Montgomery Street, Jersey City, was struck by lightning. The shock was terrific, shattering the building considerably.

On the 20th of May, a dove on the roof of Military Hall, River Street, Troy, was killed by lightning. The electric fluid passed along the railway very perceptible for several seconds. Two houses were struck, and the fluid ran down the lightning rod of a third. Several persons were stunned, but none of them materially injured. A lady and child both had their shoes torn by lightning, and holes were made by it in the childs stockings, the child itself being entirely unhurt.

On the 23th of May, a Mr. Christopher of Lexington county, Ky., was killed by lightning. He took shelter in a corn crib, in a field, with several negroes. The negroes were all stunned, but none of them killed.

On the 29th of May, the ship Soldan, at New-Orleans, was struck by lightning. It shivered the fore-royal mast and top-gallant mast, and passing down to the deck, ripped up the latter for a distance of six feet, then passed out into the water, knocking down two men.

On the same day the flag-staff of the St. Charles Theatre, at New-Orleans, was struck by lightning and shattered into a thousand pieces.

On the 4th of June, the wife of John Wilkinson, of Madrid, St. Lawrence county, N. Y., was killed by lightning.

On the same day, a man named Stevens, of the town of Riga was killed by lightning while ploughing in the field. The fluid entered the top of his head and came out at his chin, making a hole like a bullet. It then ran down his body, passed through his foot, and tore the sole off his boot. One of the horses was killed.

On the 5th of June, two fine saddle horses were killed by lightning, under a tree near Newman, Ga.

On the 9th of June, the lightning struck two houses in Philadelphia, shattering the upper part of the houses. It also struck a tree in Long Lane, Passyunk, under which two boys with a horse and cart had sought shelter from the rain. It killed the horse, and severely affected both of the boys. The rim of the hat of one of them was cut in two, and his hair singed.

On the same day, a French woman was killed by lightning on Prince Edward's Island. The lightning came down the stove pipe.

On the same day, a bolt of lightning descended in the orchard of Jas. S. Tarrantt, near Peekskill, killing a horse under a tree.

The same day, a young man named Nichols, and a young lady named Pierce, were killed by lightning in Royalston, Mass., while standing at her father's door.

The same day in Hampton, Rev. Nathaniel Rawson was killed by lightning while in an open field. He had a rake in his hand which was torn to pieces.

The same night a large barn, belonging to David Zeller, Esq., near Hagerstown, was burnt by the lightning. It contained 1,000 bushels of wheat and 60 tons of hay, which were entirely destroyed, together with a very valuable imported cow, threshing machine, six setts of gears, and a great many other articles. Loss above $4,000.

The 15th of July, a church in Salem Street, Boston, was struck by lightning, and injured. Five houses in Fayette Street, Boston, was struck by lightning and injured. A house was struck in Arlington; also two barns were struck and burnt; also a railroad bridge, near Whitestone was struck and burnt.

The same day, a barn belonging to Mr. Reeves, of Wayland, Mass., was set on fire by lightning, and burnt with its contents.

The same day, two barns belonging to A. & L. Rice, Barre, Mass. were consumed by lightning. A barn on the same spot was struck by lightning and burnt 13 years ago.

The same day, the building of Gen. Blossom, in Turner village, Me., was burned by lightning.

The same day, three children were killed in Stewartson, N. C. They were playing near a tree in the school yard, when the lightning struck the tree and killed three of them on the spot.

The 16th of July, Mr. Thompson's house, near Petersburg, Va., was struck by lightning. Mr. Thompson was struck upon the head and killed instantly; his wife was knocked down, and a servant girl much burnt.

The 17th of July, the brick house of J. B. Titcomb, Newburyport, Mass., was struck by lightning and damaged.

The 20th and 21st of July, several persons were killed by lightning at St. Maria, Canada; Mr. Lotpeniere's farm house was burnt by lightning.

The 21st of July, a young man, a Carpenter, named James Mc Ilroy, was killed by lightning in Toronto, U. C.

The same day, a barn near Richmond, U. C., was struck by lightning, and burned with its contents.

The 24th of July, brig Caracas was struck by lightning, in lat. 34 35, long. 74 20, which stunned several men who were aloft, descended in a straight line to the quarter deck, and passed out of the hawser hole into the sea.

The same day, bark Rio Grand was struck by lightning, in lat. 34 35, lon. 71 38, and main-top mast was split.

The 26th July, a farm house near Schenectady was struck by lightning. The building was shattered throughout. The occupant was passing at the time between the house and barn—he was thrown down, badly bruised, and we believe had some bones broken; his wife, who was in the house, was stunned.

The 27th of July, 3 men were killed by lightning in a house in St. Genieve Canada; an another person is not expected to live; and an another was injured.

The 30th of July, the lightning struck the warehouse of J. D. Thurston, at Town Point, and rent it considerably.

The same day, the house occupied by Mr. Poliss, Worcester, Mass. was struck by lightning, and was with the furniture considerably injured. One person was stunned.

The same day, John Boose, his wife and child, aged 7 or 8 years, were killed by lightning at Pine Creek, about 2 miles from Washington.

The same day, a large stone barn, near Philadelphia, was struck by lightning, and with its contents consumed.

The same day, an ice house in Philadelphia was struck by lightning, and the roof shattered. A fine horse in a shed adjoining was killed.

The same night, bark Sharon, at Charlestown, Mass., was struck by lightning, had main-mast, main-top-mast, and main-top-gallant mast shivered.

In July, the barns of Mr. F. Summers, of Middletown Valley, Md., and of John Siler, of Back Creek, Va., were destroyed by lightning.

In July, Mrs. Lair, on the Little Sciota, was killed by lightning. She was holding an infant in her arms which was *not killed*. It was burnt on the lips a little.

In July, at Pulaski, Tenn., Mrs. Verrell and her child, and the horse on which they rode were killed by lightning.

The 3d of August, the bark Casild, from Boston, bound to Pensacola, was struck by lightning, lost her main and mizzen top-mast, and was left in a leaky state.

The same day, the brig Manhattan was struck by lightning off St. Marks, Fa., damage trifling.

The 7th of August, a house in Georgetown, Mass., was struck by lightning and damaged. No person was injured. Another dwelling was struck during the same shower.

The 8th of August, Miss Putney and Miss White were killed by lightning on Union Hill, Richmond, Va. They were sitting on the same sofa at the time.

The same day, the lightning struck the chimney and roof of the Washington Assembly Rooms, and stunned a female in that building and a boy in a coach factory close by.

The same day, the house of Mr. Samuel Burt, in Woolwich, was struck by lightning, and a little girl about 7 years old was killed.

The 9th of August, the lightning struck a liberty pole at the corner of Jackson and Sands Street, Brooklyn; also a lamp-post in Sands Street, which was shattered to pieces. Several persons in the neighborhood were more or less shocked.

The same day, the lightning struck a house in Pearl Street, New-York, which was slightly damaged.

The same day, at Barnstead, N. H., the lightning struck J. K. Kane's cabinet shop, consuming it with his dwelling and barn. Also, at the same place, the house, barn and other out buildings of Rev. Enos George, were destroyed by lightning.

The same day, Ezra Farnsworth's barns, in Groton, were struck by lightning and consumed with their contents.

The same day, a barn in Maiden Creek Township, Pa., was destroyed by lightning with its contents.

The same day, the lightning struck several places in Moultonborough, N. H., and in one place killed two cows and injured another.

The 10th of August, the barn of Joseph Detwiler, near Reading, Pa., was destroyed by lightning with its contents.

The same day, a barn of M. F. Clark, near Cornwall Landing, Hudson River, was struck by lightning, and with its contents consumed.

The same day, the barn of Thomas Jones, Carroll county, Md., was destroyed by lightning with its contents. Two horses were also burned.

The same day, the schr. Atalanta was struck by lightning in the river coming down from New-Orleans.

The same day, Charls A. Lavalle, Jr. was killed by lightning in New Madrid, Mo. while standing by the fire-place conversing with his mother.

The 11th of Aug., the lightning struck in several places in the vicinity of Yarmouth, Mass. The house of Capt. Howes Taylor, in Yarmouth was struck and much damaged. The inmates narrowly escaping. The dwelling of Ezra Hall, in North Dennis, was struck and injured. The barn of Kelly Chase and the house of Miller Wheldon, in South Dennis, were struck and injured. The barn of L. Howes, in East Dennis, was struck and with its contents consumed. The dwelling of Capt. Jos. Lewis, of Centreville, L.I. was struck and injured. The house of G. Sears, of Hyannis Port, was struck and injured, and several sheep belonging to Mr. Sears killed. The dwelling of Eben. Scudder, at Marston's Mills, was struck and damaged. A salt mill at Brewster was struck and injured. The Schooners Virginia and Clinton, lying at the breakwater at Bass River, were struck and damaged. At Harwick, Preston Ellis, 22 years old, was struck dead while standing in the door of Franklin Barrett.

The same day, ship Berlin was struck by lightning at New-Orleans. All three of her masts were struck, and the electric fluid escaped by passing down her mainmast into the hold, setting fire to her cargo.

The same night, there were several houses struck in Sandford, York county, Maine. The house of Captain Stephen Willard, of Sandfoad, was literally shattered. The fluid passed down from the chimney to all parts of the house; and in the descent passed upon the beds in which were Capt. W. and his wife, and two children. Capt. W. was seriously injured, his wife was badly lacerated, and it is feared dangerously wounded. One of the children was much burned. The fluid passed from Mrs. W.'s chest down her legs, and gashed them badly, perforated the beds, and passed off into the cellar. It also struck the out-buildings separated from the house, and killed two large hogs out of four which were in the same pen. It also struck and badly shattered the Methodist meeting-house at Spring Vale.

The 16th of August, the house of Dr. Thompson, at St. Charles, Missouri, was struck by lightning, and one young man was killed, and another so injured that he died next day.

The same day, the barn of James H. Dix, in Malden, was struck by lightning. The fluid first struck the roof, tearing off several rafters, and then passed down on the inside of the barn into the stall in which a horse is usually kept, where it killed a chicken, burning nearly all its feathers. The lightning then passed out without doing any further material damage. The course of the fluid was clearly marked on the boards, where it passed through the hay, which it did not ignite. Fortunately the horse was not in the barn at the time.

Thr 22d of August, the dwelling-house, barn and shed of T. Jones, of Sandford, Maine, were set on fire and destroyed by lightning.

The 23d of August, a house was struck by lightning, in Philadelphia, and injured; several other houses were struck. Three places were struck at New Haven, two at Hartford, one at Boston, and one at Dorchester. The buildings struck at New Haven were provided with lightning rods; they were the Lancasterian School-house, the house of Mr. Stilman, and a house of James Brewster. At Hartford, the bridge over the Connecticut was struck, and a barn in the rear of Talcott street. A horse and hog in the barn were killed.

The same day, Miss Perry, aged 14, was killed by lightning, at Westminster, Mass.

The same day, the Tremont House, in Littleton, Mass., was struck by lightning, and, together with all the buildings connected, consumed.

The same day a barn, near Poughkeepsie, was destroyed by lightning, together with a waggon-house and shed adjoining.

The same day, Daniel Britt, of North Bridgewater, Mass., was killed by lighining, while returning from his field.

The same day, a daughter of Mr. Bowerscck, of Daytou, Ohio, aged 12 years, was killed by lightning.

The same day, the lightning struck an apple tree on Staten Island, near Brighton, splitting it in pieces. A large stone was broken into two pieces by the bolt, and one half driven into the body of the apple tree, and the other half forced into the ground. Several persons who were at work on a building near the tree were severely stunned. Some days before, the lightning struck upon the ground near the Narrows, killing the watermelon and cucumber vines for several feet round, but affected no other vegetation.

The same day, at Hubbardstown, Mass., a barn, with its contents, was consumed by lightning.

The same day, at Fitchburg, a barn, with its contents, was destroyed by lightning. Two young heifers were killed during the same storm.

The same day, the barn of Mr. Keen, in Exeter township, near Reading, was totally consumed by the lightning.

The same day, the lightning struck a vessel at Port Richmond, and severely injured the Captain.

The 24th of August, several persons were assembled under the trees, at the Meeting-house near Norfolk, Va. The lightning struck two boys, cutting one of them from the shoulder down.

The same day, the ship Oceanus, in James River, was struck by lightning, had her main-topmast and top gallant shivered, killing one man and severely injuring another.

The 26th of August, Mr. Stow was killed by lightning, at Northampton, Illinois, and his brother so much injured as to preclude all hope of his recovery.

The same day, as the western stage was proceeding west from Chicago, Illinois, and when about 17 miles from that city, near Honeywell's stand, it was met by a thunder storm. A gentleman, who was seated with the driver, to avoid getting wet left the box, and took an inside seat. He had not been many seconds within the coach, before the driver was struck by the electric fluid, which passed down his body, tearing his cravat, vest and pantaloons, and depriving him of life almost immediately. The fluid then passed down and struck one of the wheel horses, tearing the harness off and killing the animal. The driver's name was Summon's.

The 27th of August, the lightning struck two or three houses at Washington City, D.C.

The same day, a young man, aged 22, was killed by lightning at Saco, Maine.

The 29th of August, the dwelling of H. B. Miller, of Addison township, Ohio, was struck by lightning. Mrs. Miller was killed instantly, and Mr. Miller so badly injured that his recovery is doubtful. Other persons in the house were stunned.

The 30th of August, the house of Sydney Morse, on Beacon street, was struck upon the roof and slightly damaged. The lightning also struck upon the wharf of Hinckley & Drury, South End, and effected some small damage. Mr. Welch, of Roxbury, was driving his meat waggon across Little Neck, Dorchester, when the lightning struck his horse and killed him instantly, while he himself escaped uninjured. The storm was very severe at Taunton. The Bristol Print Works were struck.

The same day, at Hingham, in the North Village, the dwelling of Mr. Henry Herrey, near the old Colony House, and that of Mr. Gridley Stodden, in Herrey street, were struck by lightning.

In August, the Ship Eliza, with 178 passengers, from Bremen, bound to Baltimore, when 30 miles W. S. W. of Cape Henry, encountered a heavy storm of thunder, lightning and rain. The clouds were so low that they rested upon the tops of the masts. At about 3 o'clock, P. M., a heavy and fearful crush was heard, part of the mainmast fell on the deck, and the whole ship seemed sparkling with fire. Two of the seaman were knocked down, but recovered. The hold of the vessel was filled with sulphurous smoke. The passengers were in great consternation supposing the vessel on fire. A young woman who had a white handkerchief in her hand, found on examination that it had become colored with black spots. The ship was found tight on trying the pumps, but the iron rod of the pump was so hot that it could not be handled.

In August, the brig Americ was struck by lightning, at B. F., North River, carrying away foretop-gallant mast, shivered foretop mast, and damaged foremast badly. No one injured.

The 2d of September, C. Kaufman was killed by lightning at Back River Neck, near Baltimore, while sitting on the shore of Back River, mending his net.

The 4th of September, Schooner Mary Caroline, from Edenton, bound to Charleston, was struck by lightning which shattered her maintop mast and mainmast down to the deck.

The 18th of September, two children were struck down by lightning, in Ernestown, Upper Canada, while drawing water from a well. The one holding the well-pail was instantly killed, the other lies in a very precarious state.

The night of the 20th September, the storm was very severe at Burlington, Vt., Whitesboro', Utica, Deerfield, and other places in the vicinity. The lightning struck in several places.

The same night, at Davenport, in Delaware County, the barn and sheds of Isaac Birdsall, were struck by lightning and consumed.

In September, Mrs. Green, of Wilton, Maine, was killed by light ning, while on a visit at Harrington. Mrs. Green was seated near the fire-place, the lightning descended the chimney, struck the wire in the dress cap upon her head, set her cap on fire, and then descended her person, tearing her clothes and producing instant death.

The 21st of September, a barn was struck by lightning at Shoreham, Vt., and consumed.

The morning of the 22d of September, about 2 o'clock, the brick storehouse of Mr. Aronson, of Whitehall, New-Jersey, was struck by lightning, and the roof set on fire, but soon extinguished.

The 20th of October, a thunder-storm was experienced at Grand Ecore, Natchitochez, and a young man by the name of Lucien Robau killed by the lightning.

The 1st of November, a very severe thunder-storm was experienced in the lower part of the state of Delaware. The lightning struck in several places about Central Bridge. The storm extended to Philadelphia, at which place the lightning was very vivid.

Nine oxen were killed by lightning near Chicago, Illinois.

[From the Galveston News of Nov. 2d.]

A very heavy storm of thunder and lightning recently occurred at this place, the reports of the thunder and the flashes of lightning being so nearly simultaneous that the intervening time was imperceptible. Immediately after the shower the bay was seen covered with dead ducks and geese in all directions. There could not have been much short of three thousand slain in the vicinity. Others, though not killed, were so stunned or paralized with the concussion, that they paddled about in utter bewilderment, as if intoxicated or afflicted with the vertigo. Some wild geese on the prairie were also killed by the same shock, and have since been found.

The 20th of October, a storm of thunder and lightning was experienced at Bainbridge, in Decatur county, Georgia. The academy edifice was struck by the electric fire, and a son of Mr. Harrell killed instantly. A little girl was also struck, her clothes set on fire, and her shoes torn from her feet. The scholars were all of them severely stunned.

SINGULAR ESCAPE FROM LIGHTNING.

We were at Oswego the newly erected county seat of Kendall, some time since, and visited Mr. Chapman's blacksmith shop, which the day before had been struck with lightning. There appears to have been two currents nearly simultaneous, one of which struck the ridge pole ten feet from the front end, and another struck a chimney in the back end of the building.—The house is probably 35 feet in length and 24 in width, the upper part occupied for a wagon maker's shop, and the lower for a blacksmith shop. The first named current divided on the roof, shivering to pieces the corner post, and on the other side of the building passing down the post ten feet from the corner. A man stood at his work bench in front of the post, who was thrown across the shop under a bench, and his chisels, bits, augers, &c., which were hanging in frame work, were carried out of the front window, as is supposed, and none of them could be found except a piece of chisel, which was found the other side of the street. Many of the tools on the bench had spots on them melted. The man was uninjured except that his hair was singed, and the side of his neck and arms next to the post were severely burnt, almost blistered. In the blacksmith shop below a man at his vice bench held a piece of iron in his hand, the end of which was melted and he uninjured; and a man standing on a door sill close by, remarked "that it felt as if a cannon ball had been shot and carried off all my leg." His look of blank astonishment may be surmised, when upon looking down he found a strip the whole length of his pantaloons had been singed threadbare.

The other current threw down the top of the chimney, and sent a man standing near by, in the second story across the shop. He was considerably deranged for a time, as he supposes, from the effects of the lightning, though his head was slightly cut by a brick. Otherwise he was uninjured. The current descended the chimney, passing out under the sill, by an old anvil, and within two or three feet of another man who was working at the anvil, and who was uninjured.

We have been thus particular in the incidents, for the escape of so many men uninjured, with marks of lightning upon their persons, and amid the flying of splinters, tools and bricks, is most wonderful. We have never known a parallel instance.

The succeeding night there was a thunder storm, and the man who was deranged in the morning, was also deranged during the storm. The others said they felt most uncomfortably the influence of the electricity in the atmosphere.

LIGHTNING AND SNOW.

On the 20th of October, 1845, I set out early in the morning to ascend the white face peak of the Adirondack Mountains and met on my way to the mountain a snow storm. My thermometer marked the temperature at 36° of Farenheit. It was 7 o'clock in the morning when the storm met me; next day the snow made a second visit, and the following day at 5 o'clk. in the morning, my thermometer marked the cold at 14 degrees. At New York at the same hour it was 33°, and at Syracuse, at sunrise was 32°, but next morning fell to 24°. Mr. Conkey notes the record of his barometer on the 22d at from 29,74 to 29,80. On the 20th the thermometer marked the temperature from 41 to 46° throughout the day and the dew point at 36°. Rain fell at Syracuse on that day to the extent of but 3-100 of an inch, the wind blowing from the North and N. West. The clouds were *nimbus* all day. At Montreal, Lower Canada, snow fell on the 22d. The Great Western Steamer in latitude 46,26, long. 53,09, encountered a snow storm on the 23d. Air at noon, 38°, water 45°. At Grand Ecore Natchitoches, a lightning storm occurred the 20th of October, and a young man was killed instantly by a thunder-bolt. At Decatur County, Georgia, a thunder-storm was experienced the same day and a young man was struck by the lightning. The same day a snow storm was in great activity on the mountains of south western Virginia. We thus have the testimony of the lightning as to the commencement of the storms of the 20th of Oct. ond the 14th and 15th of February, and that the line of the tempest was a thorough line in both cases.

LIGHTNING AND SNOW.

On the 13th of February, 1846, the schooner Hand, lying in the port of New-Orleans, was struck by Lightning. The same morning, at six o'clock, a thunderbolt fell from a lightning cloud at Mobile, Alabama, upon a house, killing a young lady instantly who was at the time reposing upon a feather bed. The Watch on board the ship Huntress, in latitude 32°, 29' N. longitude 72° 18' W., at half past 3 o'clk. on the morning of the 15th, noticed lightning in the north-west, and shortly after was overtaken by a squall from the same direction. At Charleston, S. C., on the morning of the 14th, at half-past 8 o'clock, the wind blew a hurricane, the storm was terrible. At New-York snow commenced falling at 10 o'clock in the evening of the 14th, and continued a gale of wind which blew in unfitful and furious blasts, I have received from L. W. Conkey, Esq., of Syracuse, the following account of this storm:

"The snow storm which commenced on Saturday, the 14th, at half-past 11 o'clock, P. M., commenced with a strong wind from the east. Sunday morning the 15th, at 7 o'clock, there seemed to be a calm, the mercury in the Barometer standing at 29 inches for about three hours—the snow falling principally during the same time, and it seemed as though the whole country would be buried in an avalanche. In a previous letter to you I stated that the nearer the dew-point temperature was to the temperature of the atmosphere, the more likely it was to storm when the mercury fell in the Barometer. On examining the hygromatic state of the atmosphere at sun rise I found the dew-point temperature to exceed that of the atmosphere about four degrees, which accounted for the vapor condencing so rapidly at that time—the snow falling in an entire cloud for about two hours. At 9 o'clock in the morning, I measured the depth of the snow in my rain guage (and also at other places) and found it to be 18 inches deep; at 5 o'clock P.M. the end of the storm, the whole depth was 32 inches. The snow was very light and dry, and measured but 1 80-100 inches when melted in the rain guage. I think it the heaviest fall of snow within the same time ever known."

ARKANSAS SNAKES.

I received, via New-Orleans, a few weeks since, a box of living Rattlesnakes, three in number, which were captured upon the mountains in Arkansas in August last. My friend, Mr. Ward, presented them to me "as a specimen of the live stock of Arkansas." Their snakeships arrived safely, a journey, counting the distance of the circuitous route they came, of 4000 miles. These snakes I have presented to the individual who keeps the curiosity shop in Courtlandt Street near Broadway. It is his intention to dispose of them to some person going to Europe. In my extensive travels in the forest I have seen but two Rattlesnakes—one of these lay across the path I was riding, and within a few feet of him was a striped squirrel. I dismounted from my horse, cut a pole from the wood, and was about to attack the serpent when he fled, making his rattles jingle merrily—the squirrel was alive when I took it up: it had not been within four feet of the snake. I carried it with me a few miles in a loose pocket in an outside coat and on examination an hour or more afterwards found it lifeless. The other rattlesnake which I mentioned, I passed while on horseback upon the prairies. This snake was short but unusually thick. It fled on my approach. I was glad to drop the acquaintance as soon as made.

In the wardrobe of a mummy which I examined in the mammoth cave of Kentucky were the skins of two rattlesnakes nicely folded up. One of these had 16 rattles and a button. The skins were no doubt placed in the sepulchural chamber as trophies to denote the daring acts of the individual who was deposited beside them, and in the same knapsack was the claw of an eagle, and the jaw of a bear, and various other articles, a particular account of which will be found in this volume.

LOOSE WAY OF DOING THE PUBLIC BUSINESS.

The business of the corporation is transacted in a loose manner; as an illustration, we will state a case. Burtis Skidmore, Esq., a member of the Anti-Assessment Committee, as Executor of the estate of S. Nersworthy paid an assessment of $500 and upwards to one of the Corporation Collectors, claimed as an assessment for opening Thirty Second Street on paper,

Some months after another Collector called with a bill and demanded payment: this he also paid. In making up his accounts some months after he discovered that he had paid the Corporation twice, whereupon he applied for a return of the money, which he was unable to obtain, after applying to the proper department and after petitioning the Common Council—he commenced a suit against the Mayor, Aldermen, &c., when the suit was noticed for trial the Corporation at length returned the money with interest, and paid the costs. The Collector's were so often calling with assessment Bills that Mr. Skidmore was not particular in looking into their proceedings, as they had been in the habit of calling almost every week with some new assessment, and as he observes "they had beaten a regular pathway to his place." *This business was done by "departments."* Comment is needless.

STATE CONVENTION.

Court for the Correction of Errors.

The Constitution of 1777, contains the following provision:

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, and DECLARE, that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellor and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal; and in like manner, when an appeal, from a decree in equity, shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

The Constitution of 1821, contains the following provision:

"The Court for the trial of Impeachments and the Correction of Errors, shall consist of the president of the Senate, the Senators, the Chancellor, and Justices of the Supreme Court, or the major part of them; but when an impeachment shall be presented against the chancellor, or any justice of the Supreme Court, the person so impeached, shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in Chancery shall be heard, the Chancellor shall inform the Court of the reasons of his decree; and when a writ of Error shall be brought on a judgment of the Supreme Court, the Justices of that Court shall assign the reasons for the judgment, but shall have no voice for affirmance or reversal.—*Art. 5, Sec.*

It is most clear that it was the intention of the Convention of 1777, as well as that of 1821, to organize the HIGH COURT in the manner and form in which the language of both these sections indicate. The Court is constituted of *classes of public officers*, viz: the Lieut. Governor, the Senators, the Chancellor and the Justices of the Supreme Court, or a major part of them. It is the majority of the *classes* and not a majority of the *individuals* who compose one or two classes. The Chancellor is required to give his reasons in cases of appeal, but is to have no vote—the same duty is required of the Justices of the Supreme Court in cases of writs of Error. Thus the presence of these officers are contemplated by this language of the Constitution. It frequently happens in cases of writs of Error that neither the Chancellor or Justices of the Supreme Court are present, and on the occasion of the resignation of Lieut. Governor Dickinson, on being appointed United States Senator during his term of office, the Lieut. Governor and Chancellor were absent. It was doubtless the interest of the framers of the Constitution to constitute an intelligent Court, and they selected four classes of public officers, whose experience in the performance of other public duties would qualify them for this particular duty. The executive, the Legislative, the Equity and Law branches of the government, are here combined.

The duties of the Lieut. Governor, as well as the Senators are interfered with in this taking up their time, in this judicial employment, but it is a suitable, a good school for the Senators, and under our peculiar organization of government, necessary to qualify them for their duties, as Legislators. Senators are elected for four years, and this lengthened term of office is as useful as a schoolmaster to the incumbent, but experience is also needed for to qualify for judicial duties as well as legislative, and who shall learn the Judge if he is a Freshman.

Law is said to be a science; so is chemistry, and had the great Sir Humphrey Davy been called upon to analyze a compound, it would not have resounded to his credit to state that in all his former analyses he had been mistaken in consequence of having overlooked the reported analyses of some chemist of former times.

In a not very recent assessment decision we have an admission of the great equity Judge of this vast Commonwealth in the case of the widow Pierson and her children, who were deprived of house and home, by a New-York Corporation assessment—that in the "*hurry of business*" he had overlooked a decision.

STATE CONVENTION.

Can a free, sovereign and Independent State in the framing of a fundamental law for the limitation of the exercise of power, by its public functionaries, create within its boundaries a local monarchy, circumscribed by the geographical boundaries of a single county like that of the city of New-York?

STATE CONVENTION.

Salaries of Judges.—The act passed by the Legislature in 1828, organizing the Superior Court in the City of New-York, provides that the salary of the Judges shall be paid by the Corporation—and they also can diminish or increase their salaries. *This is all wrong.* The Corporation have a multitude of suits in this Court. The Convention must see to this.

The New-York Corporation which went post-haste to Albany to procure the confirmation of ☞ *KING JOHN'S CHARTFR—forthwith by the State Legislature*—have come back again!

They met a  in the way.

JOHN STREET ASSESSMENT.

SUPERIOR COURT, March Term, 1846.

Judge Vanderpool Presiding.

Action of Ejectment, brought by David M. Prall, *vs.* Widow McGowen, and Isaac Adriance.

This suit was brought by the Plaintiff to obtain possession of a lot on the southerly side of John Street, between William and Nassau Streets, upon which a new store house was erected by Mrs. McG. The said plaintiff bid off this lot at the Street Commissioners assessment sale for $123, and the defendant has since built a store upon it.

The Corporation Officers in consideration of the Plaintiff's paying to them the assessment executed to him a lease of the widow's lot, for the term of 50 years. The property is valued at $40,000. Peter A. Cowdrey, Esq., X-Counsel of the Corporation appeared as Counsel for the Plaintiff, and produced documentary evidance of the Corporation of New-York and of the SUPREME COURT ROAD COMMISSIONER'S DEPARTMENT, to establish the Plaintiff's title. Richard Mott, Esq., and J. P. Hall, Esq., Counsel for Defendants objected to each and every paper, and insisted that the plaintiff had wholly failed to show any title in himself in the premises in question, and moved for a *nonsuit*. The Court sustained the objections of defendant's Counsel and nonsuited the plaintiff.

Every lot on the southerly side of John Street, between William and Nassau, received an award, except the lot of Mrs. McGowen. A part of this lot was taken for widening the Street, and the residue, as now appears, assessed $123. This matter is a mystery, as was also the case of an assessment on lots belonging to Assistant Alderman Townsend for the pretended opening of the Seventh Avenue. Mr. ADRIANCE and Assistant Alderman TOWNSEND *were both members of the Anti-Assessment Committee*

HUDSON RIVER RAILROAD.

We are highly gratified to see a thorough movement making for the construction of a Railroad on the bank of the Hudson River, from New-York to Albany Nature has made a path for this road, and it is astonishing that the improvement of it should have been so long neglected, and still more astonishing that the legislature of 1845 should have neglected to grant a charter on the application of such citizens as JAMES BOORMAN, STEPHEN ALLEN, and SAUL ALLEY. It is to be hoped that the present legislature will remedy this neglect. Mr. Boorman, who heads this movement, is a member of one of the the oldest Commercial Houses in New-York; a merchant of high standing, a most estimable citizen, a man of great wealth, of extensive business acquirements, and a practical man. Mr. Allen and Mr. Alley, are among our best citizens. When such men step forward and offer to go on with the work, success will follow the movement. Of the superiority of the route and the advantages of the work, it is superfluous to speak. The stock will be quickly taken when a charter is obtained. Mr. Boorman will take 50,000 at once, and advance the whole sum in cash.

OPENING STREETS.

The Common Council, we are informed, attach a condition to the resolutions for making application to the Road Department of the Supreme Court for opening streets, which is, that the applicants shall give a bond to pay the cost in case of failure. The opponents will of course use this proceeding as an objection, among others, to the appointment of Commissioners. The whole proceedings are vitiated by such a condition.

THE HISTORY OF THE WORLD.

The history of our earth—its creation and subsequent changes, prior to the deluge, covering a period of many centuries of time, and extending back beyond to three unmeasured and unmeasurable periods, and of the people which inhabited it, is confined to the pages of the sacred Scripture.

The history of that portion of our continent embraced within the limits of the United States, beyond 250 years ago, is a perfect blank.

We have no rule to measure changes, and it is as difficult to comprehend the mysterious works of creation as accomplished within the limit of 6000 years, as it would be to extend the creation still beyond that period until it reached backward to the extent of millions of millious of years that are swept into the ocean of eternity, and left unrecorded by human knowledge. What is to be, and not yet made known to man by his Creator, is equally unattainable. We have one record—and it is a record that is indisputable—the Scriptures of Truth. It was penned by hands that were moved by Him who is the source of all knowledge.

Municipal Gazette.

PUBLISHED BY THE ANTI-ASSESSMENT COMMITTEE AND DISTRIBUTED GRATUITOUSLY.

EDITED BY E. MERIAM.] NEW-YORK, JUNE 1, 1846. [VOL. I....No. 41

☞ The MAY No. of the Gazette containing the Constitution of Massachusetts, Connecticut and Vermont, &c. pg. 81 to 96 of the volume both inclusive, is issued to supply a vacant number in the volume in order that we may be able to place the entire volume complete in the hands of each of the members of the Convention as soon as they shall be organised for business. The present number contains some important facts in relation to the Montgomerie charter, copied from the volumes of copies of documents obtained in England, by Mr. BROADHEAD, and now in the State archieves.

ANNUAL TAX BILL.

We give below the annual Tax Bill. It authorises the assessment of the heaviest tax ever before imposed in the city of New-York. The necessity for such a tax does not exist. One half the sum authorised, properly expended, would be far more useful to the City than this great waste of money lavished upon political favorites.

A question of great importance arises under this act with respect to what particular personal property is assessable.

The act is special—has a local and not a general operation, and differs in that respect from the State Tax act. The act has been bunglingly drawn. It provides as follows: "*to be collected according to law.*" As to the *assessment of it*, the provision is special—and no personal property is authorised to be assessed except of freeholders and inhabitants of the city and county whose real and *personal estate is situate within the county.*

The question then arises under section 5 of page 381 of the 1st volume of the Revised Statutes as to the oath. If the person taxed declares that he is worth only a certain sum named in the affidavit over and above his just debts and property exempted from taxation, and he includes in this exemption all his personal estate without the county of New-York, whether such a construction is right?

The counsel of the corporation, Mr. Brady (whose course so far in office has been greatly approbated on account of his honesty of purpose and careful compliance with law) should instruct the assessors in this.

No. 282.

IN ASSEMBLY March 5, 1846.

Introduced by Mr. ALBERTSON.

AN ACT

To enable the supervisors of the city and county of New-York to raise money by tax.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SEC. 1. The mayor, recorder and aldermen of the city of New-York, as the supervisors of the city and county of New-York, of whom the mayor or recorder shall be one, are hereby empowered, as soon as conveniently may be after the passage of this act, to order and cause to be raised by tax, on the estates, real and personal, of the freeholders and inhabitants of and situated within the said city and county, and to be collected according to law, a sum not exceeding nine hundred and sixty thousand one hundred and sixty-two dollars, to be applied towards defraying the various contingent expenses legally chargeable to the said city and county, and such expenses as the mayor, aldermen and commonalty of the city of New-York may in any manner sustain or be put to by law. Such portion of the contingent expenses of the said city of New-York as relates to re-paving and cleaning streets in that part of the said city lying south of a line running through the centre of Thirty-fourth street, shall be assessed only that part of the said city lying south of the said line. And also the further sum not exceeding four hundred and twenty-eight thousand dollars, by tax on the estates, real and personal, of the freeholders and inhabitants of and situated within the said city and county, and to be collected according to law, to be applied towards defraying the expenses of police in said city and county. And also a further sum of one hundred and ninety-one thousand one hundred and ninety-three dollars eighty-two cents, by tax on the estates, real and personal, of the freeholders and inhabitants of and situated within the said city and county, and to be collected according to law, to be applied to supplying the deficiency in taxation in said city and county for the year one thousand eight hundred and forty-five. And also a further sum not exceeding one hundred and seventy-four thousand nine hundred and sixty eight dollars, by tax on the estates, real and personal, of the freeholders and inhabitants of and situated within that pars of the said city and county of New-York, which is or may be designated by a resolution or ordinance of the common council of the said city of New-York as the "Lamp district," to be collected according to law, and applied towards defraying expenses of such parts of the said city last mentioned.

CITY CONVENTION.

No. 341.

IN ASSEMBLY March 24, 1846.

Introduced by Mr. STEVENSON.

AN ACT

To provide for the calling of a convention to amend the charter of the city of New-York.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. An election shall be held in the city of New-York on the first Monday of June ensuing the passage of this act, for the selection of delegates in each ward of said city, to a county convention for revising and amending the charter of the said city of New-York.

§ 2. The delegates chosen to this convention shall be chosen as representatives from each ward, each delegate representing ten thousand inhabitants; and if any ward have, in addition to this ratio, a fraction of six thousand and upwards, one representative shall be allowed to be chosen for said fraction: but each of the present wards of the city of New-York, without regard to its population, shall be allowed one representative in said convention.

§ 3. Notice of such election shall be given, and the same shall be conducted in the manner now provided by law in regard to the charter elections in the city of New-York, and the name of each delegate voted for shall be written or printed, or partly written and partly printed upon each ballot, and the ballot shall be endorsed "Delegates to the Convention," and a separate box for the deposite of such ballots shall be kept by the inspectors of each election district in the several wards of the said city. The result of such election shall be ascertained and certified in the manner now provided in the act regulating charter elections in said city.

§ 4. All the provisions of law for the purity of elections in the city of New-York shall apply to the election held under this act; and all false swearing at said election shall be deemed and punished as perjury.

§ 5. The delegates to be chosen under this act, shall meet in the city of New-York on the first Monday of July next, at the chamber of the board of aldermen, and shall then, or as soon after as may be practicable, organize and adopt rules for their government. They shall complete their business so that any charter or amendments adopted by them, may be submitted to the electors of the city and county of New York, as in the next section provided.

§ 6. The charter or amendments adopted by the convention to be organized under this act, shall be submitted to the electors of the city and county of New-York, each provision separately at the election to be held in the said city on the first Tuesday after the first Monday of November, in the year one thousand eight hundred and forty-six; and such amendments as may be approved by a majority of said electors at said election, shall thenceforth be incorporated in, and form a part of the charter of the city of New-York. And if an entirely new charter be submitted to the electors at said election, the same shall, upon being adopted by a majority of said electors, become the charter of the city of New-York. The tickets to be used at the election to be held under this section, shall be prepared in such form as the said convention may direct.

§ 7. The expenses of the election of delegates held under this act, and all expenses attending the convention, shall be paid out of the treasury of the city of New-York. The proceeding of the convention shall be filed in the office of the clerk of the county, when duly certified to by the presiding officer and secretary or secretaries of said convention.

§ 8. The members of the convention shall have power to provide for their own pay, which shall not exceed one dollar and fifty cents per day for every day actually in session.

[*Amended...See page 556.*]

TAX UPON ACTUAL CAPITAL.

The following bill was reported in the Senate. The same bill has been three times reported in the same form, and yet remains dormant.

No. 16.

IN SENATE, January 16, 1846.

[Reported by Mr. Porter, from the Committee on Finance.]

An Act to amend the Revised Statutes in relation to the exemption of incorporated companies from taxation, and for other purposes.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Section 1. Section nine of title four, of chapter thirteen of part one of the Revised Statutes, which authorizes the exemption of incorporated companies in certain cases from taxation, is hereby repealed.

§ 2. All banks established under the act entitled "An act to authorize the business of Banking," passed April 18, 1838, shall be subject to taxation on the amount of capital paid in or secured to be paid, in the same manner as incorporated banks; and the proper officer or officers of such banks shall make an annual statement to the Comptroller and the assessors in the manner provided by the second section of title four, chapter thirteen, of the first part of the Revised Statutes.

§ 3. The provisions of the fifteenth section of the second title of the thirteenth chapter of the first part of the Revised Statutes, shall be extended to all such banks, and to all incorporated companies subject to taxation, and the affidavit in such case may be made by the president, cashier, secretary, or treasurer thereof; and such banks and incorporated companies shall be assessed on the actual value of all their real and personal estate at the time of making such assessment; and all provisions of law which are inconsistent with this act are hereby repealed. The proper officer or officers of such banks and incorporated companies shall make and deliver to the assessors an annual statement of the amount of all their real and personal estate in the manner required by section two, title four, chapter thirteen, of the first part of the Revised Statutes.

LIGHTNING OF THE THUNDERS.

The influence which lightning exerts upon the atmosphere is very great; recorded facts and long continued observation, will enable us to learn much of this active principle in the great machinery of nature.

It has been said that feathers are a protection against injury from lightning. The facts and observations recorded in this volume, prove that feathers afford no certain protection.

Metalic lightning conductors do afford protection, and no instance has yet been found in which loss of life or injury to a human being by lightning, has ever occurred in a building or vessel protected by any kind or form of metalic lightning conductor, reared for the purpose of protection; and this fact alone, it would seem, should be sufficient to satisfy every intelligent mind.

Buildings protected by metalic conductors, have been struck by lightning, and sometimes injured, but no case has yet been found in which a vessel protected by a metalic rod, has been in the least injured by lightning, if the rod terminated in the water and extended above the highest spar of the vessel.

A comparison in this, affords the illustration which demonstrates conclusively that a metalic rod extending above the surface desired to be protected, and terminates in the water, is sure and certain protection.

As to the extent of the surface which can be deemed to be protected, we must have recourse to the records of the lightning, and these are ample.

Buildings in blocks, of various heights, are often seen, and among such blocks are numerous cases in which a building of a less height has been struck by lightning, while the next, and immediately adjoining building of greater altitude, has escaped altogether. This was the case in Pine Apple street, in Brooklyn, and in Pearl street, in New-York. We examined both of those buildings with great care. Adjoining to each, and within 25 feet of where the lightning struck, was a building of more than ten feet greater elevation.

Fences are sometimes struck in barn-yards, while the buildings close alongside escape. We examined a case of this kind several years ago. An instance is recorded in this volume, of a vessel being struck upon the bowsprit, while the masts escaped altogether.

We have heard of no case in which the lightning has ever struck the vessel between the masts, or the ground between two trees which were not more than 50 feet apart.

In the protection of vessels by rods, the conductors diverge and reach the water several feet outside the vessel—these rods have never failed, and therefore offer such conclusive testimony in favor of that position, that leave us no room to say a word in favor of rods that descend perpendicular, in preference to those diverging.

Steamboats require no protection—are rarely struck by lightning, although filled with iron, and when struck are never injured—nor is there an instance on record of the loss of human life on board of a steamer, by lightning. We record one instance, in this volume, of a person being stunned by lightning on board of a steamer on the Ohio, by the breaking of a thunder bolt.

Iron ships and iron boats, and iron buildings, are the best of protection from lightning.

Buildings with metalic roofs, afford protection, but metalic eave troughs and spouts, for conducting the rain to the earth, should be straight. Spouts with short turns in them, obstruct the water, and also obstructs the lightning, and causes it either to explode or force its way through the metal, and in such case it may take a horizontal direction and pass into the building and do injury. We have in our Cabinet, tin spouts that have been broken through by lightning, and we have examined numerous tin spouts to buildings struck by lightning, and the result is the same in all these cases. The lightning in all the numerous cases we have examined, descended the *inside* of the spout, and in no case passed through the water or entered that fluid.

Carbonated hydrogen gas ignites when in contact with lightning, and the lightning at the same instant disappears. This was the case in Pearl street, and a person setting within three feet of the gas pipe, when it was struck by lightning—the pipe melted and the gas set on fire—deliberately extinguished the flame and escaped unharmed.

Water thrown freely upon persons struck by lightning, has in numerous cases restored them to activity, and this fact indicates the importance of its use in all cases.

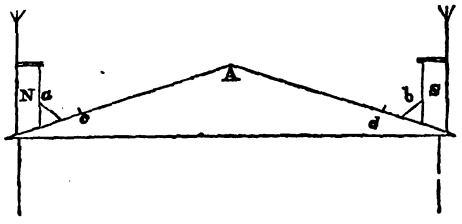
We have before frequently said, that iron wire, of No. 1 size, weighing one pound for every six feet, is a good lightning conductor, and our desire, in so frequently repeating this opinion, is not with a wish to establish a theory, but to show that protection against damage by lightning, may be had at a small cost, and thereby most persons, from the cheapness of the rod, can avail themselves of this mode of protection. We repeat—these wires have never failed, and the cost is less than a dollar for a single rod of 70 feet in length.

We have expressed the opinion that bright surfaces are preferable for lightning conductors to dark surfaces; we still entertain that opinion. In the particular examination we made of the hardware store, in Pearl street, struck by lightning in 1845, we found metals with bright surfaces fused, but we could not ascertain if the surface thus fused was in contact with other metal, for the metalic implements struck had been removed from the places in which they were when the lightning passed over them. We have a tinned iron fork in our collection, which has several spots upon it where the lightning fused the metal. An oil holder, made of bright tin, was fused in three places by the lightning in the same store.

If the lightning rod terminates in water,—which we would suggest as preferable in all cases, *when a well or cess-pool is accessible*,—it matters not whether the lower end is blunt or pointed.

We have seen iron nails that had led the lightning into the inside of buildings, and others where the lightning has followed the same conductor out of the building, and hence we argue that iron staples designed for fastening rods to the sides of dwellings, are improper appendages to lightning conductors.

We examined a highly varnished mahogany table, the surface of which the lightning had passed over, and found the varnish had been removed to the extent of the length of the track, and to the width of from one eighth to one quarter of an inch.



The diagram is designed to represent a building 50 feet long—N, the north chimney; S, the south chimney, and A, the ridge of the house. The two rods extend each seven feet above the highest point of the ridge, and at a distance of 25 feet therefrom. This is the diagram used on page 522 of this volume, to represent the Lancastrian School House, while struck by lightning, as described by Professor OLMSTEAD, to which page the reader will please refer.

We suggest this alteration in the position of the rods, viz:

1st. That a rod should project six feet or more above the centre of the ridge, making a gradual bend a few inches above the roof, and following the slant of the roof to the eave trough,—after passing over that let it diverge in its father descent, so as to reach within four feet of the ground at a distance of twenty feet from the building, at which point it may be bent so as to terminate in the water of a well or cess-pool, and if neither are close by, it may be extended to such a termination by running it along a fence.

2d. Instead of leading the rods to the ends of the building, along side of a chimney, let them diverge from the chimney, the upper point terminating in the atmosphere four feet higher than the chimney, and six feet distant from it, over a portion of the roof of the house, and when reaching the side of the roof, let the rod diverge from the roof so as to reach within four feet of the ground, twenty feet or more from the house, and terminate as in the first case of the centre rod.

3d, To a building fifty feet square, five rods should be used, all cost not to exceed five dollars, except putting up. If fifty feet long and thirty feet wide, three rods are sufficient.

In all cases terminate the rod in the water, or deep in the ground, and let the rod diverge from the building in its descent to the ground.

Iron wire of No. 1 size, measuring six feet to the pound, costs in New-York six cents per pound, or one cent per foot. This size wire has never been known to fail—the cost is so trifling, that it leaves no excuse in neglecting protection.

A wire of this size will not support itself, and should therefore have a wooden support over the roof. Where it is necessary to pass a wire through a staple, we should suggest a tin tube, of six or or more inches in length. When the tube is of tin, let it be in the shape of a hollow tube, and narrowest at the lowest point, so as to aid the lightning on the way past the points of the staple pointing inward.

Where tin spouts terminate above the floors of basement rooms which are occupied, it would be well to connect a wire with such termination, leading to the well or cess-pool, or deep into the ground, and to avoid short turns in such spouts that should cause the water in heavy rains to fill up the inside.

EARTHQUAKES STORMS, AND CALMS.

The Journal of Commerce of January 13th, 1846, contains the following:

"EARTHQUAKE AT MEMPHIS.

The Journal of Commerce of Saturday contains an account of an earthquake at Memphis, Tennessee, on Tuesday the 23d of December, at half past nine o'clk. in the evening. I was engaged the same evening and at the same hour in making meteorlogical observations upon Brooklyn Heights, and was surprised at the sudden depression of the mercury in my thermometer of three degrees. The temperature until this change was 28°—it fell to 25°, and continued at that for 11 hours afterwards, when snow commenced falling. I discovered nothing in the appearance of the atmosphere at the time to account for the sudden change. I noticed this change in the Brooklyn Star, of the next day (Wednesday the 24th). On the 7th of April last, three severe shocks of an earthquake were felt at the City of Mexico, two of which occurred between the hours of six and eight o'clock in the evening, at the same time a snow storm commenced upon the Hudson River during the continuance of which, the Steamer Swallow was stranded upon the rocks at Athens. At the same time a snow storm was raging at Chicago, Illinois, and next day snow fell plentifully at Quebec. E. M.

"[It is very unsafe to rely upon a mere coincidence of *time*, as throwing any connection between events occurring at far distant places, and having, so far as we know, no natural connection with each other.]—*Editors Jour. Com.*

We wrote Mr. HALLECK, the Editor, a private note on the morning of January 13th, after seeing the editorial remark appended to our communication, expressing in substance the opinion that we hoped we should be able to convince him of the correctness of our views in this, and of the incorrectness of those contained in the Editorial comment.

The paragraph referred to as published in the Journal of Commerce of Saturday, was that of January 10, 1846, and was in the words following:

"*Earthquake.*—The Memphis Eagle of Thursday Dec. 25th says: A very sensible quaking of the earth occurred at about half-past nine, on Tuesday evening, starting many of our people to their feet who were not on them, and frightening many others; the agitation was accompanied with a roar, or rumbling noise, and apparently proceeded from a north westerly direction, it lasted about half a minute."

The Journal of Commerce of March 7, 1846, con-

tains the following notice of an earthquake at Cincinnatti, on the 28th of Feb., 1846:

"*Earthquake.*—Several of the gentleman at our boarding house—the Howard House, on Main Street, mentioned to us on Saturday, that they felt the shock of an earthquake about 10 minutes to 8 o'clock in the morning. One gentleman, sitting in the parlor, felt the undulating motion with such force that it was with difficulty he could maintain his sitting posture. Two others, in their private rooms were affected in the same manner. The shock continued during the space of half a minute.—*Cin. Gaz. March 2d.*

The Journal of Commerce of March 14, 1846, contains the following notice of an earthquake at Santo Tomas, on the 30th of January, 1846:

"*Earthquake.*—A very violent shock of earthquake was felt at the Belgian Settlement of Santo Tomas, on Friday Evening, Jan. 30th. It is described as being like the discharge of a heavy piece of ordnance.

The Journal of Commerce of April 1, 1846, contains the following account of an earthquake at Maysville, Ky., on the 23d of March, 1846:

"*Earthquake.*—The Maysville (Ky.) Eagle of the 24th inst,, says; At 45 minutes past 12 o'clock, on Sunday night, an earthquake, preceded by a rumbling sound as of distant thunder, was sensibly felt by all the inhabitants of this city who were awake at that hour. We learn from one gentleman, who was up, that there were two concussions, scarce five seconds intervening, and that his house shook perceptibly. At the time of the shocks, there was a cloudy sky, but no wind. A gentleman from the country, who resides at an elevation of nearly 400 feet above the Maysville bottom says that the shocks at his house were severer than any that have occurred since the memorable earthquake of 1811, '12."

The Journal of Commerce of April 23, 1846, contains the following;

"*Earthquake in the West Indies.*—By way of Havanna we have received advices from the town of Cuba. On the 23d ultimo, at half past 7 in the morning, after a calm, sultry night, low, rumbling sounds were heard- Suddenly the ground shook violently, causing the greatest consternation, the people running into the street for safety. The first shock lasted one or two minutes and after a lapse of five minutes, the ground was again violently shaken. It was a solemn moment: in every direction the affrighted inhabitants might be seen on their knees, calling on God to save them, expecting each moment to be swallowed up. Several slighter shocks were felt during the forenoon, but it is believed no lives were lost. Several buildings were thrown down, and very many cracked. In the evening mass was said in all the churches for their deliverance from death."

The Journal of Commerce of May 15, 1846, contains the following:

"There was a slight shock of an earthquake at Santa Cruz (south side of Cuba) on the 28th of April."

By referring to our last Gazette, it will be seen that an earthquake took place at Memphis, Tennesee, on the 23d of December, at half-past 9 o'clock in the evening; another at Santo Tomas near the equator, on the 30th of January, hour not stated; another at Cicninnati, Ohio, on the 28th of February, at about 8 in the morning, and now we add another at Maysville, Ky., on the morning of the 23d March, at 15 minutes before 1 o'clock A.M.; and still another at Cuba, on the 23d of March, at half-past 7 in the morning; and yet another in Cuba on the 28th of April ult.

Here then, we present from the columns of our good friend Mr. Halleck, the account of six earthquakes which have occurred since he penned the editorial comment upon our notice of the Memphis earthquake.

The regularity as to time, shows that these have been periodical, one each month, and near the close of the month. Each followed by a storm, and each succeeded by a fixedness of temperature in the atmosphere.

After the December earthquake, the mercury in my thermometer remained stationery 11 hours after; that of January, 11 hours; February, 11 hours, March, 23, 11 hours, March 24, nearly the whole day, and April 28th and 29th, 11 hours.

The meteorlogical observations for the 28th and 29th of April were published in the Brooklyn Evening Star, on the 29th of April and 5th of May. The last published were first written.

The following is a copy:

"Monday morning 27th, 9 o'clock, 61°; half-past 9, 64; 12, 65; 1, 66; 2, 68; 3, 69; 4, 67; 5, 65; 6, 62; 9, 57; 10, 55.

"Tuesday morning 28th, 4 o'clock 47°; 5; 48; 6, 52; 7; 58; 8, 64; 2, 72; 3, 71½; 4, 67; 5, 65; 6, 60; 7, 58; 9, 53; 10, 50.

"Wednesday morning 29th, 4 o'clock, 50°, 5, 50; 6, 50; 7, 50; 8, 50; 9, 50. Thus we have another night in which the atmosphere has been stationary in temperature. This morning rain fell in a gentle shower between 7 and 8 o'clock.

"Thursday morning 4 o'olock, April 30. The temperature yesterday reached 57°, and vibrated considerably, lowest point at 50, at which it now is. During the night it fell 2°. In my communication sent you yesterday I stated the fixedness of temperature the previous night, and have now to notice the profuse rain-storm which followed. It will be seen by referring back to my published memorandas that a storm followed the same state of the atmosphere Dec. 23d, Jan. 31, February 28, March 23, and April 23d, (at the south,*) and now, yesterday the 23th, here."

The meteorlogical observations to which we refer were made by the editor of this Gazette, and published in the Brooklyn Star long before the accounts of the earthquakes reached here.

The account of the earthquake at Maysville, was published in the Maysville Eagle on the 24th of March, and the meteorlogical observations made on Brooklyn Heights, on the 22d, 23d and 24th of March, was published on the 25th of March in the Brooklyn Star, as follows:

"Sunday morning 5 o'clock, 32°; 7, 32°; 8, 36°; 9, 41°; 12, 47°; 3, 53°; 5. 49°.

"Monday morning, 6 o'clock, 34°; 12, 50°; 2, 50; 6, 42°; 8, 40°; at which it continued through the night, and varied from that but little during Tuesday. On Monday afternoon clouds bordered the horizon at every point of the compass. indicative of what followed," which we now add, was a storm, in which the Packet Ship Henry Clay went on shore.

The Brooklyn Star of March 2, 1846, contains our memorandum as follows:

"At half-past 9, Saturday morning, the 28th, the temperature rose to 20°, being 3° from 7 o'clock, and with this rise of temperature snow commenced falling; at one o'clock 21°; 2 P. M., 20°; four, 18°; nine o'clock, 16; and continued at that without change during the night. Sonday morning, at 7 o'clock, 16°; one P. M., 24°; 7, 20°. This morning at 7 o'clock, 20°, with a clouded atmosphere, indicating another fall of snow."

The Brooklyn Star of February 2d, 1846, contains our meteorlogical memorandums, as follows:

"Saturday was the warmest day for the month of January—the temperature rose to 52° at 2 o'clock P. M.; at the same time a black cloud appeared in the northwest; which in half an hour reduced the temperature to 41°—at midnight it had reached 22°, at which point it continued for 11 hours, at 12 o'clock, Sunday noon, was at 23°, at 5 o'clock P. M. 25°, and rose one degree during the night, and was at 7 o'clock this morning, 26°. Saturday, to near 1 o'clock P.M., the East River was covered with so dense a fog that it was with difficulty the ferry boats crossed over, and not without the aid of the shore bells. Thursday evening, about 5 o'clock, snow fell in a few sprinklings and was followed by rain during the night, in moderate quantity. Rain fell on Friday night also."

A comparison of the respective accounts of the earthquakes as stated above with the memorandums of the observations made here and published at the respective dates will be most convincing.

We have a further illustration, as follows: On the 28th of February at 11 o'clock A. M., a sudden and heavy blow was experienced at New-Orleans, and several vessels were injured by the wind.

On the first of March, next day, the ship Oneida, bound from Canton to New-York, encountered a terrible hurrieane off the south end of the Island of Madagascar, which hove the ship down on her beam ends. The same day, and the day following, the sea was so much swollen and disturbed at St. Helena that several vessels were shipwrecked in the harbor, and much damage done to buildings on the shore. The same day Nott's Island on the coast of North Carolina was nearly inundated by the sea, and great damage done. The wild fowl were killed in great numbers by the storm. The same day a tremendous snow storm was experienced at Norfolk and also at Richmond, Va. The same day snow fell three inches deep at Saltville, Va. Here are the results of the earthquake at Cincinnatti, traversing almost half across the globe.

It will be seen by the memorandums published in the star, that on the night of Dec. 23d, the temperature was stationary, that that peculiar state was preceded by a sudden fall of 3°. The same occurred on the 28th of April, and on the 28th of February the rise was 3°.

Two of the earthquakes occurred on the 28th day of the month—two on the 23d day of the month, and one on the 30th day of the month.

Extract from a Meteorlogical Record kept by the Editor on Brooklyn Heights.

Friday May 15, 1846.—4 o'clock A..M., 58; 5, 58; 6, 60; 7, 62 8, 65; 10, 70; 11, 71; 12, 72; 1, 73; 2, 72; 3, 70; 4, 68; 5, 68; 6, 62, black clouds in the south west—7, 62; 8, 61; 8½, 60; 9, 60; 10, 60.

Saturday May 16, 4 o'clock A. M., 59; 5, 59; 6, 59; 7, 62; 8, 66; 9, 66; 10, 66; 11, 65; 12, 64; 1, 62; 1½, 61, heavy rain; 2, 61; 2, 10, 61½; 2, 45, 60½; 3, 61; 3½, 63½, wind and rain; 3, 45, 62; 4, 62; 5, 60; 6, 60; 8, 58; 9, 59; 10, 60. The rain continued with trifling intermission from 30 minutes past 1 to 5 o'clock.

Sunday May 17, 5 o'clock A. M. 58; 6, 58; 7, 59; 8, 59; 9, 62; 10, 63; 11, 68: 12, 70; 1, 72; 2, 74; 3, 74; 5, 71; 6, 67; 7, 65; 9, 62: 10, 61; 11, 60.

Monday, May 18, 5 o'clock 60; 6, 62, 7, 68; 8, 75; 9, 72; 10, 77; 11, 78; 12, 80; 1, 81: 2 82; 230, 83; 2 45, 82; 3, 80, distant thunder; 3, 15, 76; heavy rain; 3 20, 75½; 3 30, 74; 3 45, 72; rain ceased; 4, 72; clear over head; 4 ½ 76; clouds approaching; 4 30, 65; 4 50, 73, very black clouds causing great comparative darkness; 4, 57, heavy rain; 5, 69½, heavy rain and vivid lightning; 5, 5, very heavy rain; 5 10, 67, heavy thunderbolt broke near by; 5½, 67; rain, thunder, lightning; 5¾, 66½, 5 35, 66; 6, 66; 6 30, 66; 6 45, 66, heavy wind and great rain; 7, 64; 7 5, 60; 7 15, 59, lightning; 8, 57; 9, 57; 10, 55.

Tuesday May 19, 4 o'clock 45; 6, 45; 7, 52; 8, 54; 9, 57; 10, 56; 11, 56; 12, 58; 1, 59; 2, 60; 3, 60; 4, 61; 5, 60; 6, 58; 7, 56; 3, 54; 9, 53; 10, 52; 11, 51.

Wednesday 20, 4 o'clock, 46; 5, 46; 6, 48; 7, 54.

A careful examination of the above record will be found very instructive.

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* The 23d of April referred to above. Our record of that and the preceding two days, published in the Brooklyn Star of April 24, is as follows:

"Tuesday 21st April, 5 o'clock, 49 deg.; 7, 53; 8, 62; 9, 67; 10, 70; 11, 72; 12, 78; 1, 79; 2, 80; 3, 81, 3½, 82; 4, 81; 5, 78; 7, 73; during Tuesday night the temperature decreased 14 deg. being at 59 at 4 o'clock on Wednesday morning. Wednesday morning 4 o'clock temperature 59 deg. 6, 57; 7, 59; 9, 57; 10, 57; 11, 55; 12, 56; 1, 56; 3, 55; 4, 54; 5, 54; 6, 53; 7, 49. It continued at that throughout the night, and was the same at 4, 5, and 6 o'clock on Thursday morning, and at 7 rose to 51."

On Thursday a heavy storm set and rain fell plentifully.

We have no account of earthquakes on the 22d of April but the peculiar state of the temperature gives abundant reason to suppose an earthquake took place on that day near the equator. It may be that we may never hear of it, for had that at Memphis, or Maysville, or Cincinnati, taken place in the wilderness, where no newspapers were printed, we probably should never have heard of the occurrence.

CHARTER.

CORPORATION OF NEW-YORK.

Papers Dd. No. 73.

Gov. Montgomerie to the Board of Trade.

New-York, May 6th, 1728.

My Lords.

I thought it my duty to take the first opportunity of acquainting your Lordships, that after a tedious voyage and being five months out of England, I arrived here on the 15th of last month. I that day published His Majesties Commission here and at Perth Amboy in New-Jersey, the week thereafter.

I have been so short a while in this country, that I dare not yet take upon me to give your Lordships a particular account of the state of the province, nor of the circumstances of the frontiers on the side of the Indians. I shall hereafter be very punctual in all my accounts and will always endeavor to put things in so true a light that your Lordships may have reason to depend upon what information I give you.

Governour Burnet tells me that he has sent you a full account what was done in the assembly here which he dissolved in November last, and in some time thereafter issued writs for calling a new one, but they had not met when I arrived. Application was immediately made to me and the people of the best interest of the province advised me to dissolve this new assembly, but I did not determine myself till I consulted with every member of the council singly, and with what gentlemen of the province were then in town. They all unanimously, and even Gov. Burnet himself advised me, to call a new assembly, as the most probable way to compose differences, and reconcile all animosities; In compliance with all their advices, I dissolved the assembly by proclamation, and writs are preparing to summon a new one to meet after harvest.

All I can yet inform your Lordships of, as to affairs in New-Jersey, is that in December last, Governour Burnet met the assembly there which ended in February; several laws were passed, of which he himself will give you a particular account. As soon as I can have them from the secretary, I shall transmit them to your Lordships, ingrossed, under the seal of the province. I hope your Lordships will be so good as to forgive the imperfect and indistinct accounts I have given you; hereafter I hope to convince your Lordships that my whole business here shall be to do what is for His Majesties service, and for the good of the provinces he has been pleased to entrust to my care. I shall alwyas strive to deserve your Lordships approbation, for I am, with great respect, My Lords,

Your Lordships' most obedient,
And most humble servant,
J. MONTGOMERIE.

Endorsed,

Rec'd, Read, } June 20th, 1728.

Col. Cosby to the Board of Trade.

New-York, 18 Sept., 1732.

My Lords,

I have the honor to acquaint your Lordships of my arrival to this place; the assembly is now a sitting, so soon as they are upp, I will not faile by the first ship that goes for England to send all the acts in order to be laid before you. I have just this moment received your Lordships' letter with a copy of Capt. Carrington's inclosed. I will immediately write to the Commissioners for the Indian affairs to consult with the Five Nations in order that they may interpose, and will do every thing that I can in that affair. I am, my Lords, with the greatest respect imaginable.

Your Lordships' most obedient humble servant,
W. COSBY.

Extract from a letter, written by GOVERNOR COSBY of the Province of New-York to the Government at Home, on the 29th of August 1733, in reference to the NEW-YORK CITY CHARTER, called Montgomerie's charter.

"No. 10 is an act confirming the charter of the city of New-York by Governour Montgomerie, MY LORDS, as to this act I would beg leave to observe that the Charter which was designed to be confirmed by this act having past away grants of a very extraordinary nature that I thought it necessary for me to acquaint your lordships with some of the inconveniences arising from it. By this charter are granted all the Islands near and round his majesties garrison here, the soil of the East River, as far as low water mark and extending in length to the utmost limit of the Island whereby His Majesties prerogative and interest may be in danger of suffering, and his ships stationed here under the necessity of becoming petitioners to the Corporation for a convenient place to carreen, or refit, for this charter having granted the Corporation, all the Islands as well near and round as before the fort which lay commodious for the security and defence of it, in case of any eruptions, was as I conceive lodging too great a power in them, in case of any necessity, and by so much lessening of the King's prerogative.

"I must own, my Lords, that I was *merely* surprised into an assent to this act, it having been exhibited so very early after my arrival (as your Lordships will perceive by the act itself) that I had not an opportunity of being acquainted with the nature and design of it, and from the general words of the title of it very little apprehended the nature of its extent.

"The act in general terms confirms the city all the grants to them at any time heretofore made without either referring to any one grant in particular, or mentioning what the grants were that were designed to be confirmed by this act, so that your Lordships on view of the act could not determine what rights, grants or particular privileges were to be confirmed by the act and for ought appears some (if not many) of these grants or charters may be (and as I believe are) prejudicial to His Majesties' interests.

"It were but lately my Lords that I came to any knowledge of the charter designed to be confirmed by this act, and that charter consisting of a vast number of skins of parchment, and the vessel by *whom* I now write being to sail in a day or two has rendered it improbable for me by this opportunity to have sent to your Lordships a copy of it, and without which your Lordships could not judge of the act, the act being worded in general terms, but shall send it by the next ship, and now hope that what I have offered will justify your Lordships to stop any proceedings at your board upon that act until I have this honor a second time to write further to your Lordship's concerning it."

REMARKS.

The Constitution of this State contains this provision:

"But nothing contained in this Constitution. shall affect any grants of land within this State, made by authority of the said King or his predecessors, or shall annul any charters to bodies politic or corporate by him or them made, before that day, or shall effect any such grants or charters since made by this State." Sec. 14, Art. 7.

The charters of the City of New-York were never granted by the said King or his predecessors, nor was it granted by this authority or sanctioned by him.

Members of Common Councils of the City in the management of its public concerns are in every respect like the "Selectmen" of towns, or the Supervisors of counties—mere administrative officers, nothing more—they have strictly speaking no legislative power for the Constitution has vested that solely in the Senate and Assembly, and these bodies cannot delegate this power.

An Act to provide for the calling of a Convention in relation to the Charter of the City of New York. Passed May 9, 1846.

The people of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. An election shall be held in the city of New-York on the first Monday of June ensuing the passage of this act, for the selection of delegates to a county convention for forming a new, or revising and amending the present charter of the said city of New-York.

§ 2. Each of the wards of the said city of New-York shall be entitled to the following representation in said convention, viz: First ward, one delegate; Second ward, one delegate; Third ward, one delegate; Fourth ward, two delegates; Fifth ward, two delegates; Sixth ward, two delegates; Seventh ward, two delegates; Eighth ward, three delegates; Ninth ward, three delegates; Tenth ward, two delegates; Eleventh ward, three delegates; Twelfth ward, one delegate; Thirteenth ward, two delegates; Fourteenth ward, two delegates; Fifteenth ward, two delegates; Sixteenth ward, two delegates; Seventeenth ward, three delegates; Eighteenth ward, two delegates.

§ 3. Notice of such election shall be given, and the same shall be provided in the manner now provided by law in regard to charter elections in the city of New-York, and the name of each delegate voted for shall be written or printed upon each ballot, and the ballot shall be endorsed "delegates to the convention," and a separate box for the deposit of such ballots shall be kept by the inspectors of each election district in the several wards of the said city.

The result of such election shall be ascertained and certified in the manner now provided in the act regulating charter elections in said city.

§ 4. All the provisions of law for the purity of elections in the city of New-York shall apply to the election held under this act; and all false swearing at said election shall be deemed and punished as perjury.

§ 5. The delegates to be chosen under this act, shall meet in the city of New-York on the first Monday of July next, at the chamber of the board of aldermen, and shall then, or as soon after as may be practicable, organize and adopt rules for their government. They shall complete their business so that any charter or amendments adopted by them may be submitted to the electors of the city and county of New-York, as in the next section provided,

§ 6. The charter or amendments proposed by the convention organized under this act, shall be submitted to the electors of the city and county of New-York, at the election to be held in the said city on the first Tuesday after the first Monday of November, in the year 1846, and if adopted by a majority of the votes cast on the question, shall be submitted to the legislature at the next session thereof for approval, and if so approved shall become the charter, or a part of the charter of the said city of Ne-York; and in case the said convention shall prefer amendments and not a new charter, the said amendments shall be submitted to the electors of the city and county of New-York separate or in clauses relating to the same subject. The ballots to be used at the election to be held under this section, shall be prepared in such form as said convention may direct, and a separate box for the deposit of such ballots shall be kept by the inspectors of each election district in the several wards of the said city, and the result of such election shall be ascertained and certified to in the same manner now provided in the act renulating elections for members of assembly.

§ 7. The expenses of the election for delegates to be held under this act, and all expenses attending the convention, shall be paid out of the treasury of the city of New-York. The proceedings of the convention shall be filed in the office of the clerk of the county, when duly certified to by the presiding officer and secretary or secretaries of said convention.

§ 8. The members of the convention shall have power to provide for their own pay, which shall not exceed one dollar and fifty cents per day for every day actually in session.

☞ The Clerk of the Anti-Assessment Committee copied the act on the 13th of May, prior to the adjournment of the Legislature, in the office of Secretary of State, but as his copy disagreed with the Corporation copy, we wrote our friend, Mr. Sec. Campbell, who is one of the most faithful and worthy public officers in the State, and received from him a letter, of which the following is a copy.

"Secretary's office, Albany, May 19, 1846.

"Dear Sir,—Your letter of yesterday has been received. The act entitled "*An act to provide for the calling of a Convention in relation to the Charter of the City of New-York,*" passed May 9, 1846, by a two-third vote, contains nine sections. The last is as follows:

"§ 9. *This act shall take effect immediately.*"

"I sent a certified copy of the act to Mr. Valentine, Clerk of the Common Council last Friday, which you can examine. Yours, very respectfully,

ARCHIBALD CAMPBELL,
Dep. Secty. State.

E. Meriam, Esq.

NO NEW VICTIMS OF TAXATION.

The Finance Committee in the Senate of this State have reported AGAINST the application for a law to tax the merchandize in the hands of commission merchants the funds in the hands of Bankers belonging to persons abroad in the city of New-York and against taxing the citizens of other states and of other counties in this State who happen to transact business in the city of New-York. The Report is an able document, it is from a very able Committee and accords with the views expressed by the meeting held at the merchant's Exchange in 1843.

The Corporation need not seek out new victims of taxation—the remedy is elsewhere, and is in the stopping of the profligate expenditure of the public money—in ceasing to squander the money wrung out of the people by destructive taxation—stop the treasury leaks—these are the remedies, We here give the Senate Report.

STATE OF NEW-YORK.

No. 109.

IN SENATE,

March 27, 1846.

REPORT

Of the finance committee on the petition of Lewis Silbrand, and others, for the taxation of the personal property of non-residents of the city of New York.

Mr. Porter, from the committee on finance, to whom was referred the petition of Lewis Silbrand and others, praying for the passage of a law that shall make all personal property liable to taxation, whether the same is owned by non-resident citizens or otherwise,

REPORTS:

That the committee have had the said petition under consideration; that it alleges that it has been ascertained that there is over ten millions in value of personal property in the city of New York, belonging to merchants and others, who are doing business in that city, but who do not reside therein; and that this property is not taxed in that city, although its owners derive equal benefits in the protection of their property with those who are compelled to pay by tax the expense of the city government; that many persons doing business in the city have become residents of neighboring places, for the purpose of avoiding taxation upon their personal property in the city, all of which the petitioners deem a grievance which they claim should be redressed.

The petition is very numerously signed, and shows that very many of the inhabitants of that city entertain the opinion, that it is consistent with the general policy of our laws, to impose taxes for the purpose of meeting the expenses of the city and state governments, upon personal property found within the city, irrespective of the residence of the owner. It may not, therefore, be inappropriate at this time to refer to the several statute provisions on this subject, to show the scope and policy of the law on the subject of taxation in this respect.

In the first place in regard to real estate, it is provided (1 *R. S.* 389, *sec.* 1, 2, 3.) that every person shall be assessed in the town or ward where he resides when the assessment is made for all lands then owned by him, within such town or ward, and occupied by him, or wholly unoccupied; and if it shall be occupied by another person than the owner, it may be assessed in the name of the owner or occupant. But if it shall be unoccupied, and the owner does not reside in the town or ward, it shall be assessed in that town or ward as the land of a non-resident. And sections 11 and 12 further provide that such lands shall be placed on the assessment roll, as the lands of non-residents, with some proper description to designate them.

Thus it will be seen that in respect to real estate, the law requires that it shall be assessed in the town or ward where it is situated, without regard to the residence of the owner.

But in respect to *personal* property the 5th section of the same title provides that every person shall be assessed in the town or ward where he resides when the assessment is made, *for all personal estate owned by him.* And section 9, which gives directions as to the form of the assessment roll, provides that the assessors shall set down in the fourth column the full value of *all the taxable personal property owned by such person*, after deducting the just debts owing by him.

The statute is therefore equally explicit and clear, that all personal property shall be assessed in the town or ward where the owner resides and not elsewhere. The universal practice has been, it is believed, in accordance with this principle, with the entire acquiesence until this time of the whole people, from the organization of the government. It is now sought to make New-York an exception in the application of this uniform principle of taxation. And the only argument offered in favor of this position is, that while the owners reside out of the city, their business and property is within the city, and they enjoy the protection of the government without sharing in the burdens of its taxation. It might be inferred that the petitioners supposed, that if they sought to make New York an exception to the general rule, that the evil of which they complain was confined to that city. Whereas it is believed that it is a common circumstance that individuals possessing wealth, will employ their capital consisting of personal property in one city or town, while they reside in another. The property, does not in any case, if assessors do their duty, escape taxation. It will contribute its due proportion to the discharge of the public burthens, though not always in the locality where it is employed. Still it is not impossible, nor indeed improbable, that equal and exact justice is done in this respect. There may be as great an amount of personal property owned by residents in the city of New-York, and employed in business elsewhere, and which is of course taxable in the city of New York, as there is employed in the city and owned by those who reside out of it.

The principle of taxing personal property in the city or town in which the owner resides, the committee believe to be sound and just in all respects. To adopt the other system, of taxing personal property where it was employed in business, irrespective of the residence of the owner would be exceedingly perplexing and troublesome in practice, and inquisitorial in character, and cannot be required upon any principle of justice or fairness. Personal property has no fixed locality, except as connected with the habitation of the owner. It may appear reasonable to the petitioners, that since a large amount of personal property is employed in business in the city of New York, while the owners reside in the neighborhood of the city, that the property should be taxable in the city. But if that principle is adopted in this instance, it must be made universal; and then the personal property of those who reside permamently in other States and in foreign countries, if found in the city of New York by the assessors, would be subjected to taxation there. Even property sent there to be sold and awaiting a market, would in that view be properly set down in the assessment roll; although the proceeds of it may have been transmitted to the owner, before that roll should be completed, and the owner assessed for it at the place of his residence.

The committee discern no reason or argument for departing from the uniform and established rule, that connects the taxation of personal property with the residence of the owner, and they recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioners be denied.

TAX UPON NON-RESIDENTS.

At a public meeting held at the Merchant's Exchange in the city of New-York, on the 6th of March, 1843, in relation to Taxes and Assessments, Preserved Fish, Esq., was called to the Chair, as President of the meeting, and William B. Crosby, Peter Cooper, Peter Schermerhorn, Abraham Van Nest, Abraham G. Thompson, George Griswold, Charles H. Russell, Jonathan Goodhue, Peter Embury, Peter I. Nevius, Peter Lorrilard, Jr. and John Haggerty as Vice Presidents.

These gentlemen were of both political parties.

The memorial of the meeting to the Legislature signed by all the persons above named, was presented in the senate of this State on the 11th of March, 1843, by the President of that Honorable Body, and is now on file in the Senate. This memorial contained the following:

"The Remonstrants represent that the Real Estate situate in the city of New-York the principal sea port of this great and growing state is valuable mostly in consequence of the Commercial advantages which said city possesses; and whatever laws are or shall be enacted which impose restrictions or burdens upon trade and Commerce in said city alone and distinct from the rest of the state is an indirect tax upon such real estate, operating in a two-fold degree, depreciating the value thereof in the same ratio as Commerce and trade are affected,—also hindering improvements and decreasing its population. The provision of one of the said bills of the said Common Council, is, that persons doing business in said city and residing beyond its limits, shall be taxed in the said city and not elsewhere in this State, or if they live without the boundaries of this State, such citizens must pay tax on their personal property in the state where they reside, and also in the State where they do business, making a double tax. This provision involves principles which are of great importance, and if it is to become a law, may lead to the passage of retaliatary laws by other States and thus the harmony of the Union be disturbed, very much to the injury of trade and Commerce as well as to the detriment of the public welfare. The provision of the said bills which requires every inhabitant or person doing business in the city of New-York to make an inventory or schedule of the personproperty belonging to him or held by him as agent for others, and to return the same under oath to the assessors within a limited time, is disapproved of, and considered inquisitorial, arbitrary and oppressive, and will in many cases be difficult and in some almost impossible to comply with."

"It is suggested that the present law of the State is sufficiently ample in this particular, and that it affords the assessors as much opportunity or means of ascertaining what persons are liable to be assessed for personal property as is needed. By the present law, they are authorised to assess any and every inhabitant, for personal property, as great in amount as they believe him to be worth; and if they cannot satisfy themselves as to the amount, they can set down as large an amount as to compel the person thus assessed to reduce the same under oath, or otherwise pay the tax on the said property.

"It is said by public officers, as the remonstrants are informed, that many persons escape taxation on personal property who are liable to taxation; this, it is suggested, is the neglect of the assessors, and not the inadequacy of the present provisions of law.

"The provision which authorises the imposing a tax upon the personal property, merchandize, produce, funds, &c., &c., in the hand of an agent, is a new feature sought to be incorporated into the laws of the State, and made applicable to this city only, involving principles of very great importance. Should this provision become a law, the effect will be *to drive business away from this city*, as well as money funds, and hereafter the interest on public and other pecuniary obligations will be made payable without the bounds of the tax district."

WHARF TAX.

An extraordinary provision has made its appearance in a bill introduced into the House of Assembly, providing for levying a wharf Tax, *secretly*, by inserting a clause at the foot of a bill relating to other matters. Such a system of legislation we are confident that the legislature will never give countenance to.

STATE OF NEW-YORK.

ASSEMBLY,

April 10, 1846.

No. 415.

AN ACT to amend an act concerning passengers in vessels coming to the port of New-York, passed February 11, 1824.

6. "*and said Corporation shall have full power to regulate the rates of wharfage charged upon all goods of vessels discharging in, at, or upon any wharf, pier, or slip in said city.*"

If there is need for the passage of a law in relation to wharfage, let a bill with a proper Title be introduced, and not insert this extraordinary provision in a bill of a title calculated to mislead the persons interested. The Corporation have recently leased the wharves, piers, &c., at public auction. A Remonstrance will be sent to the Legislature against this provision, in the mean time the members from the country will take care that their butter, pork, ashes, &c., are not thus indirectly taxed in the city of New-York.

The Flour and Produce pays a tax in the Storage and Commissions, for the Commission Merchant pays a tax and the store house is also taxed, and the vessel pays wharfage.

The Wharves, Piers, &c., are county property the same as Bridges and Roads, and are paid for by a County Tax.

[NOTE.—*The sleeper killed the bill.*]

AMERICAN SALT.

Speech of Hon. A. C. Hand, of the fourth senatorial district, in the Senate of this State in relation to the duty on Onondago Salt, reported in the Albany Atlas.

THE SALT DUTIES.

REMARKS of Mr. HAND, in Senate, March 20, in Committee of the Whole, on the bill in relation to Salt Duties.

Mr. Hand said, that as a member of the Committee on Finance, he would try to give a few statistics, showing the reasons for and against the bill reported by the Committee, and other propositions now before the Senate; among which was one from his colleague, (Mr. Clark) to make the tolls equal on foreign and on our own salt; and another by his colleague, (Mr. Mitchell,) to put the duty at three cents per bushel instead of two as proposed by the committee on finance. He said it was well known that there are but three great sources for supplying us with salt; for although Pennsylvania made, perhaps three-fourths of a million of bushels, and Massachusetts nearly half a million, and a little was made in about 20 of the states, yet foreign importation, the Kanawha springs in Virginia, and the Salina Works, were the great fountains of supply. It is supposed the United States use now about 17 or 18 millions of bushels, of which last year we imported over 8½ millions; the Salina Works made nearly four millions; and the Virginia Works, it is believed, made as much. The Hon. Abbot Lawrence, in a recent letter, has said our home manufacture is about ten millions of bushels, but he, (Mr. H.) doubted there being quite so much; and not over one-fourth of a million were exported, and this year not probably over 100,000 bushels. It is an article of prime necessity and the localities of its manufacture were limited, though perhaps the amount that can be made at those localities is not.

Of the nearly 7 millions imported in 1841, England (which exports about 12 millions bushels annually) furnished about 3¾ millions, British West Indies, about 1¾ millions, and Portugal over half a million, The amount used in the United States, is wonderful, and the demand fast increasing; and yet the price is decreasing; ten years ago it being betwen 40 and 50 cts. per bushel, and much less now as he should show. It has been said, that an adult uses about 16 lbs., annually, but it seems that in the United States, the total consumption is nearly a bushel to an inhabitant, and it is constantly applied to new uses as manure, &c. The importation of 8½ millions last year, was valued in imposing the duty, at nearly $900,000, or a little over 10 cents per bushel; and the duty imposed was over 70 per cent on the cost; amounting in all to over $680,000.

The committee on finance has reported a bill imposing a duty of 2 cents per bushel, and all drawbacks or bounty were to be abolished. These drawbacks or bounties were granted by the law of 1843 to encourage the manufacture of the article. It amounted to 7 cents and 6 mills at tide water per bushel, and ranged from 5 cents to as low as 4 mills in Ohio, Pennsylvania, Indiana, Buffalo and Oswego, being different in different places. The effect of this bounty was to increase the annual amount that came to tide water from about 5,000 bushels to 205,000 bushels in 3 years, and made a difference of nearly 170,000 bushels the first year. This year nearly 900,000 bushels have been brought to tide water, and nearly 2,000,000 have left the state the other way. This makes the question of duty very important. As the duty and tolls now are, the income on a barrel of salt brought to tide water is as follows:

Duty on 5 bushels at 6 cents, (per 56 lb)	30 cents.
Tolls,	11.79
	41.79
Drawback on reaching tide water,	38.00
Nett to the State for tolls and duty,	3.79

The proposed new duty and tolls would produce a very different result. On a barrel it would be as follows:

Duty at 2 cents (per 56 lb)	10 cents.
Tolls, (1 mill on 1000 lbs. per mile,)	5.13
Received by the State,	15.13

Making a difference of 11.34 cents per barrel in favor of the State.

Can the business stand this change? A majority of the committee thought so, so long as the present tariff is kept on, though he (Mr. H.) had his own views as to the salt coming to tide water. That this state property ought to contribute something to our present burdens no one doubted. The receipts of the canals last year just about paid expenditures and interest on the original cost. The tolls received on salt, however, fell short of its proportion. The amount of tolls received was only about one-thirtieth of the whole tolls whereas the tonnage was about one-seventeenth. It might be useful here to state the various sums imposed as duty at different times. He would put the tariff along side.

Duty.	Tariff.
To 1817, 3 cents.	1788, 6 cents.
1817 to 1834, 12½ cents.	1790, 12
1834 to 1843, 6 cents.	1813, 10
Since 1843, 6 cents and bounties.	1830, 15
	1832, 10
	1842, 8

These are imposed upon the bushel of 56 lbs. The duty, without the drawback, still remains at 6 cents. The tariff too was cut down to about 7 cents by the operation of the "compromise act," but that is not important now.

To ascertain whether the business could bear the new plan, he would make an estimate of the cost &c. Take a barrel of boiled salt:

Duty at 2 cents, (as proposed,)	10 cents.
Toll,	5.13
Making	30
Transportation (say,)	26
Per barrel,	71,13

(Not including barrel and packing.)

Suppose we take the solar salt, of which there was made, he regretted to say, less than 400,000 bushels last year. It weighs probably from 70 to 75 lbs. A bushel by measure runs thus:

Making (say,)	11
Duty 2 cents for 56 lbs.	2.5
Toll,	1.2
Freight, (say,)	7
Cost at tide-water,	21.7

This 21. 7-10th cents does not include barrel, &c., but supposes it brought in bulk.

An estimate had been made of the cost of Turk's Island salt, which weighed about as much. Take a bushel by measure:

Cost when shipped, (say,)	10 cents.
Tariff, (8 cents on 56 lbs.)	10 "
Freight, (say,)	8 "
Cost in New York,	28 "

A statement of cargo prices has been kindly furnished by a friend, by which he found them for 12 months past to average 31 cts. 8-10ths, for Turk's Island, and Liverpool 24 1-2 cents. From this statement it could be seen that probably the business could stand the proposed change, so long as the tariff remained as it now is, but if the 8 cents should be taken off by government, and foreign Salt admitted free, in all probability, the Salina Salt would no longer reach tide water. And besides the tariff, the tolls on foreign salt is 15 times as much as it will be on our own, which would always give ours the advantage west of Albany. One cent duty would hardly do more than keep the works in repair, and many facilities on the canal are now afforded, as wood toll-free, &c. He thought, at any rate, that this duty of 2 cents, should be imposed on salt not brought to tide-water. Perhaps one cent would be enough on that, as the consumer there had a choice of markets. Gentlemen had complained of the discrimination. But the difference is in facilities. If the consumer in the interior gets it at reasonable rates, is not that enough? Suppose the State, by receiving only *one* cent on a bushel in all, duty and toll, brings to tide water one million of bushels, when if *two* are imposed, none will come, should the interior complain that the State saves this $10,000, and aids in keeping down the article at tide water, by competition? He should regret to lose the New England market.

Something (said Mr. H.) has been said about reducing it as low as possible, as all must use it. That is very true, but we require tolls on all necessaries—nearly 9 cents on corn from Buffalo to Albany. And upon all kinds of provisions too. There is a large debt unpaid, the interest on which must be met, and this is the property of the State, and should it not contribute a share? On the other hand he would not embarrass the works. The amount annually paid by other States to our citizens for salt was large, and many persons are employed. By fostering these works, you keep up a brisk competition on the east and on the west, and it keeps down the foreign article.—This induced him to oppose the proposition to place foreign salt upon the same footing. The tolls now may be too high on foreign salt, but if put on par with our own manufacture, he feared it would destroy our works, and consequently destroy competition, and very much enhance the price of the article in a few years everywhere. Mr. H. said he had thus thrown together the items of information he had received. They might be, in some respects, incorrect, but if useful to the committee in forming correct opinions, he should be satisfied."

In the last number of our Gazette several typographical errors occurred in overlooking the proof sheet in the statement of analysis of the several specimens of salt. We correct these by recapitulating the statements of analysis as follows:

Salt made by solar evaporation at Geddes.

Pure chloride of sodium,	992,50
Sulphate of lime,	6,50
Carbonate of lime and magnesia,	1,00
Chloride of calcium and magnesium,	trace
	1000,00

Salt made by boiling saturated brine.

Pure chloride of sodium,	989,44
Sulphate of lime,	8,92
Chloride of calcium and magnesium,	1.64
	1000,00

Turk's Island Salt.

Pure chloride of sodium,	984,04
Sulphate of lime,	13,16*
Carbonate of lime and magnesia,	2,80
	1000,00

* And sulphate of magnesia.

Salt made at Saltville.

Chloride of sodium,	90,510
Sulphate of lime,	9,314
Carbonate of do.	0,126
Chloride of calcium,	0,050
	100,000

The analysis of the brine at Syracuse compared with that at Saltville affords more accurate information than the analysis of the prepared salt of the two establishments.

Dr. Beck made an analysis of the Onondago brine in 1837, and C. B. Hayden, Esq., made an analysis of the Saltville brine in 1843. We have the brine of both these salines in our cabinet, and also the salt, and a careful examination of all these, lead us to confide in the correctness of the respective analysis.

1000 parts of Onondago brine from four different wells produced in water 856,49,100 average—the same quantity of the Saltville, Virginia, brine produced but 754,5.100 water.

1000 parts of Saltville, Virginia, brine produced in chloride of sodium 240,52,100 and the brine of four wells at Onondago Salines average produce 136,48,100 chloride of sodium.

1000 parts of Onondago brine produced in chloride of calcium and magnesium 2,04,100 ⋈ 1000, and the Saltville brine but 0,08,100 ⋈ 1000 of chloride of calcium.

Extract of a letter from Thomas L. Preston, Esq. of Virginia, one of the proprietors of the Salt Mines in Washington county in that state, written at Syracuse, while on a visit to the Onondago Salines of our State, to the Editor.

"Syracuse, N. Y., April 20, 1846.

"My Dear Sir.

"On my arrival here I found every thing in the salt business in confusion. The water had not been let into the canal, and upon that depends the moving of the machinery for pumping the brine.

"The salt blocks were dismantled, and most of the

operatives were engaged in the unsightly process of reconstruction.

"I wished to see them in this condition for then I could have a better idea of the manner of putting them up, and a practical occular demonstration of the principles upon which they worked.

"I saw many in this denuded condition, and always sought, in consulting with the manager, information in regard to his notion of evaporating the brine. In the character of the persons enaged in this business here, I confess I have been disappointed. For the most part they have little science, and are content to follow the marked and beaten track of by gone years. Their structures are, as you informed me, rough and temporary, put up for present use on the most economical scale. From all I see around me it is but too apparent that the salt manufacturers have not prospered, and that the competition, as it is managed, is too great to make it a lucrative investment of capital. The system of hypothecating the salt manufactured by those of small means must always keep down the prices and work to the injury of those who have capital and wish to follow up their business in a regular manner. Mr. Nolton, of the Hope Factory, tells me that with all his advantages he is obliged to economise very closely to realize any thing from his operations. Here at Syracuse, that factory is acknowledged the best, and is rather looked up to, as the model. It is evidently the best arranged in every way, but I think there are defects in it which might be easily remedied and which would add materially to the saving of labor and to the more rapid evaporation of the brine. The wood used is even coarser, larger than that we use in Virginia, and much heat is lost by the manner of laying down the kettles. I have thought of several minor improvements in the construction of the blocks which I will submit you when we meet.

"The pans used here for collecting the Bittern, and other sediment, are eminently defective—inefficient. In the first place they do not fit the bottom sufficiently close, and they are so small that I presume not more than one half of that which is actually precipitated, is received in them. Still the salt is very white and makes a good show, and in the western market would sell well. A better article however can be made of our Brine, I am confident, and at as little cost. And this suggests to me a fact in the calculation of the expense of making salt that has generally been overlooked in the estimate as given at different places. We at Saltville, pump the water—cut and draw in the wood—make the barrels—build the boats and ship it to market ourselves. All these go, in some measure if not entirely, in our estimates of the price of manufacture. Here nothing is taken into the account but that which is necessary to the simple evaporation of the brine. But more of this anon.

"As the works were not in operation last week, after looking through them for two days, I resolved to proceed at once to Niagara, and spend more of my time here on my return. I left here accordingly on Thursday morning, and got back yesterday, Sunday, at 6½ A. M. I was at the Falls from 10½ A. M. Fri till 2½ P. M. Saturday. To say how much I was delighted is entirely impossible. Language but faintly conveys the impressions made upon the mind by such grand works of nature. We stand "and gaze and gaze till the heart reels with its fullness," and the mind is bound by a sense of the greatness and power of God.

"These two days I look upon as an epoch in my life. The only drawback to my pleasure was that I was alone—not even cheered by the papers giving an account of your visit. By some unexplained delay, they did not reach me till last Friday or Saturday, and I of course did not receive them till yesterday, (Sunday) morning. I have spent to-day amid the vapor of the salt kettles at the Hope Factory mostly.

"I visit now (6 o'clock P. M.) Mr. Getteau's old works. I call them *old*, for they are abandoned. I will give you my impression of them in my next. I have made Mr. Conkey's acquaintance, and find him like every one else here, kind and attentive.

"Do you not think PROF. MAPES, mistaken in his theory of the section pump? I have been thinking of it since we parted, and I confess do not fully concur with him.

"The pressure of the atmosphere will only raise water 32 feet—and no system of stationaries or underfoot valves I have ever seen bring it up higher—suppose for instance the first stationary is 26 feet below the surface of the water where a vacuum has been formed. The piston strikes against the vacuum is not made more complete, and I see no force sufficient to force the water on. 'Tis not true, you then pump from a cistern 20 feet higher than the water's ordinary surface. I would be glad you would look at this a little before we meet. I hope to be in New-York by Saturday night.

"I may drop you another line before leaving here. In the meanwhile however be assured of my kindest and most grateful regards and believe me,

"Most respectfully,

"Your ob't. sorv't,

THO. L. PRESTON."

E. Meriam, Esq.

"Saltville, Va., March 18, 1846.

"Dear Sir–I have an opportunity now of addressing you a letter by the hand of Thos. L. Preston, Esq., who will pass through New-York on his way to Syracuse, which place he intends to visit for the pupose of making a personal examination of the various improvements in the manufacture of salt. He will deliver you samples of the salt which I have manufactured since my arrival. The finest grained specimen was made in a front kettle by rapid evaporation, and the coarser specimen in the back kettles by slow evaporation, while the furnace was cooled down.

"You will perceive by these specimens, that the Saltville brine has a stronger capacity to assume the cubic form of crystals than that of Syracuse. This I attribute to the absence in the Saltville brine of a certain impurity which is contained in that of Syracuse.

"I wrote to you soon after my arrival here, and I gave it as my opinion that the Saltville brine contained as much oxide of iron and sulphate of lime as the Syracuse water; but after more careful examination, I am satisfied that it contains far less impurities. It works more kindly than any brine that I have been acquainted with, and with proper apparatus as pure and beautiful salt may be made from it as the world produces.

I have made such improvements as the nature of the circumstances, and the limited time I have been here has admitted, and the people think that the improvement is very great, but I have hardly begun to do in the way of improvement what can be done, and what I intend to do.

"Mr. Preston will collect for you, before he starts, some specimens of the various rocks of this neighborhood, which he will present to you on his arrival at your place. He is the brother of Senator Wm. C. Preston of South Carolina, and is the manager of the large Preston estate at this place. He is a highly intelligent gentleman, and you will be much gratified by a call from him.

"You would be delighted with a ramble among our mountains in search of mineral treasures in aid of the cause of science. The country presents a charmingly romantic prospect. The mountains in this vicinity do not present a continuous unbroken chain, but are in the form of a succession of pyramids, rising from two to five hundred feet high, with narrow passes between them, in many places only of sufficient width for a wagon track. I hope that you will visit us in the course of the summer.

"I am keeping a table of the temperature of the atmosphere which I will furnish you hereafter. This morning at eight the thermometer stood at 42°, and now. at 2 o'clock P. M. it is at 65°.

"Please write to me often if you have leisure. I thank you for the papers sent me since my arrival, which were duly received. It is like meeting with an old friend to see a paper from New-York.

"Respectfully yours,

THOS. SPENCER.

E. Meriam, Esq."

"Saltville, Washington Co., Va.
March 22, 1846.

"E. Meriam, Esq.

"Dear Sir:–Your letter of the 12th inst., was received yesterday, for which I thank you. I had written to you two days previous by Thomas L. Preston, Esq., who left here on that day for Syracuse, which place he intends to visit for the purpose of making a personal examination of the various improvements in salt-making.

"Mr. Preston informed me that he intended to call upon you, as you had been a correspondent of his brother, Senator Wm. C. Preston, and that he should provide himself with the various specimens of rock and minerals of this neighborhood. Knowing that it will afford you very great pleasure to see him and receive the minerals, I take this early opportunity of answering your letter received yesterday, and of apprizing you of his intention to visit you, supposing that you may receive this before his arrival, as he has numerous friends to call upon on the road, and may he detained several days in his journey.

"The Barytes is found "in place," six miles from here. I have not yet seen it, excepting a small fragment that Dr. McCall gave me, which he happened to have on hand. I put it up with a small package of specimens and sent it to my family by Mr. Preston. If he does not happen to have a specimen of Barytes for you, please to request him to open my package and give you the specimen it contains. I beg that you will not fail of doing this, as it will in your hands be more beneficial to the cause of science, and I can supply my family at another time. I sent you by Mr. Preston, samples of salt which I have manufactured since my arrival. It is better than that which has generally been made here, but I have not yet had opportunity of introducing those radical improvements which are needed to make salt with economy, and to produce that unsurpassed quality which the Saltville brine can furnish.

"In relation to the snow storm, concerning which you enquire, the first severe storm occurred on the 14th of February, while we were on board the Packet Boat ascending the James River Canal, and approaching Lynchburg. The previous day was delightful. This latter place is 142 miles west of Richmond and here the Canal terminates. It is a broken, mountainous country, and the gneis, which is the prevailing rock has been at a former period very much disturbed and the strata so distorted that it is difficult to discover any thing like a general inclination or "dip," Much of it is in a vertical position, and in some places it seems to have been turned upside down. Lynchburg is 180 miles from Saltville. We performed this part of the route by stage, and a rougher stage ride I never had. We arrived at Wytheville, in Wythe County, on the evening of the 17th of February, two days after taking stage at Lynchburgh, distance 150 miles. It was at this place that we encountered the severest snow storm, and were detained at Wytheville in consequence four days. It snowed most of the time while we remained there, with a strong wind, I think blowing from the East.

"Saltville is 28 miles from the Tennessee line and 30 miles from North Carolina. It is 90 miles from Kentucky at the gap in the Cumberland mountains. The Clynch mountain is in view about six miles distant North Westerly and is at that point 2760 feet high, the top of it capped with white sandstone, resting upon red sandstone both of which are distinctly visible at this place. By water navigation down the Holston and Tennessee Rivers, it is 150 miles to Knoxville, Tenn., and 600 miles to Huntsville, Alabama. The north fork of the Holston at this place is little more than a mountain rill, excepting in time of a freshet, when it swells to a river about 200 feet wide, and six feet deep with a strong current, at which time boats take 200 barrels of salt, and proceed down stream, but the navigation is difficult and dangerous for the first thirty miles.

"Freight from this place to Lynchburg is about one dollar per hundred, and about 50 cents from thence to Richmond.

"The chimneys of the salt furnaces here are entirely too low to manufacture salt with economy. I can stand beside some of them on the ground, and look down them. The heat is chiefly spent upon the front kettles to the destruction of the metal, and by this process much unburnt carburetted hydrogen is distilled from the fuel, and passes off into the atmosphere without benefit.

"There are some small iron works five or six miles distant, and there are works of considerable extent thirty and fifty miles distant. I furnish you with the temperature of the atmosphere and observations of the weather during this month so far, which are made by Mr. WM. KING, the clerk of King & McCall.

"Please advise me as to the amount of mineral speci-

mens you desire to have sent you. It will afford me pleasure to collect them and forward them to you.

Truly yours,

THOS. SPENCER.

	8 a.m.	12 m.	6 p.m.	
March	2d	40	46	37 Snow 3 inches.
	3	50	59	45 Intermittent rain showers.
	4	41	62	54 Clear.
	5	47	68	47 Clear.
	6	45	69	60 Half clear, half cloudy.
	7	42	72	42 Clear and windy from west.
	8	45	73	66 Clear.
	9	55	73	64 do.
	10	51	65	63 Cloudy, threatening rain.
	11	43	58	52 Cloudy.
	12	55	60	53 Much rain.
	13	53	62	56 Rain, hail and thunder.
	14	40	47	48 Cloudy, W. wind, snow, rain.
	15	49	52	46 Cloudy, stormy, west wind.
	16	39	46	43 Clear with heavy west wind.
	17	38	gone 42	Cloudy.
	18	42	gone 57	do.
	19	50	68	56 Dense smoky atmosphere.
	20	52	56	54 do. do. with light sprinkling rain.
	21	38	52	.... Clear.

Saltville, Washington Co., Va. May 3, 1846.

Dear Sir.

Your highly esteemed letters of April 6th, 10th, and 12th, were duly received. I thank you heartily for the valuable hints they contain on various topics.

Your suggestion that fire brick may be made by grinding our fire rock to a powder, and remoulding it. I think an important one. At your suggestion the experiment is now being tried, at Mr. Preston's brick yard. The rock was ground at Mr. Preston's grist-mill. The brick-maker says that it works beautifully in the moulds. I will let you know the result when they are burned.

You say that you are inclined to think that the Saltville brine is slow of evaporation, and wish my opinion upon the subject. I have examined this matter as carefully as possible, and it seems to me that it evaporated more rapidly than the Syracuse brine. In our 38 kettle furnace the back kettles "come down," full three times in 24 hours. In a furnace of the same size at Syracuse, the back kettles do not "come down" oftener than twice during the same time, and we draw quite as much salt from each kettle each time, as they do at Syracuse; that is one and a half or two bushels of salt each time the kettle "comes down" or boils down sufficiently low to withdraw the salt. The difference in quantity being 50 per cent. in favor of Saltville, which is a greater difference than there is in the strength of the brine. Syracuse being 75°, and Saltville brine at 90°. In a chemical point of view there are also strong reasons why the Syracuse brine should be the slowest of evaporation, as it contains more muriate of lime, which is exceedingly difficult to evaporate.

The buildings and machinery for pumping, attached to Mr. Preston's Salt Well, were destroyed by fire last night. The fire commenced in a blacksmith's shop, which was in the same building. The buildings and machinery at Kings' well (which is near by) were not injured.

I have procured some beautiful specimens of Barytes for you. I found it "in place" about seven miles from here, in the side of a mountain, imbedded in a yellowish hard flinty rock, which rests upon an amorphous lime stone. In one of your letters you suggested that I should be likely to find Strontian in the same locality. Will you please describe its appearance, and inform me how I may distinguish it from Barytes? I believe there is a strong resemblance between them.

I have requested Mr. King to furnish me, for your use, his meterological table up to the first of the month, which I will enclose herewith. We can furnish you with a more complete table after the arrival of the Rain-gauge which you have procured for Mr. Milner,

The season is now delightful, and our mountain scenery is beautifully picturesque. I took a ride of a dozen miles on horseback a few days since, among the mountains, and the forests presented the aspect of a magnificient flower garden, many of the trees being covered with fragrant flowers which are in full bloom at this season of the year. To add to the beauty of the scenery, we frequently meet with springs of cool transparent water, of capacious volume, gushing from the mountain side, and what is a sublime prospect, a day seldom passes that we may not see the clouds stoop and kiss the mountain's top.

I will select for the various specimens of minerals as I have opportunity, and forward them when I have completed the selection. I have recently learned that there is an extensive cave 6 or 8 miles from here, which has never been fully explored. I intend to visit it before long, and will furnish you with a description. Please write me as often as you can find it convenient.

Respectfully yours,

THOS. SPENCER.

E. Meriam, Esq.

TABLE FOR APRIL 1846.

Date.	8 a.m.	12 m.	6 p.m.	Condition of the weather.
1.	47.	60.	54.	.light cloude—east wind.
2.	41.	32.	52.	.hail, snow, east wind.
3.	49.	54.	55.	.clear and calm.
4.	48.	57.	52.	. do. do.
5.	49.	67.	62.	. do. do.
6.	46.	72.	60.	. do. do.
7.	60.	69.	56.	.cloudy, sprinkling rain.
8.	47.	56.	42.	.clear and calm.
9.	42.	60.	48.	. do. do.
10.	52.	72.	60.	.clear and calm.
11.	54.	70.	56.	.rain, west wind.
12.	59.	52.	45.	.rain in the morning, clear at evening.
13.	38.	49.	46.	.cloudy, west wind, frost in morning.
14.	32.	60.	55.	.clear and calm, frost in morning.
15.	40.	70.	58.	. do. do. do. do.
16.	50.	84.	55.	.clear and calm.
17.	46.	78.	62.	. do. do.
18.	52.	76.	58.	.clear, west wind.
19.	68.	80.	70.	.clear and calm.
20.	45.	80.	54.	. do. do.
21.	—.	85.	58.	. do. do.
22.	57.	84.	60.	. do. do.
23.	65.	73.	70.	.cloudy, west wind.
24.	67.	79.	68.	.cloudy, west wind.
25.	64.	70.	68.	.cloudy, west wind.
26.	68.	—.	—.	.cloudy, west wind.
27.	58.	67.	62.	.cloudy, east wind.
28.	59.	62.	56.	.cloudy, east wind, rain in night.
29.	61.	—.	—.	.clear, east wind.
30.	58.	76.	—.	cloudy, rain, wind variable, thunder storm

Hereafter observations will be made four times per diem. W. K., Jr.

[NOTE.—The latitude is between 36 and 37° north, longitude between 82 and 83° west. Elevation above tide-water not ascertained.—*Ed.*]

We have received from LYMAN W. CONKEY, Esq., of Syracuse, several very elaborate reports of his very minute and valuable meteorlogicol observations made at that locality. From that of April, 1846, we make the following synopsis:

Place of observation Syracuse, Onondago County, New-York, latitude 43° 1′, longitude 76° 15′, altitude of Barometer 400 feet.

APRIL 1846.

April, 1845.	Sunrise.	9 a. m.	3 p. m.	9 p. m.	REMARKS.
1.	27.	36.	43.	34.	.heavy frost.
2.	25.	36.	46.	34.	.
3.	25.	38.	50.	36.	.
4.	31.	44.	58.	43.	. [cumulus 3 p.m.
5.	38.	51.	66.	53.	.light cirrus 9 a.m., clouds cirrus
6.	48.	54.	63.	50.	.lunar hal, 10 p.m., large and bright.
7.	48.	60.	74.	63.	.showery 10 p.m., rain 0,10-100 in.
8.	40.	42.	47.	36.	.
9.	32.	41.	50.	46.	.
10.	42.	54.	67.	60.	.Daffadels in blossom.
11.	58.	64.	67.	44.	.showery 10 a.m., rain 10-100.
12.	37.	41.	39.	34.	.light snow 10 a.m., recomenced 3½ p.m. Hyacinths in blossom.
13.	29.	39.	37.	35.	.snow squalls during the day.
14.	28.	38.	48.	42.	.Nectarines and Apricots in blossom.
15.	35.	36.	39.	31.	.snow squall, 6 a.m.
16.	25.	40.	55.	50.	.Strawberries in blossom.
17.	45.	65.	73.	62.	.strength brine at Syracuse wells 73.
18.	59.	68.	75.	57.	.light shower at 5 p.m., heavy thunder and very sharp lightning.
19.	47.	52.	58.	44.	. Rain 0,40-100.
20.	35.	55.	69.	58.	.heavy frost.
21.	51.	72.	80.	60.	.shower 9 a.m., 0,03-100.
22.	49.	54.	66.	54.	.
23.	49.	56.	64.	49.	.Light showers, 10 a.m.
24.	53.	60.	65.	56.	.Sprinkle of rain 10 p.m.
25.	50.	54.	59.	50.	.
26.	40.	54.	62.	46.	.
27.	35.	52.	61.	47.	.
28.	37.	56.	74.	58.	.
29.	51.	52.	60.	52.	.Showery 3 p.m. rain 0,45-100.
30.	51.	62.	72.	60.	.Showery 6 a.m. and 9 p.m. 030-100.

East wind at sunrise on the morning of the 26th and 30th.

South east wind at sunrise on the morning of the 23d and 29th.

South wind at sunrise on the morning of the 2d, 3d, 5th, 7th, 11th, 16, 17, 18, 20th and 28th.

South west wind at Sunrise on the mornings of the 4th, 9th, 10th, 13th, 14th, 21st, 24th and 27th.

West wind at sunrise on the mornings of 1st, 6th, 8th, 15th and 19th.

North west wind at sunrise on the mornings of 12th 22d, and 25th.

At 9 o'clock in the morning the wind was from the east on the 4th, 26th, 29th and 30th, from the south on the 2d, 3d, 5th, 7th, 11th, 16th, 17th, 18th, 21st, 28th; south west, 10, 13, 14, 20 and 24; west, 1, 6, 8, 9, 19, and 27; north west 12, 15, 22 and 25; north 23.

At 3 o'clock P. M., the wind was east, 4, 18, 28, and 30; south east 29; south, 5, 7, 10, 16, and 21; south west 11, 14 and 20; west, 12, 17, 19 and 22; north west 1, 2, 3, 9, 18, 15, 25, 26 and 27; north east, 6, 23 and 24.

At 9 o'clock in the evening the wind was south east 4, 28, and 29th; south 2, 5, 6, 7, 10, 16, 17, and 30; south west 3, 11, 14, 15, and 20; west on the 8, 12, 18, 19, 21, 22 and 23; north west 1, 9, 13, 23, 25, 26 and 27; north east on the 24th.

Clear weather at sunrise on the 1, 2, 3, 4, 5, 10, 14, 16, 18, 19, 21, 27 and 28; at 9 A. M;, 1, 2, 3, 4, 16, 17, 19, 21 and 27; at 3 P. M., on the 1, 2, 3, 4, 9, 17 and 27, and at 9 P. M. on 1, 2, 3, 3, 4, 5, 6, 8, 9, 10, 15, 17, 19, 20, 22, 23, and 27.

The Dew point on the 1st at sunrise was 24; on 7, 36; 11, 54; 13, 25; 15, 28: 18, 46; 20, 28; 21, 36; 23, 47; 24, 46; 29, 36; 30, 46.

The Barometer was at 30.00 on 1, 2, 3, 4, 5, 6 and 9, and the 2, 4, and 5, 30,02, and on the 3d and 6th, 32,06, on the 11th 29,14.

Rain during the month, 2 inches.

BIRDS.

In the April number of the Gazette we said, the little bird which we denominate the Adirondack Solitary we had never seen or heard elsewhere than along the borders of the wilderness which skirt these majestic heights.

Early in the morning of the 17th, of the same month, we were surprised by the plaintive notes of the Adirondack Solitary on the top of a cherry tree, standing within twenty feet of the window at which we had penned the account of that little bird—the lower sash of the window was up at the time. We were a little surprised at the sound, and began to doubt whether imagination had not suggested the notes to the organs of hearing—while recovering from the surprise, the notes were repeated—we arose from our seat, and beheld at the top of the tree a little gray bird, which immediately flew away. The next day we visited Greenwood Cemetry, and spent a considerable time in viewing those consecrated grounds, in company with Henry Parish, Esq., who had selected some lots in that City of the Dead, for the construction of a Tomb. There we saw numerous birds. The next morning, at a little past 4 o'clock, we took a morning walk upon Brooklyn Heights, and during the whole of this walk we heard the plaintive notes of the Adriondack Solitary upon the tops of the highest trees, which it sounded at intervals. Since then we have met with Mr. Perry, of Brooklyn, who visits the Greenwood Cemetry daily, and he informs us that he heard the notes of this bird, which we described in the last number of the Gazette, a copy of which we sent him in the Greenwood Cemetry Groves, during his visits to those grounds in the month of Ap[illegible]